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HOUSE BILL 147

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

INTRODUCED BY

James E. Smith

AN ACT

RELATING TO THE OPEN MEETINGS ACT; REQUIRING AGENDAS TO BE
AVAILABLE TO THE PUBLIC AT LEAST SEVEN DAYS PRIOR TO A PUBLIC
MEETING.

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 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 any agency or
11 authority of any county, municipality, district or ~~[any]~~
12 political subdivision, held for the purpose of formulating
13 public policy, including the development of personnel policy,
14 rules, regulations or ordinances, discussing public business or
15 ~~[for the purpose of]~~ taking any action within the authority of
16 or 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 public
20 meeting once convened that is otherwise required to be open
21 pursuant to the Open Meetings Act shall be closed or dissolved
22 into small groups or committees for the purpose of permitting
23 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 in
4 person, provided that each member participating by conference
5 telephone can be identified when speaking, all participants are
6 able to hear each other at the same time and members of the
7 public attending the meeting are able to hear any member of the
8 public body who speaks during the meeting.

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

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

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1 other location appropriate to provide public notice of the
2 continuation of the meeting. Only matters appearing on the
3 agenda of the original meeting may be discussed at the
4 reconvened meeting.

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

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

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

3 H. The provisions of Subsections A, B and G of this
4 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 is made concerning purchases in an amount exceeding
19 two thousand five hundred dollars (\$2,500) that can be made
20 only 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 I. If any meeting is closed pursuant to the
14 exclusions contained in Subsection H 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. Following completion of any closed meeting, the
9 minutes of the open meeting that was closed or the minutes of
10 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 of this section as part of the minutes."