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SENATE BILL 674

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO HEALTH PRIVACY; PROVIDING FOR PROTECTION OF PATIENT
AND PEER REVIEW INFORMATION PRESENTED BEFORE BODIES SUBJECT TO
THE OPEN MEETINGS ACT AND INSPECTION OF PUBLIC RECORDS ACT;
AMENDING SECTIONS OF THE NMSA 1978.

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, any agency or authority
12 of any county, municipality, district or ~~[any]~~ political
13 subdivision, held for the purpose of formulating public policy,
14 including the development of personnel policy, rules,
15 regulations or ordinances, discussing public business or ~~[for~~
16 ~~the purpose of]~~ taking any action within the authority of or
17 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, the agenda shall be available to the public at least
11 twenty-four hours prior to the meeting. Except for emergency
12 matters, a public body shall take action only on items
13 appearing on the agenda. For purposes of this subsection, [~~an~~]
14 "emergency" refers to unforeseen circumstances that, if not
15 addressed immediately by the public body, will likely result in
16 injury or damage to persons or property or substantial
17 financial loss to the public body.

18 G. The board, commission or other policymaking body
19 shall keep written minutes of all its meetings. The minutes
20 shall include at a minimum the date, time and place of the
21 meeting, the names of members in attendance and those absent,
22 the substance of the proposals considered and a record of any
23 decisions and votes taken that show how each member voted. All
24 minutes are open to public inspection. Draft minutes shall be
25 prepared within ten working days after the meeting and shall be

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1 approved, amended or disapproved at the next meeting where a
2 quorum is present. Minutes shall not become official until
3 approved by the policymaking body.

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

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

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

22 (3) deliberations by a public body in
23 connection with an administrative adjudicatory proceeding. For
24 purposes of this paragraph, ~~[an]~~ "administrative adjudicatory
25 proceeding" means a proceeding brought by or against a person

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1 before a public body in which individual legal rights, duties
2 or privileges are required by law to be determined by the
3 public body after an opportunity for a trial-type hearing.

4 Except as otherwise provided in this section, the actual
5 administrative adjudicatory proceeding at which evidence is
6 offered or rebutted and any final action taken as a result of
7 the proceeding shall occur in an open meeting;

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

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

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

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1 shall be made in an open meeting;

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

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

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

11 (10) those portions of meetings of committees
12 or boards of public hospitals dealing with matters related to
13 the care or treatment of patients made confidential by
14 applicable state or federal laws, rules or regulations,
15 including information such as analyses, plans, records or
16 reports, pertaining to professional credentialing or
17 privileging activities, professional review activities, quality
18 review or management activities involving the competence or
19 quality of care provided by the public hospital or by health
20 care providers, including individuals who, and entities that,
21 provide health care or any attendant hearing process initiated
22 as a result of a committee's recommendations; and

23 [~~(10)~~] (11) that portion of a meeting of the
24 gaming control board dealing with information made confidential
25 pursuant to the provisions of the Gaming Control Act.

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1 I. If any meeting is closed pursuant to the
2 exclusions contained in Subsection H of this section [~~the~~
3 ~~closure~~]:

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

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

21 J. Following completion of any closed meeting, the
22 minutes of the open meeting that was closed or the minutes of
23 the next open meeting if the closed meeting was separately
24 scheduled shall state that the matters discussed in the closed
25 meeting were limited only to those specified in the motion for

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1 closure or in the notice of the separate closed meeting. This
2 statement shall be approved by the public body under Subsection
3 G of this section as part of the minutes."

4 Section 2. Section 14-2-1 NMSA 1978 (being Laws 1947,
5 Chapter 130, Section 1, as amended) is amended to read:

6 "14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--

7 A. Every person has a right to inspect public
8 records of this state except:

9 (1) records pertaining to physical or mental
10 examinations and medical treatment of persons confined to an
11 institution;

12 (2) letters of reference concerning
13 employment, licensing or permits;

14 (3) letters or memorandums that are matters of
15 opinion in personnel files or students' cumulative files;

16 (4) law enforcement records that reveal
17 confidential sources, methods, information or individuals
18 accused but not charged with a crime. Law enforcement records
19 include evidence in any form received or compiled in connection
20 with a criminal investigation or prosecution by a law
21 enforcement or prosecuting agency, including inactive matters
22 or closed investigations to the extent that they contain the
23 information listed in this paragraph;

24 (5) as provided by the Confidential Materials
25 Act;

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1 (6) trade secrets, attorney-client privileged
2 information and long-range or strategic business plans of
3 public hospitals discussed in a properly closed meeting;

4 (7) public records containing the identity of
5 or identifying information relating to an applicant or nominee
6 for the position of president of a public institution of higher
7 education;

8 (8) tactical response plans or procedures
9 prepared for or by the state or a political subdivision of the
10 state, the publication of which could reveal specific
11 vulnerabilities, risk assessments or tactical emergency
12 security procedures that could be used to facilitate the
13 planning or execution of a terrorist attack;

14 (9) discharge papers of a veteran of the armed
15 forces of the United States filed with the county clerk before
16 July 1, 2005 that have not been commingled with other recorded
17 documents. These papers will be available only to the veteran
18 who filed the papers, the veteran's next of kin, the deceased
19 veteran's properly appointed personal representative or
20 executor, a person holding the veteran's general power of
21 attorney or a person designated in writing by the veteran to
22 receive the records;

23 (10) discharge papers of a veteran of the
24 armed forces of the United States filed with the county clerk
25 before July 1, 2005 that have been commingled with other

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1 recorded documents if the veteran has recorded a request for
2 exemption from public disclosure of discharge papers with the
3 county clerk. If such a request has been recorded, the records
4 may be released only to the veteran filing the papers, the
5 veteran's next of kin, the deceased veteran's properly
6 appointed personal representative or executor, a person holding
7 the veteran's general power of attorney or a person designated
8 in writing by the veteran to receive the records;

9 (11) discharge papers of a veteran of the
10 armed forces of the United States filed with the county clerk
11 after June 30, 2005. These papers will be available only to
12 the veteran who filed them, the veteran's next of kin, the
13 deceased veteran's properly appointed personal representative
14 or executor, a person holding the veteran's general power of
15 attorney or a person designated in writing by the veteran to
16 receive the records; [~~and~~]

17 (12) records of public hospitals related to
18 the care or treatment of patients made confidential by
19 applicable state or federal laws, rules or regulations,
20 including information such as analyses, plans, records or
21 reports, pertaining to professional credentialing or
22 privileging activities, professional review activities, quality
23 review or management activities involving the competence or
24 quality of care provided by the public hospital or by health
25 care providers, including individuals who, and entities that,

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1 provide health care, or any other attendant hearing process
2 initiated as a result of a committee's recommendations,
3 regardless of whether the information is provided to a
4 committee or board of the public hospital that is subject to
5 the Open Meetings Act as provided for in Section 10-15-1 NMSA
6 1978; and

7 [~~12~~] (13) as otherwise provided by law.

8 B. At least twenty-one days before the date of the
9 meeting of the governing board of a public institution of
10 higher education at which final action is taken on selection of
11 the person for the position of president of the institution,
12 the governing board shall give public notice of the names of
13 the finalists being considered for the position. The board
14 shall consider in the final selection process at least five
15 finalists. The required notice shall be given by publication
16 in a newspaper of statewide circulation and in a newspaper of
17 county-wide circulation in the county in which the institution
18 is located. Publication shall be made once and shall occur at
19 least twenty-one days and not more than thirty days before the
20 described meeting.

21 C. Postponement of a meeting described in
22 Subsection B of this section for which notice has been given
23 does not relieve the governing body from the requirement of
24 giving notice of a rescheduled meeting in accordance with the
25 provisions of Subsection B of this section.

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