

1 SENATE BILL 456

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Timothy Z. Jennings

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10 AN ACT

11 RELATING TO OPEN GOVERNMENT; REQUIRING LIVE VIDEO AND AUDIO
12 TRANSMISSIONS VIA THE INTERNET OF THE GOVERNOR'S CABINET
13 MEETINGS; PROVIDING EXCEPTIONS; REQUIRING LIVE VIDEO AND AUDIO
14 TRANSMISSION VIA THE INTERNET OF MEETINGS OF CERTAIN PUBLIC
15 ENTITIES CONDUCTING PUBLIC BUSINESS; PROVIDING EXCEPTIONS;
16 REQUIRING COPIES OF TRANSMISSIONS TO BE RETAINED AS PUBLIC
17 RECORDS.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. Section 9-1-3 NMSA 1978 (being Laws 1977,
21 Chapter 248, Section 3) is amended to read:

22 "9-1-3. CABINET CREATED--MEMBERS--POWERS AND DUTIES.--

23 A. There is created the "executive cabinet" headed
24 by the governor and consisting of, but not limited to, the
25 lieutenant governor and the secretaries of such departments as

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1 are hereafter created and designated as "cabinet departments"
2 pursuant to law.

3 B. The cabinet shall:

4 (1) advise the governor on problems of state
5 government;

6 (2) establish liaison and provide
7 communication between the executive departments and state
8 elected officials;

9 (3) investigate problems of public policy;

10 (4) study government performance and recommend
11 methods of inter-agency cooperation;

12 (5) review policy problems and recommend
13 solutions;

14 (6) strive to minimize and eliminate
15 overlapping jurisdictions and conflicts within the executive
16 branch; and

17 (7) assist the governor in defining policies
18 and programs to make the government responsive to the needs of
19 the people.

20 C. The governor shall call meetings of the cabinet
21 at ~~[his]~~ the governor's pleasure and shall seek the advice of
22 the cabinet members.

23 D. The governor shall provide live video and audio
24 transmissions of cabinet meetings on the governor's internet
25 web site. The governor shall give at least twenty-four hours'

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1 notice of the cabinet meeting on the governor's internet web
2 site, unless the meeting is called to address an emergency less
3 than twenty-four hours before the meeting is to be held. For
4 the purpose of this subsection, "emergency" refers to
5 unforeseen circumstances that, if not addressed immediately by
6 the cabinet, will likely result in injury or damage to persons
7 or property or substantial loss to the state. A live video and
8 audio transmission need not be made for a portion of a cabinet
9 meeting where the subject is a matter identified in Paragraphs
10 (1) through (8) of Subsection L of Section 10-15-1 NMSA 1978.
11 The governor shall make a copy of the transmission, and it is a
12 public record. The copy shall be retained and disposed of by
13 the governor in accordance with a records retention and
14 disposition schedule adopted by the state commission of public
15 records pursuant to the Public Records Act."

16 SECTION 2. Section 10-15-1 NMSA 1978 (being Laws 1974,
17 Chapter 91, Section 1, as amended) is amended to read:

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

20 A. In recognition of the fact that a representative
21 government is dependent upon an informed electorate, it is
22 declared to be public policy of this state that all persons are
23 entitled to the greatest possible information regarding the
24 affairs of government and the official acts of those officers
25 and employees who represent them. The formation of public

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

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

24 C. The board, commission, administrative
25 adjudicatory body or other policymaking body conducting a

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1 meeting required to be a public meeting open to the public
2 pursuant to Subsection A of this section shall provide for live
3 video and audio transmission of that public meeting via the
4 internet no later than January 1, 2012 unless exempted pursuant
5 to Subsection D of this section. The location or uniform
6 resource locator of the internet site where the live
7 transmission is or will be available shall be provided in the
8 notice of the public meeting required by the Open Meetings Act.
9 The internet site shall be a public access site or a site
10 available to the public without cost or subscription. The
11 department of information technology, when requested, shall
12 provide technical assistance to a board, commission
13 administrative adjudicatory body or other policymaking body to
14 implement the live video and audio transmission required by
15 this subsection.

16 D. After a request by a board, commission,
17 administrative adjudicatory body or other policymaking body for
18 technical assistance, if the department of information
19 technology determines in writing that providing a live video
20 and audio transmission of a particular public meeting in a
21 particular location and at a particular time is technically or
22 logistically impracticable, the department of information
23 technology shall issue the written determination to the
24 affected entity. If live audio transmission is practicable but
25 not video transmission, the written determination shall so

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1 indicate. The written determination shall exempt the entity
2 from providing a live video and audio transmission or from
3 providing a live video transmission for the particular public
4 meeting, as the case may be, as otherwise required by the Open
5 Meetings Act.

6 E. A board, commission, administrative adjudicatory
7 body or other policymaking body shall receive no more than two
8 exemptions in a twelve-month period pursuant to Subsection D of
9 this section. An entity receiving an exemption shall take all
10 actions reasonable and necessary to schedule its public
11 meetings at times and places where live video and audio
12 transmission of the meetings can occur.

13 F. A board, commission, administrative adjudicatory
14 body or other policymaking body providing a live video and
15 audio transmission of a public meeting, or a live audio
16 transmission of a public meeting pursuant to Subsection D of
17 this section, shall also produce an electronic media exact copy
18 of the transmission. The copy shall be a public record. The
19 copy shall be retained and disposed of by the entity producing
20 it in accordance with a records retention and disposition
21 schedule adopted by the state commission of public records
22 pursuant to the Public Records Act.

23 [~~G.~~] G. If otherwise allowed by law or rule of the
24 public body, a member of a public body may participate in a
25 meeting of the public body by means of a conference telephone

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

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

18 ~~[E-]~~ I. A public body may recess and reconvene a
19 meeting to a day subsequent to that stated in the meeting
20 notice if, prior to recessing, the public body specifies the
21 date, time and place for continuation of the meeting and,
22 immediately following the recessed meeting, posts notice of the
23 date, time and place for the reconvened meeting on or near the
24 door of the place where the original meeting was held and in at
25 least one other location appropriate to provide public notice

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1 of the continuation of the meeting. Only matters appearing on
2 the agenda of the original meeting may be discussed at the
3 reconvened meeting.

4 ~~[F-]~~ J. Meeting notices shall include an agenda
5 containing a list of specific items of business to be discussed
6 or transacted at the meeting or information on how the public
7 may obtain a copy of such an agenda. Except in the case of an
8 emergency, the agenda shall be available to the public at least
9 ~~[twenty-four hours]~~ seven consecutive days immediately prior to
10 the meeting. Except for emergency matters, a public body shall
11 take action only on items appearing on the agenda. For
12 purposes of this subsection, ~~[an]~~ "emergency" refers to
13 unforeseen circumstances that, if not addressed immediately by
14 the public body, will likely result in injury or damage to
15 persons or property or substantial financial loss to the public
16 body.

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

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1 next meeting where a quorum is present. Minutes shall not
2 become official until approved by the policymaking body.

3 [~~H-~~] L. The provisions of Subsections A, B, C and
4 [~~G~~] K of this section do not apply to:

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

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

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

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1 or privileges are required by law to be determined by the
2 public body after an opportunity for a trial-type hearing.
3 Except as otherwise provided in this section, the actual
4 administrative adjudicatory proceeding at which evidence is
5 offered or rebutted and any final action taken as a result of
6 the proceeding shall occur in an open meeting;

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

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

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

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

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

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

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

13 [~~F.~~] M. If any meeting is closed pursuant to the
14 exclusions contained in Subsection [~~H~~] L of this section [~~the~~
15 ~~closure~~]:

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

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1 (2) if a closure is called for when the
2 policymaking body is not in an open meeting, the closed meeting
3 shall not be held until public notice, appropriate under the
4 circumstances, stating the specific provision of the law
5 authorizing the closed meeting and stating with reasonable
6 specificity the subject to be discussed is given to the members
7 and to the general public.

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