

1 HOUSE BILL 225

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

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

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
20 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

21 A. In recognition of the fact that a representative
22 government is dependent upon an informed electorate, it is
23 declared to be public policy of this state that all persons are
24 entitled to the greatest possible information regarding the
25 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 and
4 archived video and audio transmission of that public meeting
5 via the internet no later than January 1, 2018 unless exempted
6 pursuant to Subsection D or G of this section. The location or
7 uniform resource locator of the internet website where the live
8 and archived transmission is accessible or will be accessible
9 shall be provided in the notice of the public meeting required
10 by the Open Meetings Act. The internet website shall be a
11 public access website or a website available to the public
12 without cost or subscription. The department of information
13 technology, when requested, shall provide technical assistance
14 to the board, commission, administrative adjudicatory body or
15 other policymaking body to implement the live and archived
16 video and audio transmission required by 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. The copy shall be posted
25 to the internet website within forty-eight hours of the end of

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1 the meeting, except for meetings that occur on Friday, Saturday
2 or Sunday, in which case the copy of the meeting shall be
3 posted to the internet website prior to end of business on the
4 following Tuesday.

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

8 (1) a municipality with a population, as shown
9 by the most recent federal decennial census, of less than
10 fifteen thousand;

11 (2) a county other than a class A county; or

12 (3) a political subdivision of the state other
13 than a county or municipality.

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

24 ~~[D.]~~ I. Any meetings at which the discussion or
25 adoption of any proposed resolution, rule, regulation or formal

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1 action occurs and at which a majority or quorum of the body is
2 in attendance, and any closed meetings, shall be held only
3 after reasonable notice to the public. The affected body shall
4 determine at least annually in a public meeting what notice for
5 a public meeting is reasonable when applied to that body. That
6 notice shall include broadcast stations licensed by the federal
7 communications commission and newspapers of general circulation
8 that have provided a written request for such notice.

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

20 ~~[F-]~~ K. Meeting notices shall include an agenda
21 containing a list of specific items of business to be discussed
22 or transacted at the meeting or information on how the public
23 may obtain a copy of such an agenda. Except in the case of an
24 emergency or in the case of a public body that ordinarily meets
25 more frequently than once per week, at least seventy-two hours

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1 prior to the meeting, the agenda shall be available to the
2 public and posted on the public body's [~~web-site~~] website, if
3 one is maintained. A public body that ordinarily meets more
4 frequently than once per week shall post a draft agenda at
5 least seventy-two hours prior to the meeting and a final agenda
6 at least thirty-six hours prior to the meeting. Except for
7 emergency matters, a public body shall take action only on
8 items appearing on the agenda. For purposes of this
9 subsection, "emergency" refers to unforeseen circumstances
10 that, if not addressed immediately by the public body, will
11 likely result in injury or damage to persons or property or
12 substantial financial loss to the public body. Within ten days
13 of taking action on an emergency matter, the public body shall
14 report to the attorney general's office the action taken and
15 the circumstances creating the emergency; provided that the
16 requirement to report to the attorney general is waived upon
17 the declaration of a state or national emergency.

18 [~~G.—The~~] L. A board, commission, administrative
19 adjudicatory body or other policymaking body shall keep written
20 minutes of all its meetings. The minutes shall include at a
21 minimum the date, time and place of the meeting, the names of
22 members in attendance and those absent, the substance of the
23 proposals considered and a record of any decisions and votes
24 taken that show how each member voted. All minutes are open to
25 public inspection. Draft minutes shall be prepared within ten

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1 working days after the meeting and shall be approved, amended
2 or disapproved at the next meeting where a quorum is present.
3 Minutes shall not become official until approved by the
4 policymaking body.

5 ~~[H.]~~ M. The provisions of Subsections A, B, C and
6 ~~[G]~~ L of this section do not apply to:

7 (1) meetings pertaining to issuance,
8 suspension, renewal or revocation of a license, except that a
9 hearing at which evidence is offered or rebutted shall be open.
10 All final actions on the issuance, suspension, renewal or
11 revocation of a license shall be taken at an open meeting;

12 (2) limited personnel matters; provided that
13 for purposes of the Open Meetings Act, "limited personnel
14 matters" means the discussion of hiring, promotion, demotion,
15 dismissal, assignment or resignation of or the investigation or
16 consideration of complaints or charges against any individual
17 public employee; provided further that this paragraph is not to
18 be construed as to exempt final actions on personnel from being
19 taken at open public meetings, nor does it preclude an
20 aggrieved public employee from demanding a public hearing.
21 Judicial candidates interviewed by any commission shall have
22 the right to demand an open interview;

23 (3) deliberations by a public body in
24 connection with an administrative adjudicatory proceeding. For
25 purposes of this paragraph, "administrative adjudicatory

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1 proceeding" means a proceeding brought by or against a person
2 before a public body in which individual legal rights, duties
3 or privileges are required by law to be determined by the
4 public body after an opportunity for a trial-type hearing.

5 Except as otherwise provided in this section, the actual
6 administrative adjudicatory proceeding at which evidence is
7 offered or rebutted and any final action taken as a result of
8 the proceeding shall occur in an open meeting;

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

12 (5) meetings for the discussion of bargaining
13 strategy preliminary to collective bargaining negotiations
14 between the policymaking body and a bargaining unit
15 representing the employees of that policymaking body and
16 collective bargaining sessions at which the policymaking body
17 and the representatives of the collective bargaining unit are
18 present;

19 (6) that portion of meetings at which a
20 decision concerning purchases in an amount exceeding two
21 thousand five hundred dollars (\$2,500) that can be made only
22 from one source is discussed and that portion of meetings at
23 which the contents of competitive sealed proposals solicited
24 pursuant to the Procurement Code are discussed during the
25 contract negotiation process. The actual approval of purchase

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1 of the item or final action regarding the selection of a
2 contractor shall be made in an open meeting;

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

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

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

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

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

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

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1 meeting; or

2 (2) if a closure is called for when the
3 policymaking body is not in an open meeting, the closed meeting
4 shall not be held until public notice, appropriate under the
5 circumstances, stating the specific provision of the law
6 authorizing the closed meeting and stating with reasonable
7 specificity the subject to be discussed is given to the members
8 and to the general public.

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

17 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
18 provisions of this act is July 1, 2017.

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