

HOUSE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 392

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

AN ACT

RELATING TO OPEN GOVERNMENT; REQUIRING LIVE VIDEO AND AUDIO  
TRANSMISSION VIA THE INTERNET OF MEETINGS OF PUBLIC ENTITIES,  
INCLUDING THE LEGISLATURE, CONDUCTING PUBLIC BUSINESS WITH  
CERTAIN EXCEPTIONS; REQUIRING THE ARCHIVING 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

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underscored material = new  
[bracketed material] = delete

1 affairs of government and the official acts of those officers  
2 and employees who represent them. The formation of public  
3 policy or the conduct of business by vote shall not be  
4 conducted in closed meeting. All meetings of any public body  
5 except the legislature and the courts shall be public meetings,  
6 and all persons so desiring shall be permitted to attend and  
7 listen to the deliberations and proceedings. Reasonable  
8 efforts shall be made to accommodate the use of audio and video  
9 recording devices.

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

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1           C. On or after January 1, 2016, a board,  
2           commission, administrative adjudicatory body or other  
3           policymaking body of any state agency or any agency or  
4           authority of any county, municipality, district or political  
5           subdivision conducting a meeting required to be a public  
6           meeting open to the public pursuant to Subsection A of this  
7           section shall provide for live video and audio transmission of  
8           that public meeting via the internet, unless exempted pursuant  
9           to Subsection D or H of this section.

10           D. The presiding officer of the board, commission,  
11           administrative adjudicatory body or other policymaking body of  
12           any state agency or any agency or authority of any county,  
13           municipality, district or political subdivision shall make a  
14           determination as to whether providing a live video and audio  
15           transmission of a particular public meeting in a particular  
16           location at a particular time is financially, technically or  
17           logistically practicable. If live audio transmission is  
18           determined by the presiding officer to be practicable but video  
19           transmission is not, a live audio transmission shall be  
20           provided via the internet. If transmission is determined by  
21           the presiding officer to be impracticable, the entity shall be  
22           exempt from providing a live video and audio transmission or  
23           from providing a live audio transmission, as the case may be,  
24           for the particular public meeting as otherwise required by the  
25           Open Meetings Act.

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1           E. The department of information technology shall  
2 develop, operate and maintain an internet web site that is free  
3 and accessible where the public can access live video and audio  
4 transmissions of meetings of executive state agencies that are  
5 required by the provisions of this 2015 act. The web site  
6 shall be part of or linked to the sunshine portal. Agencies  
7 employing the central web site operated by the department of  
8 information technology shall be charged an equitable share of  
9 the yearly costs associated with the operation. Webcasting of  
10 live video and audio transmission of meetings of non-executive  
11 state agencies that are required by the provisions of this 2015  
12 act shall utilize another web site; provided the location or  
13 uniform resource locator of the internet web site where the  
14 live video and audio transmission is or will be available shall  
15 be provided in the notice of the public meeting as required by  
16 the Open Meetings Act.

17           F. A board, commission, administrative adjudicatory  
18 body or other policymaking body of any state agency or any  
19 agency or authority of any county, municipality, district or  
20 political subdivision shall take reasonable and necessary  
21 actions to schedule its public meetings at times and places  
22 where live video and audio transmission of the meetings can  
23 occur.

24           G. Live video and audio transmission of a public  
25 meeting, or live audio transmission of a public meeting

1 pursuant to Subsection D of this section, shall be archived.  
2 The archive shall be a public record. The archive shall be  
3 retained and disposed of in accordance with a records retention  
4 and disposition schedule adopted pursuant to the Public Records  
5 Act.

6 H. The provisions of Subsections C, D, F and G of  
7 this section do not apply to any board, commission,  
8 administrative adjudicatory body or other policymaking body.

9 ~~[G.]~~ I. 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.]~~ J. 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.]~~ K. 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.]~~ L. 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]~~ M. 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.]~~ N. The provisions of Subsections A, B, C and

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1 [G] M 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



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~~] O. If any meeting is closed pursuant to the  
11 exclusions contained in Subsection [~~H~~] N 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-]~~ P. 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]~~ M 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, pursuant to policies  
4 adopted by the New Mexico Legislative Council, the legislative  
5 council service determines that providing a live video and  
6 audio transmission of a particular public meeting in a  
7 particular location and at a particular time is financially,  
8 technically or logistically impracticable. If live audio  
9 transmission is practicable but video transmission is not, a  
10 live audio transmission shall be provided via the internet. If  
11 transmission is determined to be impracticable, the legislature  
12 is exempt from providing a live video and audio transmission or  
13 from providing a live video transmission, as the case may be,  
14 for the particular public meeting as otherwise required by the  
15 Open Meetings Act.

16 C. The legislature shall archive the live video and  
17 audio transmission or audio transmission of each public  
18 meeting. The archive shall be a public record. The archive  
19 shall be retained and disposed of in accordance with a records  
20 retention and disposition schedule adopted pursuant to the  
21 Public Records Act.

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

