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HOUSE BILL 392

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Kelly K. Fajardo

AN ACT

RELATING TO OPEN GOVERNMENT; REQUIRING LIVE VIDEO AND AUDIO
TRANSMISSION VIA THE INTERNET OF MEETINGS OF PUBLIC ENTITIES
CONDUCTING PUBLIC BUSINESS; REQUIRING COPIES OF TRANSMISSIONS
TO BE RETAINED AS PUBLIC RECORDS.

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

25 C. A board, commission, administrative adjudicatory

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1 body or other policymaking body conducting a meeting required
2 to be a public meeting open to the public pursuant to
3 Subsection A of this section shall provide for live video and
4 audio transmission of that public meeting via the internet no
5 later than January 1, 2016 unless exempted pursuant to
6 Subsection D or G of this section. The location or uniform
7 resource locator of the internet web site where the live
8 transmission is or will be available shall be provided in the
9 notice of the public meeting required by the Open Meetings Act.
10 The internet web site shall be a public access web site or a
11 web site available to the public without cost or subscription.
12 The department of information technology, when requested, shall
13 provide technical assistance to the board, commission,
14 administrative adjudicatory body or other policymaking body to
15 implement the live video and audio transmission required by
16 this subsection.

17 D. After a request by a board, commission,
18 administrative adjudicatory body or other policymaking body for
19 technical assistance, the department of information technology
20 shall make a determination as to whether providing a live video
21 and audio transmission of a particular public meeting in a
22 particular location at a particular time is technically or
23 logistically practicable. The department shall issue the
24 determination in writing to the affected entity. If live audio
25 transmission is determined to be practicable but video

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1 transmission is not, the written determination shall so
2 indicate. If transmission is determined to be impracticable,
3 the written determination shall exempt the entity from
4 providing a live video and audio transmission or from providing
5 a live video transmission, as the case may be, for the
6 particular public meeting as otherwise required by the Open
7 Meetings Act.

8 E. A board, commission, administrative adjudicatory
9 body or other policymaking body may receive a twelve-month
10 exemption pursuant to Subsection D of this section. An entity
11 receiving an exemption shall take all actions reasonable and
12 necessary to schedule its public meetings at times and places
13 where live video and audio transmission of the meetings can
14 occur.

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

25 G. The provisions of Subsections C, D, E and F of

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1 this section do not apply to any board, commission,
2 administrative adjudicatory body or other policymaking body of:
3 (1) a municipality with a population, as shown
4 by the most recent federal decennial census, of less than
5 fifteen thousand;
6 (2) a county other than a class A county; or
7 (3) a political subdivision of the state other
8 than a county or municipality.

9 ~~[G-]~~ H. If otherwise allowed by law or rule of the
10 public body, a member of a public body may participate in a
11 meeting of the public body by means of a conference telephone
12 or other similar communications equipment when it is otherwise
13 difficult or impossible for the member to attend the meeting in
14 person; provided that each member participating by conference
15 telephone can be identified when speaking, all participants are
16 able to hear each other at the same time and members of the
17 public attending the meeting are able to hear any member of the
18 public body who speaks during the meeting.

19 ~~[D-]~~ I. Any meetings at which the discussion or
20 adoption of any proposed resolution, rule, regulation or formal
21 action occurs and at which a majority or quorum of the body is
22 in attendance, and any closed meetings, shall be held only
23 after reasonable notice to the public. The affected body shall
24 determine at least annually in a public meeting what notice for
25 a public meeting is reasonable when applied to that body. That

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1 notice shall include broadcast stations licensed by the federal
2 communications commission and newspapers of general circulation
3 that have provided a written request for such notice.

4 ~~[E-]~~ J. A public body may recess and reconvene a
5 meeting to a day subsequent to that stated in the meeting
6 notice if, prior to recessing, the public body specifies the
7 date, time and place for continuation of the meeting and,
8 immediately following the recessed meeting, posts notice of the
9 date, time and place for the reconvened meeting on or near the
10 door of the place where the original meeting was held and in at
11 least one other location appropriate to provide public notice
12 of the continuation of the meeting. Only matters appearing on
13 the agenda of the original meeting may be discussed at the
14 reconvened meeting.

15 ~~[F-]~~ K. Meeting notices shall include an agenda
16 containing a list of specific items of business to be discussed
17 or transacted at the meeting or information on how the public
18 may obtain a copy of such an agenda. Except in the case of an
19 emergency or in the case of a public body that ordinarily meets
20 more frequently than once per week, at least seventy-two hours
21 prior to the meeting, the agenda shall be available to the
22 public and posted on the public body's web site, if one is
23 maintained. A public body that ordinarily meets more
24 frequently than once per week shall post a draft agenda at
25 least seventy-two hours prior to the meeting and a final agenda

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1 at least thirty-six hours prior to the meeting. Except for
2 emergency matters, a public body shall take action only on
3 items appearing on the agenda. For purposes of this
4 subsection, "emergency" refers to unforeseen circumstances
5 that, if not addressed immediately by the public body, will
6 likely result in injury or damage to persons or property or
7 substantial financial loss to the public body. Within ten days
8 of taking action on an emergency matter, the public body shall
9 report to the attorney general's office the action taken and
10 the circumstances creating the emergency; provided that the
11 requirement to report to the attorney general is waived upon
12 the declaration of a state or national emergency.

13 [G.—The] L. A board, commission, administrative
14 adjudicatory body or other policymaking body shall keep written
15 minutes of all its meetings. The minutes shall include at a
16 minimum the date, time and place of the meeting, the names of
17 members in attendance and those absent, the substance of the
18 proposals considered and a record of any decisions and votes
19 taken that show how each member voted. All minutes are open to
20 public inspection. Draft minutes shall be prepared within ten
21 working days after the meeting and shall be approved, amended
22 or disapproved at the next meeting where a quorum is present.
23 Minutes shall not become official until approved by the
24 policymaking body.

25 [H.—] M. The provisions of Subsections A, B, C and

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1 [G] L of this section do not apply to:

2 (1) meetings pertaining to issuance,
3 suspension, renewal or revocation of a license, except that a
4 hearing at which evidence is offered or rebutted shall be open.

5 All final actions on the issuance, suspension, renewal or
6 revocation of a license shall be taken at an open meeting;

7 (2) limited personnel matters; provided that
8 for purposes of the Open Meetings Act, "limited personnel
9 matters" means the discussion of hiring, promotion, demotion,
10 dismissal, assignment or resignation of or the investigation or
11 consideration of complaints or charges against any individual
12 public employee; provided further that this paragraph is not to
13 be construed as to exempt final actions on personnel from being
14 taken at open public meetings, nor does it preclude an
15 aggrieved public employee from demanding a public hearing.

16 Judicial candidates interviewed by any commission shall have
17 the right to demand an open interview;

18 (3) deliberations by a public body in
19 connection with an administrative adjudicatory proceeding. For
20 purposes of this paragraph, "administrative adjudicatory
21 proceeding" means a proceeding brought by or against a person
22 before a public body in which individual legal rights, duties
23 or privileges are required by law to be determined by the
24 public body after an opportunity for a trial-type hearing.

25 Except as otherwise provided in this section, the actual

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1 administrative adjudicatory proceeding at which evidence is
2 offered or rebutted and any final action taken as a result of
3 the proceeding shall occur in an open meeting;

4 (4) the discussion of personally identifiable
5 information about any individual student, unless the student or
6 the student's parent or guardian requests otherwise;

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

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

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

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

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

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

10 [~~F.~~] N. If any meeting is closed pursuant to the
11 exclusions contained in Subsection [~~H~~] M of this section:

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

22 (2) if a closure is called for when the
23 policymaking body is not in an open meeting, the closed meeting
24 shall not be held until public notice, appropriate under the
25 circumstances, stating the specific provision of the law

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1 authorizing the closed meeting and stating with reasonable
2 specificity the subject to be discussed is given to the members
3 and to the general public.

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

12 **SECTION 2.** Section 10-15-2 NMSA 1978 (being Laws 1974,
13 Chapter 91, Section 2, as amended) is amended to read:

14 "10-15-2. STATE LEGISLATURE--MEETINGS.--

15 A. Unless otherwise provided by joint house and
16 senate rule, all meetings of any committee or [~~policy-making~~]
17 policymaking body of the legislature [~~held for the purpose of~~
18 ~~discussing public business or for the purpose of taking any~~
19 ~~action within the authority of or the delegated authority of~~
20 ~~the committee or body~~] are declared to be public meetings open
21 to the public at all times. Reasonable notice of meetings
22 shall be given to the public by publication or by the presiding
23 officer of each house prior to the time the meeting is
24 scheduled.

25 B. No later than the second session of the fifty-

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1 second legislature, the legislature shall provide to the public
2 on its internet web site a live audio and video stream of its
3 sessions and public meetings unless the legislative council
4 service determines in writing that providing a live video and
5 audio transmission of a particular public meeting in a
6 particular location and at a particular time is technically or
7 logistically impracticable. If live audio transmission is
8 practicable but video transmission is not, the written
9 determination shall so indicate. The written determination
10 shall exempt the legislature from providing a live video and
11 audio transmission or from providing a live video transmission,
12 as the case may be, for the particular public meeting as
13 otherwise required by the Open Meetings Act.

14 C. The legislature shall produce an electronic
15 media exact copy of the live video and audio transmission or
16 audio transmission of each public meeting. The copy shall be a
17 public record. The copy shall be retained and disposed of by
18 the legislature in accordance with a records retention and
19 disposition schedule adopted by the state commission of public
20 records pursuant to the Public Records Act.

21 [~~B.~~] D. The provisions of Subsection A of this
22 section do not apply to matters relating to personnel or
23 matters adjudicatory in nature or to investigative or quasi-
24 judicial proceedings relating to ethics and conduct or to a
25 caucus of a political party.

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[~~G.~~] E. For the purposes of this section, "meeting" means a gathering of a quorum of the members of a standing or interim committee or policymaking body or conference committee held for the purpose of [~~taking any action within the authority of the committee or body~~] discussing public business."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.