

FIFTY-FOURTH LEGISLATURE
FIRST SESSION

March 12, 2019

SENATE FLOOR AMENDMENT number 1 to SENATE EDUCATION COMMITTEE
SUBSTITUTE FOR SENATE BILL
668, as amended

Amendment sponsored by Senator Daniel A. Ivey-Soto

1. Strike Senate Judiciary Committee Amendments 13, 15 and 16.

2. On page 42, lines 4 through 14, strike Section 32 in its
entirety and insert in lieu thereof the following sections to read:

"SECTION 32. Section 2-6-1 NMSA 1978 (being Laws 1961, Chapter
2, Section 1, as amended) is amended to read:

"2-6-1. LIMIT ON THE TIME WITHIN WHICH BILLS MAY BE
INTRODUCED.--

A. A bill shall not be accepted for filing until after the
beginning of the prohibited period for soliciting campaign
contributions provided for in Section 1-19-34.1 NMSA 1978.

B. No bill shall be introduced at any regular session of
the legislature subsequent to the thirtieth legislative day in
sessions held in the odd-numbered years or subsequent to the
fifteenth legislative day in sessions held in the even-numbered
years. The limitation provided in this [~~section~~] subsection does
not apply to the general appropriation bill, bills to provide for
the current expenses of the government and such bills as may be
referred to the legislature by the governor by special message
specifically setting forth the emergency or necessity requiring such
legislation."

SECTION 33. Section 10-15-1 NMSA 1978 (being Laws 1974,
Chapter 91, Section 1, as amended) is amended to read:

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

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

C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person; provided that each member participating by conference telephone can be

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identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

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

E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

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

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final agenda at least thirty-six hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body. Within ten days of taking action on an emergency matter, the public body shall report to the [~~attorney general's office~~] state ethics commission the action taken and the circumstances creating the emergency; provided that the requirement to report to the [~~attorney general~~] state ethics commission is waived upon the declaration of a state or national emergency.

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

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

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

(2) limited personnel matters; provided that for purposes of the Open Meetings Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of

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complaints or charges against any individual public employee; provided further that this paragraph is not to be construed as to exempt final actions on personnel from being taken at open public meetings, nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;

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

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

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

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

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

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

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

(10) that portion of a meeting of the gaming control board dealing with information made confidential pursuant to the provisions of the Gaming Control Act; and

(11) except as provided in the State Ethics Commission Act, meetings of the state ethics commission or its committees that relate to complaints or investigations.

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

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

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

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stating with reasonable specificity the subject to be discussed is given to the members and to the general public.

J. Following completion of any closed meeting, the minutes of the open meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes."

SECTION 34. Section 10-15-3 NMSA 1978 (being Laws 1974, Chapter 91, Section 3, as amended) is amended to read:

"10-15-3. INVALID ACTIONS--STANDING.--

A. No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978. Every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.

B. Civil enforcement of all provisions of the Open Meetings Act shall be [enforced] by the [~~attorney general or by the district attorney in the county of jurisdiction~~] state ethics commission. However, nothing in that act shall prevent an individual from independently applying for enforcement through the district courts; provided that the individual first provides written notice of the claimed violation to the public body and that the public body has denied or not acted on the claim within fifteen days of receiving it. A public meeting held to address a claimed violation of the Open Meetings Act shall include a summary of comments made at the meeting at which the claimed violation

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occurred.

C. The district courts of this state shall have jurisdiction, upon the application of any person to enforce the purpose of the Open Meetings Act, by injunction, mandamus or other appropriate order. The court shall award costs and reasonable attorney fees to any person who is successful in bringing a court action to enforce the provisions of the Open Meetings Act. If the prevailing party in a legal action brought under this section is a public body defendant, it shall be awarded court costs. A public body defendant that prevails in a court action brought under this section shall be awarded its reasonable attorney fees from the plaintiff if the plaintiff brought the action without sufficient information and belief that good grounds supported it.

D. No section of the Open Meetings Act shall be construed to preclude other remedies or rights not relating to the question of open meetings."

SECTION 35. Section 13-1-177 NMSA 1978 (being Laws 1984, Chapter 65, Section 150, as amended) is amended to read:

"13-1-177. AUTHORITY TO SUSPEND OR DEBAR.--

A. The [~~state purchasing agent or a central purchasing office~~] state ethics commission, after consultation with the using agency, may suspend a person from consideration for award of contracts if the [~~state purchasing agent or central purchasing office~~] state ethics commission, after reasonable investigation, finds that a person has engaged in conduct that constitutes cause for debarment pursuant to Section 13-1-178 NMSA 1978.

B. The term of a suspension pursuant to this section shall not exceed three months; however, if a person, including a bidder, offeror or contractor, has been charged with a criminal offense that would be a cause for debarment pursuant to Section 13-1-178 NMSA 1978, the suspension shall remain in effect until the criminal

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charge is resolved and the person is debarred or the reason for suspension no longer exists.

C. The [~~state purchasing agent or a central purchasing office~~] state ethics commission, after reasonable notice to the person involved, shall have authority to [~~recommend to the governing authority of a state agency or a local public body the debarment of~~] debar a person for cause from consideration for award of contracts, other than contracts for professional services. The debarment shall not be for a period of more than three years. The authority to debar shall be exercised by the [~~governing authority of a state agency or a local public body~~] state ethics commission in accordance with rules that shall provide for reasonable notice and a fair hearing prior to debarment.

D. As used in this section, the terms "person", "bidder", "offeror" and "contractor" include principals, officers, directors, owners, partners and managers of the person, bidder, offeror or contractor."

SECTION 36. Section 13-1-178 NMSA 1978 (being Laws 1984, Chapter 65, Section 151, as amended) is amended to read:

"13-1-178. CAUSES FOR DEBARMENT OR SUSPENSION--TIME LIMIT.--

A. The causes for debarment or suspension occurring within three years of the date final action on a procurement is taken include but are not limited to the following:

(1) criminal conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;

(2) civil judgment against a bidder, offeror or contractor for a civil violation related to obtaining unlawfully or

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attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;

(3) conviction of a bidder, offeror or contractor under state or federal statutes related to embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, making false statements or receiving stolen property or for violation of federal or state tax laws;

(4) conviction of a bidder, offeror or contractor under state or federal antitrust statutes relating to the submission of offers;

(5) criminal conviction against a bidder, offeror or contractor for any other offense related to honesty, integrity or business ethics;

(6) civil judgment against a bidder, offeror or contractor for a civil violation related to honesty, integrity or business ethics;

(7) civil judgment against a bidder, offeror or contractor pursuant to the Unfair Practices Act;

(8) violation by a bidder, offeror or contractor of contract provisions, as set forth in this paragraph, of a character that is reasonably regarded by the [~~state purchasing agent or a central purchasing office~~] state ethics commission to be so serious as to justify suspension or debarment action, including:

(a) willful failure to perform in accordance with one or more contracts; or

(b) a history of failure to perform or of unsatisfactory performance of one or more contracts; provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose debarment; and

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provided further that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(9) any other cause that the [~~state purchasing agent or a central purchasing office~~] state ethics commission determines to be so serious and compelling as to affect responsibility as a contractor; or

(10) for a willful violation by a bidder, offeror or contractor of the provisions of the Procurement Code.

B. As used in this section, the terms "bidder", "offeror" and "contractor" include principals, officers, directors, owners, partners and managers of the bidder, offeror or contractor."

SECTION 37. Section 13-1-196 NMSA 1978 (being Laws 1984, Chapter 65, Section 169) is amended to read:

"13-1-196. CIVIL PENALTY.--Any person, firm or corporation that knowingly violates any provision of the Procurement Code is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each procurement in violation of any provision of the Procurement Code. The [~~attorney general or the district attorney in the jurisdiction in which the violation occurs~~] state ethics commission is empowered to bring a civil action for the enforcement of any provision of the Procurement Code. Any penalty collected under the provisions of this section shall be credited to the general fund of the political subdivision in which the violation occurred and on whose behalf the suit was brought."

SECTION 38. Section 14-2-12 NMSA 1978 (being Laws 1993, Chapter 258, Section 9) is amended to read:

"14-2-12. ENFORCEMENT.--

A. An action to enforce the Inspection of Public Records

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Act may be brought by:

(1) the [~~attorney general or the district attorney in the county of jurisdiction~~] state ethics commission; or

(2) a person whose written request has been denied.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Inspection of Public Records Act.

C. The exhaustion of administrative remedies shall not be required prior to bringing any action to enforce the procedures of the Inspection of Public Records Act.

D. The court shall award damages, costs and reasonable [~~attorneys'~~] attorney fees to any person whose written request has been denied and who is successful in a court action to enforce the provisions of the Inspection of Public Records Act."

SECTION 39. Section 34-10-2.1 NMSA 1978 (being Laws 1977, Chapter 289, Section 1) is amended to read:

"34-10-2.1. JUDICIAL STANDARDS COMMISSION--DUTIES--SUBPOENA POWER.--

A. Pursuant to the judicial standards commission's authority granted by Article 6, Section 32 of the constitution of New Mexico, any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office, persistent failure or inability to perform the judge's duties or habitual intemperance, or may be retired for a disability that seriously interferes with the performance of the justice's, judge's or magistrate's duties and that is, or is likely to become, of a permanent character. The judicial standards commission is granted the same authority to regulate the conduct and character of members of the state ethics commission, court-appointed commissioners,

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judicial hearing officers, administrative law judges or special masters while acting in a judicial capacity.

B. With respect to the officials listed in Subsection A of this section, the judicial standards commission shall:

(1) investigate all charges, complaints and allegations as to willful misconduct in office, persistent failure or inability to perform [~~a judge's~~] official duties or habitual intemperance, [~~of any justice, judge or magistrate of any court, and when~~] if the commission deems necessary, and hold a hearing on the charges, complaints or allegations concerning the discipline or removal of [~~such judicial officer~~] the official;

(2) investigate and, if the commission deems necessary, hold hearings on any charge, complaint or allegation that [~~a justice, judge or magistrate~~] an official listed in Subsection A of this section has suffered a disability that is seriously interfering with the performance of [~~his~~] the official's duties [~~which~~] and that is, or is likely to become, of a permanent character;

(3) if the commission deems it necessary or convenient, appoint three masters, who are justices or judges of courts of record, to hear and take evidence in any matter arising under Paragraph (1) or (2) of this subsection who shall report their findings to the commission; and

(4) after a hearing deemed necessary pursuant to Paragraph (2) of this subsection or after considering the record and the findings and report of the masters, if the commission finds good cause, [~~it shall~~] recommend to the supreme court the discipline, removal or retirement of the [~~justice, judge or magistrate~~] official.

~~[B.]~~ C. In any investigation or hearing held under the provisions of this section, the commission [~~shall have the power to~~]

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may administer oaths and, with the concurrence of a majority of the members of the commission, [~~it may~~] petition a district court to subpoena witnesses, compel their attendance and examine them under oath or affirmation and require the production of any books, records, documents or other evidence it may deem relevant or material to an investigation upon a showing of probable cause."".

3. On page 44, line 5, strike "35" and insert in lieu thereof "38 and 40 through 44".

4. On page 44, between lines 5 and 6, insert a new subsection to read:

"C. The effective date of the provisions of Section 39 of this act is July 1, 2020.".

5. Renumber the sections to correspond with these amendments.

Daniel A. Ivey-Soto

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____