

which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this act.

B. Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in Section 218(d)(3) of the Social Security Act have been met, the governor or an officer of the state designated by the governor, shall so certify to the secretary of health, education and welfare.

History: 1953 Comp., § 5-7-9, enacted by Laws 1955, ch. 172, § 9; 1973, ch. 329, § 4.

Social Security Act. — Section 218 of the federal Social Security Act, referred to in Subsections A and B, appears as 42 U.S.C. § 418.

Legislative intent. — The legislature intends, so far as the political subdivisions are concerned, that the initial step for coverage is to be made by the political subdivision by submitting a plan. If the plan is proper, and the political subdivision has its own retirement system or was a part of the state system, the governor is to call for a referendum for such political subdivision. If there happens to be a number of such divisions with proper plans, they can, of course, be grouped together for the purpose of the

referendum. No political subdivision would work out a plan for coverage without first determining that the employees were for such plan. 1955-56 Op. Att'y Gen. No. 6333.

Scope of gubernatorial powers as to referendums. — The governor can, within the provisions of the Social Security Act, designate what shall constitute a retirement system for the purpose of a referendum. The governor can designate each political subdivision as a separate retirement system for the purpose of this referendum. 1955-56 Op. Att'y Gen. No. 6333.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81 C.J.S. Social Security and Public Welfare §§ 28, 38.

10-14-11. Social security referendum.

A referendum for or against participation in the federal old age and survivors insurance embodied in the federal Social Security Act shall be conducted for the employees of a general hospital, or outpatient clinics thereof, operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, if required by federal or state law.

History: 1978 Comp., § 10-14-11, enacted by Laws 1978, ch. 167, § 3.

Social Security Act. — The provisions of the

federal Social Security Act, referred to in this section, appear as 42 U.S.C. § 301 et seq.

ARTICLE 15

Open Meetings

Sec.

10-15-1. Formation of public policy; procedures for open meetings; exceptions and procedures for closed meetings.

10-15-1.1. Short title.

Sec.

10-15-2. State legislature; meetings.

10-15-3. Invalid actions; standing.

10-15-4. Penalty.

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 and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so 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 [Chapter 10, Article 15 NMSA 1978]. 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 [Chapter 10, Article 15 NMSA 1978], "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 policymaking 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 five hundred dollars (\$2,500) that can be made only from one source and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code [13-1-28 NMSA 1978] 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 [Chapter 60, Article 2E NMSA 1978].

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.

The 1993 amendment, effective June 18, 1993, in Subsection B, inserted "administrative adjudicatory body" near the beginning of the first sentence; added Subsections C, E, F, and J, redesignating the remaining subsections accordingly and making a related reference change in present Subsections H and I; added Paragraphs (3) and (4) to Subsection H, redesignating the remaining paragraphs accordingly; added the language beginning "and that portion of meetings" to the end of the first sentence of present Paragraph (6) and substituted "or final action regarding the selection of a contractor shall" for "is to" in the second sentence of that paragraph; in Subsection I, inserted "and the subject to be discussed" and "with reasonable specificity" in Paragraph (1) and deleted "the closed meetings" following "in an open meeting" and inserted "and stating with reasonable specificity the subject to be discussed" in Paragraph (2); and made stylistic changes in Subsection B and Subsections D, G, H, and I.

The 1997 amendment, in Subsection H, added Paragraph (10) and made minor stylistic changes at the end of Paragraphs (8) and (9). Laws 1997, ch. 190 does not contain an effective date provision applicable to this section, but, pursuant to N.M. Const., art. IV, § 13, the amendment is effective June 20, 1997, 90 days after adjournment.

The 1999 amendment, effective June 18, 1999, rewrote Paragraph H(9) which read: "those portions of meetings of committees or boards of public hospitals that receive less than fifty percent of their operating budget from direct public funds and appropriations where strategic and long-range business plans are discussed; and".

Purpose of the Open Meetings Act is to open the meetings of governmental bodies to public scrutiny by allowing public attendance at such meetings, not to unduly burden the appropriate exercise of governmental decision-making and ability to act. *Gutierrez v. City of Albuquerque*, 96 N.M. 398, 631 P.2d 304 (1981).

Effect on city-owned utility. — A city-owned electric utility corporation is a governmental board within a statute that requires the governing bodies of municipalities, etc., and all other governmental boards and commissions of state or its subdivisions that are supported by public funds to make all final decisions at meetings open to the public. *Raton Pub. Serv. Co. v. Hobbes*, 76 N.M. 535, 417 P.2d 32 (1966) (decided under prior law).

Effect on city board of education. — A city board of education is a policymaking body covered by the public meeting law. *State v. Hernandez*, 89 N.M. 698, 556 P.2d 1174 (1976).

Dental hygiene committee must comply fully with the Open Meetings Act. 1987 Op. Att'y Gen. No. 87-82.

Intercommunity water supply association. — An association composed solely of two incorporated villages for purposes of securing an adequate and economic supply of water for the residents of the villages was a public body subject to the Open Meetings Act, particularly in light of the considerable public authority the association had over the creation, maintenance and distribution of the water to the two villages. 1991 Op. Att'y Gen. No. 91-07.

To "attend and listen," as used in Subsection A, means that persons desiring to attend shall have the opportunity to do so, that no one will be systematically excluded or arbitrarily refused admittance, and that the meeting will not be "closed" to the

public. *Gutierrez v. City of Albuquerque*, 96 N.M. 398, 631 P.2d 304 (1981).

Reasonable public access required. — A governmental entity must allow reasonable public access for those who wish to attend and listen to its proceedings. *Gutierrez v. City of Albuquerque*, 96 N.M. 398, 631 P.2d 304 (1981).

All stages to be open. — All stages of the meetings must be open to the public because if the body were allowed to conduct a closed meeting in the determination of a matter, and then merely open the meeting to the public and announce its decision, the clear intent of the legislature would be defeated. 1959-60 Op. Att'y Gen. No. 59-105 (decided under prior law).

Meeting with overflow crowd qualifies as open and public. — When the size of a crowd exceeds the capacity of the meeting place and every effort is made to allow those who cannot gain entrance to listen to the proceedings, the requirements of this article are satisfied and the meeting qualifies as both open and public. *Gutierrez v. City of Albuquerque*, 96 N.M. 398, 631 P.2d 304 (1981).

Denial to citizen of right to address board. — A local school board president has authority to deny citizens the right to address the local school board during a meeting of the board, if he is authorized to do so by rules promulgated by the board and he does not exercise that authority arbitrarily or capriciously. 1990 Op. Att'y Gen. No. 90-26.

Restrictions on public's right to speak at open meetings. — The Open Meetings Act does not require a county commission to allow the public to speak at its meetings. However, the commission in this case had an intentional practice and tradition of allowing public comment at its meetings, and it failed to identify a significant government interest justifying the prohibition of plaintiff's speech at a commission meeting. Therefore, the district courts order of summary judgment in favor of the commissioners was reversed. *Mesa v. White*, 197 F.3d 1041 (10th Cir. 1999).

Decisions made by telephone, etc. — Final decisions made by telephone, mail or telegraph are not made at a meeting open to the public within the meaning of the act. A clear intention of the words "meeting open to the public" is to provide a situation where all of the attending members of the board or commission assembled together arrive at final decisions and determinations in such a manner as to allow the press and the general public to be present. Any other interpretation would defeat the legislative intent of the statute. 1959-60 Op. Att'y Gen. No. 59-105 (decided under prior law).

A county commission may not, consistently with this article, approve purchases by telephone. When it approves purchases, a county commission is conducting public business and taking official action. Therefore, to be valid, this action must be taken by the commissioners acting as a body at a meeting open to the public and according to the requirements of the Open Meetings Act. 1991 Op. Att'y Gen. No. 91-12.

Recording and broadcasting of meetings. — News reporters may record public meetings and may later broadcast those recordings, if the recording process does not effectively interfere with certain legitimate governmental interests such as the need to provide for order, decorum, etc. 1973 Op. Att'y Gen. No. 73-10 (decided under prior law).

Notice of meetings. — Notice must be posted in a timely manner prior to the anticipated meeting. 1990 Op. Att'y Gen. No. 90-29.

The reasonable notice standard contained in the Open Meetings Act involves an analysis of its substance and procedure, and no hard and fast rule can be applied to what constitutes "reasonable notice" under the Act. 1990 Op. Att'y Gen. No. 90-29.

Procedurally, it is acceptable to post notice in a prominent location like city hall or in the county courthouse. However, where notice has been posted in a prominent location but the public is denied access, such notice is defective and therefore not reasonable. 1990 Op. Att'y Gen. No. 90-29.

It is recommended that public policy-making bodies post notice at least 10 days prior to regular meetings, three days prior to special meetings and as practicable for emergency meetings. However, emergency meetings called with little or no notice must involve issues which, if not addressed immediately by a policy-making body, will threaten the health, safety or property of its citizens. 1990 Op. Att'y Gen. No. 90-29.

A violation of the Open Meeting Act's notice provisions must be considered to be substantial because the Act's policy goals and intent cannot be achieved without sufficient notice. 1990 Op. Att'y Gen. No. 90-29.

Publication in New Mexico register. — A notice of proposed rulemaking in the New Mexico Register probably would not constitute reasonable notice under the Open Meetings Act, 10-15-1 to 10-15-4 NMSA 1978, because the register is not widely circulated and is not readily available to the general public. 1993 Op. Att'y Gen. No. 93-2.

Notice reasonable. — Where notice of the meeting at which a board adopted regulations under the Environmental Improvement Act was mailed at least 10 days prior to the scheduled date to 64 individuals, committees and organizations (including the appellant who had and exercised the opportunity to appear at two preliminary meetings at which evidence was taken regarding the proposed regulations), the notice of these preliminary meetings was published in nine newspapers, a news release was issued on April 16, 1974, giving the time and place of the April 19 meeting and stating that the board would take action on proposed regulations for solid waste and New Mexico's ambient air standard for sulfur dioxide, notice of the meeting, citing a U.P.I. release, appeared in two other papers on April 18, 1974, and April 17, 1974, respectively, and moreover, April 19 was the regular monthly meeting date for the board, it was held that all of these efforts by the board constituted reasonable notice to the public within the meaning of this subsection. *New Mexico Mun. League, Inc. v. New Mexico Env'tl. Imp. Bd.*, 88 N.M. 201, 539 P.2d 221 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

"Limited personnel matters" exception. — If a public policy-making body desires to meet in executive session to discuss an individual employee's dismissal, promotion, resignation, complaint or shortcomings, then such a meeting could properly be closed pursuant to the "limited personnel matters" exception set forth in Subsection H(2). Conversely, budgetary discussions and the like, while sometimes tangentially related to personnel matters, are not to be held behind closed doors. 1990 Op. Att'y Gen. No. 90-28.

Reinstatement of termination proceedings after initial ones defective. — Where the original

termination proceedings against a teacher were reversed based upon a procedural defect (failure to comply with this article), the school board was entitled to reinstate terminational proceedings, correct the procedural defect, and rely upon the same alleged acts of misconduct that had been relied upon in the original proceedings. *Board of Educ. v. Sullivan*, 106 N.M. 125, 740 P.2d 119 (1987).

Correction of procedural error. — A local school board's procedural error in, following private deliberations, issuing its written decision affirming a teacher's dismissal without convening an open meeting and without a public announcement of the vote, may be corrected by holding a prompt public meeting, affording the teacher an opportunity to be present, and publicly voting on and ratifying its decision. *Kleinberg v. Board of Educ.*, 107 N.M. 38, 751 P.2d 722 (Ct. App. 1988).

No general right of public sector collective bargaining. — It would be incorrect to infer that by including a provision allowing closed meetings to discuss strategy preliminary to collective bargaining negotiations, Paragraph H(5) of this section, the legislature recognized the general right of public sector collective bargaining. To the contrary, that provision was enacted only because the legislature specifically had authorized cities to bargain collectively with transit workers in 3-52-14 to 3-52-16 NMSA 1978. 1987 Op. Att'y Gen. No. 87-41.

Meetings with attorney. — Subsection H(7) does not apply only when a public body has already become involved in litigation or has been informed it will likely become involved. Also, it does not require that a decision regarding litigation be made in an open meeting. *Board of County Comm'rs v. Ogden*, 117 N.M. 181, 870 P.2d 143 (Ct. App. 1994).

Moot claim not vacated. — Although the drug-testing policy in issue was replaced, making the claim under this act moot on appeal, the city is not entitled to vacate the trial court's judgment on that claim. *19 Solid Waste Dep't Mechanics v. City of Albuquerque*, 76 F.3d 1142 (10th Cir. 1996).

The Las Cruces Selection Advisory Committee is a policy-making body for purposes of the Open Meetings Act. 1990 Op. Att'y Gen. No. 90-27.

Law reviews. — For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 101 et seq.

Emergency exception under state law making proceedings by public bodies open to the public, 33 A.L.R.5th 731.

Attorney-client exception under state law making proceedings by public bodies open to the public, 34 A.L.R.5th 591.

Pending or prospective litigation exception under state law making proceedings by public bodies open to the public, 35 A.L.R.5th 113.

Construction and application of exemptions, under 5 USCS § 552b(c), to open meeting requirement of Sunshine Act, 82 A.L.R. Fed. 465.

Exhaustion of administrative remedies as prerequisite to judicial action to compel disclosure under Freedom of Information Act (FOIA) (5 USC § 552), 112 A.L.R. Fed. 561.

73 C.J.S. Public Administrative Law and Procedure § 19.

10-15-1.1. Short title.

Chapter 10, Article 15 NMSA 1978 may be cited as the "Open Meetings Act".

History: 1978 Comp., § 10-15-1.1, enacted by Laws 1979, ch. 366, § 2; 1989, ch. 299, § 2.

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

History: 1953 Comp., § 5-6-24, enacted by Laws 1974, ch. 91, § 2.

Open meetings not required. — The open meet

ings requirement as defined in this section does not apply to a caucus of the majority party of the house of representatives. 1976 Op. Att'y Gen. No. 76-21.

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 Section 10-15-1 NMSA 1978. 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 Section 10-15-1 NMSA 1978.

B. All provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] 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.

History: 1953 Comp., § 5-6-25, enacted by Laws 1974, ch. 91, § 3; 1989, ch. 299, § 3; 1993, ch. 262, § 2; 1997, ch. 148, § 1.

The 1993 amendment, effective June 18, 1993,

purported to amend this section but made no change. The 1997 amendment added the proviso in the second sentence of Subsection B and rewrote Subsection C. Laws 1997, ch. 148 contains no effective date

provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature.

Employment offer from two commissioners.
— The action of two county commissioners orally extending an offer of a two-year employment was

without statutory authority because it was not made at a duly constituted meeting of the board and, thus, it was not a valid act capable of binding the county. *Trujillo v. Gonzales*, 106 N.M. 620, 747 P.2d 915 (1987).

10-15-4. Penalty.

Any person violating any of the provisions of Section 10-15-1 or 10-15-2 NMSA 1978 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.

History: 1953 Comp., § 5-6-26, enacted by Laws 1974, ch. 91, § 4; 1989, ch. 299, § 4.