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HOUSE BILL 35

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

James E. Smith

AN ACT

RELATING TO THE OPEN MEETINGS ACT; REQUIRING AGENDAS TO BE  
AVAILABLE TO THE PUBLIC AT LEAST SEVENTY-TWO HOURS 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~~] seventy-two hours 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."