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HOUSE BILL 708

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO OPEN MEETINGS; AMENDING THE OPEN MEETINGS ACT TO INCREASE CRIMINAL PENALTIES FOR VIOLATIONS AND TO PROVIDE FOR CIVIL PENALTIES.

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

Section 1. Section 10-15-3 NMSA 1978 (being Laws 1974, Chapter 91, Section 3, as amended) is amended to read:

"10-15-3. INVALID ACTIONS--STANDING.--

A. [~~No~~] A resolution, rule, regulation, ordinance or action of [~~any~~] a board, commission, committee or other policymaking body shall not be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978. Every resolution, rule, regulation, ordinance or action of [~~any~~] a board, commission, committee or other policymaking body shall be presumed to have been taken or

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1 made at a meeting held in accordance with the requirements of  
2 Section 10-15-1 NMSA 1978.

3 B. All provisions of the Open Meetings Act shall be  
4 enforced by the attorney general or by the district attorney in  
5 the county of jurisdiction. However, nothing in that act shall  
6 prevent an individual from independently applying for  
7 enforcement through the district courts; provided that the  
8 individual first provides written notice of the claimed  
9 violation to the public body and that the public body has  
10 denied or not acted on the claim within fifteen days of  
11 receiving it. A public meeting held to address a claimed  
12 violation of the Open Meetings Act shall include a summary of  
13 comments made at the meeting at which the claimed violation  
14 occurred.

15 C. The district courts of this state shall have  
16 jurisdiction, upon the application of any person to enforce the  
17 purpose of the Open Meetings Act, by injunction, mandamus or  
18 other appropriate order. The court shall award costs and  
19 reasonable attorney fees to any person who is successful in  
20 bringing a court action to enforce the provisions of the Open  
21 Meetings Act. If the prevailing party in a legal action  
22 brought under this section is a public body defendant, it shall  
23 be awarded court costs. A public body defendant that prevails  
24 in a court action brought under this section shall be awarded  
25 its reasonable attorney fees from the plaintiff if the

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1 plaintiff brought the action without sufficient information and  
2 belief that good grounds supported it.

3 D. In addition to costs, attorney fees and other  
4 relief granted pursuant to Subsection C of this section, the  
5 court may assess a civil penalty against a member of the public  
6 body if the court finds that the member willfully and knowingly  
7 violated a provision of Section 10-15-1 or 10-15-2 NMSA 1978.  
8 The amount of the civil penalty shall be determined by the  
9 court but shall not exceed one thousand dollars (\$1,000) or the  
10 costs incurred by the public body to correct an action  
11 invalidated because of the violation, whichever is greater.  
12 Civil penalties imposed pursuant to this subsection are the  
13 personal liability of the member of the public body and shall  
14 not be paid or reimbursed by public funds.

15 ~~[D.]~~ E. No section of the Open Meetings Act shall  
16 be construed to preclude other remedies or rights not relating  
17 to the question of open meetings."

18 Section 2. Section 10-15-4 NMSA 1978 (being Laws 1974,  
19 Chapter 91, Section 4, as amended) is amended to read:

20 "10-15-4. PENALTY.--

21 ~~[Any]~~ A. A person violating ~~[any of the provisions]~~  
22 a provision of Section 10-15-1 or 10-15-2 NMSA 1978 is guilty  
23 of a misdemeanor and upon conviction shall be punished by a  
24 fine of not more than ~~[five hundred dollars (\$500)]~~ one  
25 thousand dollars (\$1,000) for each offense.

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1                    B. As used in this section, "each offense" means  
2                    each separate action taken by a public body at a meeting held  
3                    in violation of the provisions of the Open Meetings Act."

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