

# New Mexico Open Meetings Act

The “Open Meetings Act,” NMSA 1978, Sections 10-15-1 to 10-15-4, is known as a “sunshine law.” All states have such laws, which are essentially motivated by the belief that the democratic ideal is best served by a well-informed public. Sunshine laws generally require that public business be conducted in full public view, that the actions of public bodies be taken openly, and that the deliberations of public bodies be open to the public.



If you would like additional copies of this Guide, or if you have any questions about the Guide or the applicability of the Act, please contact the Civil Division of the Office of the Attorney General, P.O. Drawer 1508, Santa Fe, New Mexico 87504-1508, or by telephone at (505) 827-6070. The Guide is also posted on the Attorney General Office’s website at <http://www.ago.state.nm.us>; after accessing the site, simply click on “Civil Division”.

## Section 10-15-1. Formation of Public Policy

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 policy or the conduct of business by vote shall not be conducted in closed meetings. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

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

C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications

commission and newspapers of general circulation that have provided a written request for such notice.

E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting, and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

F. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency, the agenda shall be available to the public at least twenty-four hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this Subsection, an “emergency” refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body.

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

H. The provisions of Subsections A, B and G of this section do not apply to:

- (1) Meetings pertaining to issuance, suspension, renewal or revocation of a license except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;
- (2) limited personnel matters; provided that for purposes of the Open Meetings Act, “limited personnel matters” means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this Subsection is not to be construed as to exempt final actions on personnel from being taken at open public meetings; nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;
- (3) deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, an “administrative adjudicatory proceeding” means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;
- (4) the discussion of personally identifiable information about any individual student, unless the student, his parent or guardian requests otherwise;
- (5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policy-making body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;

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

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

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

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

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

I. If any meeting is closed pursuant to the exclusions contained in Subsection H of this section, the closure:

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

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

J. Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes.

### **Section 10-15-2. State Legislature; Meetings.**

A. All meetings of a quorum of members of any committee or policymaking body of the state legislature held for the purpose of discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such committee or body are declared to be public meetings open to the public at all times.

B. The provisions of Subsection A of this section shall not apply to matters relating to personnel, or matters adjudicatory in nature, or any bill, resolution or other legislative matter not yet presented to either house of the legislature or general appropriation bills.

C. For the purpose of this section, "meeting" means a gathering of the members called by the presiding officer of a standing committee.

### **10-15-3. Invalid Actions; Standing.**

A. No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of NMSA 1978, Section 10-15-1. Every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of NMSA 1978, Section 10-15-1.

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

C. The district courts of this state shall have jurisdiction, upon the application of any person to enforce the purpose of the Open Meetings Act, by injunction, mandamus or other appropriate order. The court shall award costs and reasonable attorney fees to any person who is successful in bringing a court action to enforce the provisions of the Open Meetings Act. If the prevailing party in a legal action brought under this section is a public body defendant, it shall be awarded court costs. A public body defendant that prevails in a court action brought under this section shall be awarded its reasonable attorney fees from the plaintiff if the plaintiff brought the action without sufficient information and belief that good grounds supported it.

D. No section of the Open Meetings Act shall be construed to preclude other remedies or rights not relating to the question of open meetings.

### **10-15-4. Penalty.**

Any person violating any of the provisions of NMSA 1978, Section 10-15-1 or 10-15-2 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) for each offense.