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HOUSE BILL 21

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

James E. Smith and Daniel Ivey-Soto

AN ACT

RELATING TO THE OPEN MEETINGS ACT; REQUIRING AGENDAS TO BE AVAILABLE TO THE PUBLIC AT LEAST SEVENTY-TWO HOURS PRIOR TO A PUBLIC MEETING; REQUIRING THE ATTORNEY GENERAL TO REVIEW A PUBLIC BODY'S ACTION ON EMERGENCY MATTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 10-15-1 NMSA 1978 (being Laws 1974, Chapter 91, Section 1, as amended) is amended to read:

"10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers

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1 and employees who represent them. The formation of public
2 policy or the conduct of business by vote shall not be
3 conducted in closed meeting. All meetings of any public body
4 except the legislature and the courts shall be public meetings,
5 and all persons so desiring shall be permitted to attend and
6 listen to the deliberations and proceedings. Reasonable
7 efforts shall be made to accommodate the use of audio and video
8 recording devices.

9 B. All meetings of a quorum of members of any
10 board, commission, administrative adjudicatory body or other
11 policymaking body of any state agency or any agency or
12 authority of any county, municipality, district or ~~[any]~~
13 political subdivision, held for the purpose of formulating
14 public policy, including the development of personnel policy,
15 rules, regulations or ordinances, discussing public business or
16 ~~[for the purpose of]~~ taking any action within the authority of
17 or the delegated authority of any board, commission or other
18 policymaking body are declared to be public meetings open to
19 the public at all times, except as otherwise provided in the
20 constitution of New Mexico or the Open Meetings Act. No public
21 meeting once convened that is otherwise required to be open
22 pursuant to the Open Meetings Act shall be closed or dissolved
23 into small groups or committees for the purpose of permitting
24 the closing of the meeting.

25 C. If otherwise allowed by law or rule of the

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1 public body, a member of a public body may participate in a
2 meeting of the public body by means of a conference telephone
3 or other similar communications equipment when it is otherwise
4 difficult or impossible for the member to attend the meeting in
5 person, provided that each member participating by conference
6 telephone can be identified when speaking, all participants are
7 able to hear each other at the same time and members of the
8 public attending the meeting are able to hear any member of the
9 public body who speaks during the meeting.

10 D. Any meetings at which the discussion or adoption
11 of any proposed resolution, rule, regulation or formal action
12 occurs and at which a majority or quorum of the body is in
13 attendance, and any closed meetings, shall be held only after
14 reasonable notice to the public. The affected body shall
15 determine at least annually in a public meeting what notice for
16 a public meeting is reasonable when applied to that body. That
17 notice shall include broadcast stations licensed by the federal
18 communications commission and newspapers of general circulation
19 that have provided a written request for such notice.

20 E. A public body may recess and reconvene a meeting
21 to a day subsequent to that stated in the meeting notice if,
22 prior to recessing, the public body specifies the date, time
23 and place for continuation of the meeting and, immediately
24 following the recessed meeting, posts notice of the date, time
25 and place for the reconvened meeting on or near the door of the

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1 place where the original meeting was held and in at least one
2 other location appropriate to provide public notice of the
3 continuation of the meeting. Only matters appearing on the
4 agenda of the original meeting may be discussed at the
5 reconvened meeting.

6 F. Meeting notices shall include an agenda
7 containing a list of specific items of business to be discussed
8 or transacted at the meeting or information on how the public
9 may obtain a copy of such an agenda. Except in the case of an
10 emergency or in the case of a public body that ordinarily meets
11 more frequently than once per week, at least seventy-two hours
12 prior to the meeting, the agenda shall be available to the
13 public [~~at least twenty-four hours prior to the meeting~~] and
14 posted on the public body's web site, if one is maintained. A
15 public body that ordinarily meets more frequently than once per
16 week shall post a draft agenda at least seventy-two hours prior
17 to the meeting and a final agenda at least thirty-six hours
18 prior to the meeting. Except for emergency matters, a public
19 body shall take action only on items appearing on the agenda.
20 For purposes of this subsection, [~~an~~] "emergency" refers to
21 unforeseen circumstances that, if not addressed immediately by
22 the public body, will likely result in injury or damage to
23 persons or property or substantial financial loss to the public
24 body. Within five days of taking action on an emergency
25 matter, the public body shall report to the attorney general's

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1 office the action taken and the circumstances creating the
2 emergency.

3 G. The board, commission or other policymaking body
4 shall keep written minutes of all its meetings. The minutes
5 shall include at a minimum the date, time and place of the
6 meeting, the names of members in attendance and those absent,
7 the substance of the proposals considered and a record of any
8 decisions and votes taken that show how each member voted. All
9 minutes are open to public inspection. Draft minutes shall be
10 prepared within ten working days after the meeting and shall be
11 approved, amended or disapproved at the next meeting where a
12 quorum is present. Minutes shall not become official until
13 approved by the policymaking body.

14 H. The provisions of Subsections A, B and G of this
15 section do not apply to:

16 (1) meetings pertaining to issuance,
17 suspension, renewal or revocation of a license, except that a
18 hearing at which evidence is offered or rebutted shall be open.
19 All final actions on the issuance, suspension, renewal or
20 revocation of a license shall be taken at an open meeting;

21 (2) limited personnel matters; provided that
22 for purposes of the Open Meetings Act, "limited personnel
23 matters" means the discussion of hiring, promotion, demotion,
24 dismissal, assignment or resignation of or the investigation or
25 consideration of complaints or charges against any individual

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1 public employee; provided further that this [~~subsection~~]
2 paragraph is not to be construed as to exempt final actions on
3 personnel from being taken at open public meetings, nor does it
4 preclude an aggrieved public employee from demanding a public
5 hearing. Judicial candidates interviewed by any commission
6 shall have the right to demand an open interview;

7 (3) deliberations by a public body in
8 connection with an administrative adjudicatory proceeding. For
9 purposes of this paragraph, [~~an~~] "administrative adjudicatory
10 proceeding" means a proceeding brought by or against a person
11 before a public body in which individual legal rights, duties
12 or privileges are required by law to be determined by the
13 public body after an opportunity for a trial-type hearing.
14 Except as otherwise provided in this section, the actual
15 administrative adjudicatory proceeding at which evidence is
16 offered or rebutted and any final action taken as a result of
17 the proceeding shall occur in an open meeting;

18 (4) the discussion of personally identifiable
19 information about any individual student, unless the student
20 [~~his~~] or the student's parent or guardian requests otherwise;

21 (5) meetings for the discussion of bargaining
22 strategy preliminary to collective bargaining negotiations
23 between the policymaking body and a bargaining unit
24 representing the employees of that policymaking body and
25 collective bargaining sessions at which the policymaking body

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1 and the representatives of the collective bargaining unit are
2 present;

3 (6) that portion of meetings at which a
4 decision concerning purchases in an amount exceeding two
5 thousand five hundred dollars (\$2,500) that can be made only
6 from one source is discussed and that portion of meetings at
7 which the contents of competitive sealed proposals solicited
8 pursuant to the Procurement Code are discussed during the
9 contract negotiation process. The actual approval of purchase
10 of the item or final action regarding the selection of a
11 contractor shall be made in an open meeting;

12 (7) meetings subject to the attorney-client
13 privilege pertaining to threatened or pending litigation in
14 which the public body is or may become a participant;

15 (8) meetings for the discussion of the
16 purchase, acquisition or disposal of real property or water
17 rights by the public body;

18 (9) those portions of meetings of committees
19 or boards of public hospitals where strategic and long-range
20 business plans or trade secrets are discussed; and

21 (10) that portion of a meeting of the gaming
22 control board dealing with information made confidential
23 pursuant to the provisions of the Gaming Control Act.

24 I. If any meeting is closed pursuant to the
25 exclusions contained in Subsection H of this section [the

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1 closure]:

2 (1) the closure, if made in an open meeting,
3 shall be approved by a majority vote of a quorum of the
4 policymaking body; the authority for the closure and the
5 subject to be discussed shall be stated with reasonable
6 specificity in the motion calling for the vote on a closed
7 meeting; the vote shall be taken in an open meeting; and the
8 vote of each individual member shall be recorded in the
9 minutes. Only those subjects announced or voted upon prior to
10 closure by the policymaking body may be discussed in a closed
11 meeting; ~~and~~ or

12 (2) if a closure is called for when the
13 policymaking body is not in an open meeting, the closed meeting
14 shall not be held until public notice, appropriate under the
15 circumstances, stating the specific provision of the law
16 authorizing the closed meeting and stating with reasonable
17 specificity the subject to be discussed is given to the members
18 and to the general public.

19 J. Following completion of any closed meeting, the
20 minutes of the open meeting that was closed or the minutes of
21 the next open meeting if the closed meeting was separately
22 scheduled shall state that the matters discussed in the closed
23 meeting were limited only to those specified in the motion for
24 closure or in the notice of the separate closed meeting. This
25 statement shall be approved by the public body under Subsection

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G of this section as part of the minutes."

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