



New Mexico Open Meetings Act



Open Meetings Act

NMSA 1978, § 10-15-1(A)

Right to Open Meetings

- Formation of public policy or the conduct of business by vote shall not be conducted in closed meetings
- Generally, public bodies may not form public policy or conduct business in closed meetings
- All persons desiring must be permitted to attend & listen to the proceedings
- Audio & video recordings to be accommodated

Open Meetings Act

NMSA 1978, § 10-15-1(B)

All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency or political subdivision held for the purpose of:

- Formulating public policy
- Discussing public business, **or**
- For the purpose of taking any action within the authority or delegated authority of the policymaking body

Open Meetings Act

NMSA 1978, § 10-15-1(B)

QUORUM

- OMA applies to all meetings of a quorum
- Quorum = One more than half of the public body's members
- Quorum may exist even if members are not present together at same time and place
- **Rolling quorums**

Open Meetings Act

NMSA 1978, § 10-15-1(B)

Meetings Not Covered By OMA

- Social situations
- Chance meetings
- **Don't discuss
public business!**

Open Meetings Act

NMSA 1978, § 10-15-1(B)

Policymaking Bodies

- Joint authority to act
- Delegated authority
 - Hearing officer
 - Subcommittees
 - Policymaking
 - Advisory

Open Meetings Act

NMSA 1978, § 10-15-1(C)

Telephone Conferences

- If otherwise allowed by law or rule of the public body, a member of the public body may participate in a meeting of the public body by means of a conference call or other similar communication equipment when it is otherwise difficult or impossible for the member to attend the meeting in person.
- **The Act itself does not authorize attendance by telephone.**

Open Meetings Act

NMSA 1978, § 10-15-1(D)

Reasonable Notice

- Public bodies must give reasonable advance notice of meetings
- Applies to all meetings of a quorum of the body whether open or closed
- **No secret meetings**
- Public body must determine reasonable notice annually in an open meetings resolution

Open Meetings Act

NMSA 1978, § 10-15-1(E)

Recess & Reconvene

- Before recessing, must specify date, time & place for continuation of meeting
- Post notice at the door of original site & one other appropriate location
- Topics discussed are restricted to items appearing on original agenda

Open Meetings Act

NMSA 1978, § 10-15-1(F)

Agenda

- Meeting notice must include agenda or where public can obtain a copy
- Must contain a list of specific items of business to be discussed or transacted at meeting
- **NO ACTION** may be taken at meeting unless item appears on the agenda made in advance of the meeting
- Exception for emergencies, yet emergency action must be reported to the Office of the Attorney General within 10 days, unless a state or national emergency has been declared.

Open Meetings Act

NMSA 1978, § 10-15-1(F)

Agenda

- During the regular 2013 session, the legislature amended the Open Meetings Act to change how far in advance public bodies must make meeting agendas available to the public.
- A public body is now required to post the agenda at least 72 hours prior to the meeting.

Open Meetings Act

NMSA 1978, § 10-15-1(G)

Minutes

- Public body required to keep minutes of open meetings
- At minimum, minutes shall include:
 - 1) date, time & place of meeting
 - 2) names of members in attendance and those absent
 - 3) substance of proposals considered
 - 4) record of any decisions made & votes taken that show how each member voted
- **No secret ballots**
- Draft minutes must be prepared within 10 working days
- Minutes (including draft minutes) are a public record
- Action on minutes – next meeting of quorum. Official upon the approval of the public body

Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exceptions

- (1) Meetings pertaining to issuance, suspension, renewal or revocation of a license
 - ✓ hearing at which evidence is offered or rebutted must be open.
 - ✓ All final actions taken at an open meeting

Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exceptions (cont'd)

- (2) Limited personnel matters: discussion of hiring, promotion, demotion, dismissal, assignment or resignation of, or the investigation or consideration of complaints or charges against, any individual public employee
- ✓ does not cover general personnel policy; limited to individual employees
 - ✓ does not preclude an aggrieved public employee from demanding a public hearing
 - ✓ final actions on personnel taken at open public meetings

Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exceptions (cont'd)

- (3) Deliberations in connection with an administrative adjudicatory proceeding
 - ✓ Hearing and final action takes place in public meeting

Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exceptions (cont'd)

(4) The discussion of personally identifiable information about any individual student

- ✓ Does not apply to discussions that apply to students generally
- ✓ Does not apply if student, parent or guardian requests public discussion

Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exceptions (cont'd)

- (5) Meetings to discuss bargaining strategy preliminary to negotiations between the policy-making body & a union representing public body's employees & collective bargaining sessions
- ✓ Does not apply to discussions of general bargaining policy
 - ✓ Does not apply unless public body is negotiating with union representing employees
 - ✓ Public Employee Bargaining Act permits closed meetings for consultations and impasse resolution

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NMSA 1978, § 10-15-1(H)

Exceptions (cont'd)

(6) Discussions of:

- sole source purchases in an amount exceeding \$2,500

- contents of competitive sealed proposals solicited pursuant to the Procurement Code

- ✓ Actual approval of purchase of the item or final action regarding the selection of a contractor is made in an open meeting

Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exceptions (cont'd)

(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

- ✓ Only exception that expressly allows closed meeting to discuss attorney-client privileged matters

Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exceptions (cont'd)

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

Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exceptions (cont'd)

- (9) Public hospital board meetings to discuss strategic and long-range business plans or trade secrets
- (10) Gaming Control Board meetings to dealing with confidential information under the Gaming Control Act

Open Meetings Act

NMSA 1978, § 10-15-1(I),(J)

Procedure for Closure

- 1) During open meeting
 - a) motion stating legal authority for closure **AND** topic to be discussed with reasonable specificity
 - b) approved by majority vote and vote of each individual member recorded in the minutes (roll call vote)

Open Meetings Act

NMSA 1978, § 10-15-1(I),(J)

Procedure for Closure (cont'd)

- 2) Separate closed meeting
 - a) prior public notice
 - b) notice must state specific law authorizing closure AND topic to be discussed with reasonable specificity

- Minutes must state that matters discussed in closed session were limited to those specified in the motion to close or notice of closed meeting

Open Meetings Act

NMSA 1978, § 10-15-2

Legislature & Courts

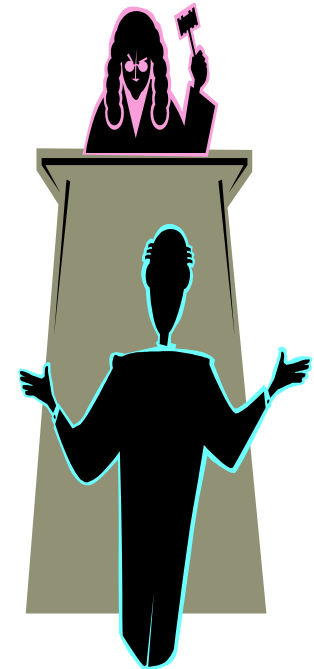
- OMA does not generally apply to legislature & courts
- Standing legislative committee & conference committee meetings
 - Must be open to the public
 - Preceded by reasonable notice

Open Meetings Act

NMSA 1978, § 10-15-3

Enforcement

- Attorney General - statewide
- District Attorneys –
in county of jurisdiction
- Private individuals



Open Meetings Act

Section 10-15-3

Enforcement by Individuals

- 1) Written notice to public body required; public body has 15 days to act on claimed violation
- 2) Meetings to “cure” violations shall include summary of comments made at the meeting at which the claimed violation occurred
- 3) Individual can recover reasonable costs & attorney fees
- 4) Public body can recover costs. Attorney fees only if lawsuit was frivolous

Open Meetings Act

NMSA 1978, § 10-15-3

Consequences of Violating the Act

- Presumption that public body acted in accordance with the Act
- Actions taken in violation of the Act are deemed invalid

Consequences of Violating OMA

- ➔ NMSA 1978, Section 10-15-3(A), (C)
 - ➔ Any action taken by the public body is invalid, but presumption of accordancy with OMA;
 - ➔ Court can issue injunction, mandamus or other appropriate order to enforce OMA;
 - ➔ Court **must** award costs, reasonable attorney fees to successful complainant;
 - ➔ If public body prevails, court **must** award costs, but **may only award attorney fees if** action was brought without sufficient information and belief that good grounds supported the action.

Open Meetings Act

NMSA 1978, § 10-15-4

Criminal Penalties

Violations of the Act are a misdemeanor and punishable by a fine of up to \$500 for each offense





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[nmag.gov](http://www.nmag.gov)

<http://www.nmag.gov/oma-and-ipra-nm-sunshine-laws.aspx>