

1 HOUSE BILL 378

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO OPEN MEETINGS; REQUIRING A PUBLIC BODY TO PERMIT
12 ORAL PUBLIC COMMENT AT A PUBLIC MEETING.

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

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

17 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
18 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

19 A. In recognition of the fact that a representative
20 government is dependent upon an informed electorate, it is
21 declared to be public policy of this state that all persons are
22 entitled to the greatest possible information regarding the
23 affairs of government and the official acts of those officers
24 and employees who represent them. The formation of public
25 policy or the conduct of business by vote shall not be

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1 conducted in closed meeting. All meetings of any public body
2 except the legislature and the courts shall be public meetings,
3 and all persons so desiring shall be permitted to attend and
4 listen to the deliberations and proceedings. Reasonable
5 efforts shall be made to accommodate the use of audio and video
6 recording devices.

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

23 C. A public body shall permit oral public comment
24 before final action on any matter described in Subsection B of
25 this section. At the discretion of the public body, oral

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1 public comment may be permitted during a period for general
2 oral public comment on any issue of public importance or may be
3 permitted immediately prior to discussion and action being
4 taken on a matter by the public body. The public body shall
5 allow a reasonable amount of time for individual oral public
6 comment and a reasonable total amount of time for oral public
7 comment; provided that regardless of the amount of time
8 allowed, the public body shall allow for a diversity of
9 viewpoints to be presented.

10 ~~[G-]~~ D. If otherwise allowed by law or rule of the
11 public body, a member of a public body may participate in a
12 meeting of the public body by means of a conference telephone
13 or other similar communications equipment when it is otherwise
14 difficult or impossible for the member to attend the meeting in
15 person; provided that each member participating by conference
16 telephone can be identified when speaking, all participants are
17 able to hear each other at the same time and members of the
18 public attending the meeting are able to hear any member of the
19 public body who speaks during the meeting.

20 ~~[D-]~~ E. Any meetings at which the discussion or
21 adoption of any proposed resolution, rule, regulation or formal
22 action occurs and at which a majority or quorum of the body is
23 in attendance, and any closed meetings, shall be held only
24 after reasonable notice to the public. The affected body shall
25 determine at least annually in a public meeting what notice for

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1 a public meeting is reasonable when applied to that body. That
2 notice shall include broadcast stations licensed by the federal
3 communications commission and newspapers of general circulation
4 that have provided a written request for such notice.

5 ~~[E-]~~ F. A public body may recess and reconvene a
6 meeting to a day subsequent to that stated in the meeting
7 notice if, prior to recessing, the public body specifies the
8 date, time and place for continuation of the meeting and,
9 immediately following the recessed meeting, posts notice of the
10 date, time and place for the reconvened meeting on or near the
11 door of the place where the original meeting was held and in at
12 least one other location appropriate to provide public notice
13 of the continuation of the meeting. Only matters appearing on
14 the agenda of the original meeting may be discussed at the
15 reconvened meeting.

16 ~~[F-]~~ G. Meeting notices shall include an agenda
17 containing a list of specific items of business to be discussed
18 or transacted at the meeting or information on how the public
19 may obtain a copy of such an agenda. Except in the case of an
20 emergency or in the case of a public body that ordinarily meets
21 more frequently than once per week, at least seventy-two hours
22 prior to the meeting, the agenda shall be available to the
23 public and posted on the public body's web site, if one is
24 maintained. A public body that ordinarily meets more
25 frequently than once per week shall post a draft agenda at

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1 least seventy-two hours prior to the meeting and a final agenda
2 at least thirty-six hours prior to the meeting. Except for
3 emergency matters, a public body shall take action only on
4 items appearing on the agenda. For purposes of this
5 subsection, "emergency" refers to unforeseen circumstances
6 that, if not addressed immediately by the public body, will
7 likely result in injury or damage to persons or property or
8 substantial financial loss to the public body. Within ten days
9 of taking action on an emergency matter, the public body shall
10 report to the attorney general's office the action taken and
11 the circumstances creating the emergency; provided that the
12 requirement to report to the attorney general is waived upon
13 the declaration of a state or national emergency.

14 ~~[G-]~~ H. The board, commission or other policymaking
15 body shall keep written minutes of all its meetings. The
16 minutes shall include at a minimum the date, time and place of
17 the meeting, the names of members in attendance and those
18 absent, the substance of the proposals considered and a record
19 of any decisions and votes taken that show how each member
20 voted. All minutes are open to public inspection. Draft
21 minutes shall be prepared within ten working days after the
22 meeting and shall be approved, amended or disapproved at the
23 next meeting where a quorum is present. Minutes shall not
24 become official until approved by the policymaking body.

25 ~~[H-]~~ I. The provisions of Subsections A, B and ~~[G]~~

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1 H of this section do not apply to:

2 (1) meetings pertaining to issuance,
3 suspension, renewal or revocation of a license, except that a
4 hearing at which evidence is offered or rebutted shall be open.
5 All final actions on the issuance, suspension, renewal or
6 revocation of a license shall be taken at an open meeting;

7 (2) limited personnel matters; provided that
8 for purposes of the Open Meetings Act, "limited personnel
9 matters" means the discussion of hiring, promotion, demotion,
10 dismissal, assignment or resignation of or the investigation or
11 consideration of complaints or charges against any individual
12 public employee; provided further that this paragraph is not to
13 be construed as to exempt final actions on personnel from being
14 taken at open public meetings, nor does it preclude an
15 aggrieved public employee from demanding a public hearing.
16 Judicial candidates interviewed by any commission shall have
17 the right to demand an open interview;

18 (3) deliberations by a public body in
19 connection with an administrative adjudicatory proceeding. For
20 purposes of this paragraph, "administrative adjudicatory
21 proceeding" means a proceeding brought by or against a person
22 before a public body in which individual legal rights, duties
23 or privileges are required by law to be determined by the
24 public body after an opportunity for a trial-type hearing.
25 Except as otherwise provided in this section, the actual

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1 administrative adjudicatory proceeding at which evidence is
2 offered or rebutted and any final action taken as a result of
3 the proceeding shall occur in an open meeting;

4 (4) the discussion of personally identifiable
5 information about any individual student, unless the student or
6 the student's parent or guardian requests otherwise;

7 (5) meetings for the discussion of bargaining
8 strategy preliminary to collective bargaining negotiations
9 between the policymaking body and a bargaining unit
10 representing the employees of that policymaking body and
11 collective bargaining sessions at which the policymaking body
12 and the representatives of the collective bargaining unit are
13 present;

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

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

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1 (8) meetings for the discussion of the
2 purchase, acquisition or disposal of real property or water
3 rights by the public body;

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

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

10 [~~F.~~] J. If any meeting is closed pursuant to the
11 exclusions contained in Subsection [~~H~~] I of this section:

12 (1) the closure, if made in an open meeting,
13 shall be approved by a majority vote of a quorum of the
14 policymaking body; the authority for the closure and the
15 subject to be discussed shall be stated with reasonable
16 specificity in the motion calling for the vote on a closed
17 meeting; the vote shall be taken in an open meeting; and the
18 vote of each individual member shall be recorded in the
19 minutes. Only those subjects announced or voted upon prior to
20 closure by the policymaking body may be discussed in a closed
21 meeting; or

22 (2) if a closure is called for when the
23 policymaking body is not in an open meeting, the closed meeting
24 shall not be held until public notice, appropriate under the
25 circumstances, stating the specific provision of the law

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1 authorizing the closed meeting and stating with reasonable
2 specificity the subject to be discussed is given to the members
3 and to the general public.

4 ~~[J-]~~ K. Following completion of any closed meeting,
5 the minutes of the open meeting that was closed or the minutes
6 of the next open meeting if the closed meeting was separately
7 scheduled shall state that the matters discussed in the closed
8 meeting were limited only to those specified in the motion for
9 closure or in the notice of the separate closed meeting. This
10 statement shall be approved by the public body under Subsection
11 ~~[G]~~ H of this section as part of the minutes."