

6/27/24 from Geoffry Tager to Patty Matthews

Patty,

While this appears to be a bill that requires retaining records of an open meeting, it also looks like it doesn't provide funding to the PED for provision of this statewide. LFC's FIR on SB 137 notes the bill "does not include an appropriation but may create additional operating costs... and administrative costs for schools." I would imagine funds would come from their operating costs, though I am not sure that's really a legal issue.

It looks like they would need to retain the comments and allow interface, but I imagine that NMDOJ would probably interpret that to mean that a time specified would be fine, assuming they treat this as an Open Meetings Act requirement. Along those same lines, without looking more closely into the matter at this time, the NMDOJ may be the ones electing to enforce this. Of course, the public may elect to seek enforcement through complaints filed in court.

The PEC may also be considering applications, and implications, as it relates to state-chartered charter schools. When I reached out to Corina, she indicated that she has provided the following guidance to schools:

Here's what the new requirements are for GC meetings ([see p13 of SB137](#)):

- Live audio/video webcasting of GC meetings (the PEC has a free YouTube account; you could also use Zoom)
- Public comment section on the agenda
- Recordings of the meetings & the approved minutes—of the prior meeting, posted to the school's website within 7 days
- 3-year archives of those recordings

Much success in all your future endeavors. Best, Geoff

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From: pmatthews@matthewsfox.com <pmatthews@matthewsfox.com>
Sent: Monday, June 10, 2024 4:26 PM
To: Tager, Geoffrey, PED <Geoffrey.Tager@ped.nm.gov>; Rodriguez, Aaron, PED <Aaron.Rodriguez2@ped.nm.gov>; HOSFORD BARNES, JULIA <Jhbnm1@gmail.com>
Cc: Chavez, Corina, PED <Corina.Chavez2@ped.nm.gov>; sfox@matthewsfox.com
Subject: RE: [EXTERNAL] SB137

Any news as July 1 is fast approaching.

NOTE: AS OF MAY 6, 2024 I WILL NOT BE IN THE OFFICE ON FRIDAYS. I WILL BE OFFICIALLY RETIRED FROM MATTHEWS FOX, P.C. AS OF JUNE 30, 2024.

PATRICIA MATTHEWS

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From: Tager, Geoffrey, PED <Geoffrey.Tager@ped.nm.gov>
Sent: Tuesday, June 4, 2024 1:44 PM
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Cc: Chavez, Corina, PED <Corina.Chavez2@ped.nm.gov>; sfox@matthewsfox.com
Subject: RE: [EXTERNAL] SB137

Patty,

Thanks for bringing this to our attention. Please allow us an opportunity to review and discuss and we will get back to you.

Best, Geoff

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From: pmatthews@matthewsfox.com <pmatthews@matthewsfox.com>
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Cc: Chavez, Corina, PED <Corina.Chavez2@ped.nm.gov>; sfox@matthewsfox.com
Subject: [EXTERNAL] SB137

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Dear Counsel:

As you know SB137 is effective as of July 1, 2024. I have asked for guidance from the AG's office without success. I understand the law is not an amendment to the Open Meetings Act, rather it adds new provisions to the Public School Code, so I am reaching out to you for clarification. I have also searched the PED website for any guidance about implementing the new law and find none. The law is unclear and has provisions that conflict with the OMA. Because this law is under the Public School Code and does not state otherwise, I assume the PED is the agency charged with enforcing the law, albeit there are no penalty provisions defined in the statute. Note however, that for charter schools, an authorizer can revoke or not renew a charter for legal noncompliance where a local district board (same provision restated in Article 5) would have no consequences. I am not a constitutional scholar, but there certainly seem to be some vagueness issues with this law.

Here are my specific questions/concerns and I hope that you can assist with some guidance.

1. The new law requires that the school offer "live audio and video **webcasts** of governing body meetings" accessible through the school's website.

Many public bodies appear to be holding meetings 100% virtually using Zoom or some other online meeting platform. Others, some hybrid of in-person and online meeting platforms is still occurring out of convenience, not necessity. Based on my understanding of “webcasting” – the public body would need to be in-person to “webcast”, meaning produce an online broadcast of the meeting. If a member is not able to attend except telephonically or by an online meeting link, then that would be part of the broadcast. Please confirm or clarify.

Many schools have expressed the onerousness of having to create a broadcast, i.e., the extra cost for purchasing the equipment, hiring specialists to run the broadcast and coordinate the online public access.

Are their PED funds to pay for this investment in equipment, etc.?

2. The new law requires the governing body’s webcast platform to allow for “members of the public to submit written or verbal comments.” There is no limitation on when these comments can be made.

As you know, the Open Meetings Act provides that “[a]ll 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.” NMSA 1978, §10-15.1(A).

Does the new language mean that a member of the public can comment at any time during the proceeding, not just during public comment even when the body has not added a public comment section to its agenda, e.g., for a special meeting? If so, what is the expectation of the public entity to respond? Or should we advise our clients that this language means that public comment (written or verbal) is permissible consistent with OMA, i.e., only during public comment periods when there is public comment on the agenda. Can you please confirm or provide the PED’s interpretation?

Does an “audio comment” mean that a voice recording is to be kept of every individual who wishes to say something – outside of the public comment period?

3. Which division/bureau of the PED will be enforcing these new provisions? What are the consequences? As you know, the statute is silent regarding consequences.

Thank you for your feedback.

Patty

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