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HOUSE BILL 741

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Daniel P. Silva

AN ACT

RELATING TO OPEN MEETINGS; EXCLUDING DISCUSSIONS OF TRADE  
SECRETS OF CERTAIN PUBLIC HOSPITALS FROM THE APPLICATION OF  
THE OPEN MEETINGS ACT; AMENDING 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  
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  
4 meetings, and all persons so desiring shall be permitted to  
5 attend and listen to the deliberations and proceedings.  
6 Reasonable efforts shall be made to accommodate the use of  
7 audio and video 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, any agency or authority  
11 of any county, municipality, district or any political  
12 subdivision, held for the purpose of formulating public  
13 policy, including the development of personnel policy, rules,  
14 regulations or ordinances, discussing public business or for  
15 the purpose of taking any action within the authority of or  
16 the delegated authority of any board, commission or other  
17 policymaking body are declared to be public meetings open to  
18 the public at all times, except as otherwise provided in the  
19 constitution of New Mexico or the Open Meetings Act. No  
20 public meeting once convened that is otherwise required to be  
21 open pursuant to the Open Meetings Act shall be closed or  
22 dissolved into small groups or committees for the purpose of  
23 permitting the closing of the meeting.

24 C. If otherwise allowed by law or rule of the  
25 public body, a member of a public body may participate in a

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

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

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

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

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

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

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

4 H. The provisions of Subsections A, B and G of  
5 this 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  
9 open. All final actions on the issuance, suspension, renewal  
10 or 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  
15 or consideration of complaints or charges against any  
16 individual public employee; provided further that this  
17 subsection is not to be construed as to exempt final actions  
18 on personnel from being taken at open public meetings, nor  
19 does it preclude an aggrieved public employee from demanding a  
20 public hearing. Judicial candidates interviewed by any  
21 commission shall have the right to demand an open interview;

22 (3) deliberations by a public body in  
23 connection with an administrative adjudicatory proceeding.

24 For purposes of this paragraph, an "administrative  
25 adjudicatory proceeding" means a proceeding brought by or

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

9 (4) the discussion of personally identifiable  
10 information about any individual student, unless the student,  
11 his parent or guardian requests otherwise;

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

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

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1 item or final action regarding the selection of a contractor  
2 shall be made in an open meeting;

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

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

9 (9) those portions of meetings of committees  
10 or boards of public hospitals [~~that receive less than fifty~~  
11 ~~percent of their operating budget from direct public funds and~~  
12 ~~appropriations~~] where strategic and long-range business plans  
13 or trade secrets are discussed; and

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

17 I. If any meeting is closed pursuant to the  
18 exclusions contained in Subsection H of this section, the  
19 closure:

20 (1) if made in an open meeting, shall be  
21 approved by a majority vote of a quorum of the policymaking  
22 body; the authority for the closure and the subject to be  
23 discussed shall be stated with reasonable specificity in the  
24 motion calling for the vote on a closed meeting; the vote  
25 shall be taken in an open meeting; and the vote of each

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1 individual member shall be recorded in the minutes. Only  
2 those subjects announced or voted upon prior to closure by the  
3 policymaking body may be discussed in a closed meeting; and

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

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

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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5  
6 February 27, 1999

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8 Mr. Speaker:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

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12 HOUSE BILL 741

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14 has had it under consideration and reports same with  
15 recommendation that it DO PASS.

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17 Respectfully submitted,

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21 R. David Pederson, Chairman  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Luna, T. Taylor, Sanchez

Absent: None

J: \99BillSWP\H0741

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FIRST SESSION, 1999

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

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March 14, 1999

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Mr. President:

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Your JUDICIARY COMMITTEE, to whom has been referred

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HOUSE BILL 741

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has had it under consideration and reports same WITHOUT  
RECOMMENDATION.

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Respectfully submitted,

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Michael S. Sanchez, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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(Chief Clerk)

(Chief Clerk)

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Date \_\_\_\_\_

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The roll call vote was 5 For 0 Against

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Yes: 5

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No: None

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Excused: Aragon, Davis, Lopez

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Absent: None

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