

LFC Requester:	Clint Elkins
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	<u>February 11, 2015</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>HB 378</u>

Sponsor:	<u>Sen. Ivey-Soto & Rep. Smith</u>	Agency Code:	<u>Attorney General's Office</u>
Short Title:	<u>REQUIRE ORAL PUBLIC COMMENT AT MEETINGS</u>	Person Writing	<u>Joshua R. Granata, AAG</u>
		Phone:	<u>827-6088</u>
		Email	<u>jgranata@nmag.gov</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

House Bill 378 is an act which proposes to add new material to the Open Meetings Act (OMA), Section 10-15-1, NMSA 1978. The act would require a public body to allow for public comment before any final action is taken, as described in subsection B, by the public body. Additionally, the act would require the public body to allow for a diversity of viewpoints to be presented.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

House Bill 378 would significantly change the policy of the OMA as expressed in Sec. 10-15-1(A). Currently the OMA requires that all meetings of a public body, in which a quorum is present, allow for persons to *attend* and *listen* to the deliberation of the proceedings. House Bill 378 would provide the public with the opportunity to attend, listen, and participate in all public meetings. Requiring public bodies to allow for public comment may have many unintended and far reaching consequences.

The act as drafted does not provide any exceptions to requiring public comment prior to a public body taking action. For example, there may be circumstances in which a public body may wish to limit repetitive, incompetent and irrelevant comments. Another instance in which boards must restrict public comments arises in licensing adjudications. For example, many boards restrict comments related to pending adjudications in order to avoid any potential tainting of the board, and to avoid allegations of the board being biased by the disclosure of the public comments.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A
OTHER SUBSTANTIVE ISSUES

N/A
ALTERNATIVES

Perhaps substituting the word “may” for “shall” in subsection C, line 23 of page 2, will alleviate many of the concerns listed above.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. If this bill is not enacted very little will change. Most public bodies currently allow for public comment at their open meetings.

AMENDMENTS

Revise the first sentence of proposed new Subsection C to read:

"As a general rule, a public body shall permit . . . in Subsection B of this section, except for disciplinary or other proceedings in which due process and fairness may warrant limiting or prohibiting public comment in order not to prejudice an agency decision."

Additionally, a recommended exception to the requirement for public comment is as follows:

"This provision does not apply if the administrative record has been closed."