

LB 898

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LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 898

FINAL READING

Introduced by Preister, 5

Read first time January 5, 2006

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Open Meetings Act; to amend sections
2 84-1410, 84-1411, 84-1412, and 84-1414, Revised Statutes
3 Cumulative Supplement, 2004; to change provisions
4 relating to closed sessions; to provide for detailed
5 agendas; to change provisions relating to public bodies;
6 and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-1410, Revised Statutes Cumulative
2 Supplement, 2004, is amended to read:

3 84-1410 (1) Any public body may hold a closed session
4 by the affirmative vote of a majority of its voting members
5 if a closed session is clearly necessary for the protection of
6 the public interest or for the prevention of needless injury to
7 the reputation of an individual and if such individual has not
8 requested a public meeting. The subject matter and the reason
9 necessitating the closed session shall be identified in the motion
10 to close. Closed sessions may be held for, but shall not be limited
11 to, such reasons as:

12 (a) Strategy sessions with respect to collective
13 bargaining, real estate purchases, pending litigation, or
14 litigation which is imminent as evidenced by communication of a
15 claim or threat of litigation to or by the public body;

16 (b) Discussion regarding deployment of security personnel
17 or devices;

18 (c) Investigative proceedings regarding allegations of
19 criminal misconduct; or

20 (d) Evaluation of the job performance of a person when
21 necessary to prevent needless injury to the reputation of a person
22 and if such person has not requested a public meeting.

23 Nothing in this section shall permit a closed meeting for
24 discussion of the appointment or election of a new member to any
25 public body.

1 (2) The vote to hold a closed session shall be taken
2 in open session. The entire motion, the vote of each member on
3 the question of holding a closed session, ~~the reason for the~~
4 ~~closed session,~~ and the time when the closed session commenced
5 and concluded shall be recorded in the minutes. If the motion to
6 close passes, then the presiding officer immediately prior to the
7 closed session shall restate on the record the limitation of the
8 subject matter of the closed session. The public body holding such
9 a closed session shall restrict its consideration of matters during
10 the closed portions to only those purposes set forth in the ~~minutes~~
11 motion to close as the reason for the closed session. The meeting
12 shall be reconvened in open session before any formal action may
13 be taken. For purposes of this section, formal action shall mean a
14 collective decision or a collective commitment or promise to make
15 a decision on any question, motion, proposal, resolution, order,
16 or ordinance or formation of a position or policy but shall not
17 include negotiating guidance given by members of the public body
18 to legal counsel or other negotiators in closed sessions authorized
19 under subdivision (1)(a) of this section.

20 (3) Any member of any public body shall have the right
21 to challenge the continuation of a closed session if the member
22 determines that the session has exceeded the reason stated in the
23 original motion to hold a closed session or if the member contends
24 that the closed session is neither clearly necessary for (a) the
25 protection of the public interest or (b) the prevention of needless

1 injury to the reputation of an individual. Such challenge shall
2 be overruled only by a majority vote of the members of the public
3 body. Such challenge and its disposition shall be recorded in the
4 minutes.

5 (4) Nothing in this section shall be construed to require
6 that any meeting be closed to the public. No person or public body
7 shall fail to invite a portion of its members to a meeting, and
8 no public body shall designate itself a subcommittee of the whole
9 body for the purpose of circumventing the Open Meetings Act. No
10 closed session, informal meeting, chance meeting, social gathering,
11 email, fax, or other electronic communication shall be used for the
12 purpose of circumventing the requirements of the act.

13 (5) The act does not apply to chance meetings or to
14 attendance at or travel to conventions or workshops of members
15 of a public body at which there is no meeting of the body then
16 intentionally convened, if there is no vote or other action taken
17 regarding any matter over which the public body has supervision,
18 control, jurisdiction, or advisory power.

19 Sec. 2. Section 84-1411, Revised Statutes Cumulative
20 Supplement, 2004, is amended to read:

21 84-1411 (1) Each public body shall give reasonable
22 advance publicized notice of the time and place of each meeting
23 by a method designated by each public body and recorded in its
24 minutes. Such notice shall be transmitted to all members of the
25 public body and to the public. Such notice shall contain an

1 agenda of subjects known at the time of the publicized notice
2 or a statement that the agenda, which shall be kept continually
3 current, shall be readily available for public inspection at the
4 principal office of the public body during normal business hours.
5 Agenda items shall be sufficiently descriptive to give the public
6 reasonable notice of the matters to be considered at the meeting.
7 Except for items of an emergency nature, the agenda shall not
8 be altered later than (a) twenty-four hours before the scheduled
9 commencement of the meeting or (b) forty-eight hours before the
10 scheduled commencement of a meeting of a city council or village
11 board scheduled outside the corporate limits of the municipality.
12 The public body shall have the right to modify the agenda to
13 include items of an emergency nature only at such public meeting.

14 (2) A meeting of a state agency, state board, state
15 commission, state council, or state committee, of an advisory
16 committee of any such state entity, of an organization created
17 under the Interlocal Cooperation Act, the Joint Public Agency Act,
18 or the Municipal Cooperative Financing Act, of the governing body
19 of a public power district having a chartered territory of more
20 than fifty counties in this state, or of the governing body of
21 a risk management pool or its advisory committees organized in
22 accordance with the Intergovernmental Risk Management Act may be
23 held by means of videoconferencing or, in the case of the Judicial
24 Resources Commission in those cases specified in section 24-1204,
25 by telephone conference, if:

1 (a) Reasonable advance publicized notice is given;

2 (b) Reasonable arrangements are made to accommodate the
3 public's right to attend, hear, and speak at the meeting, including
4 seating, recordation by audio or visual recording devices, and
5 a reasonable opportunity for input such as public comment or
6 questions to at least the same extent as would be provided if
7 videoconferencing or telephone conferencing was not used;

8 (c) At least one copy of all documents being considered
9 is available to the public at each site of the videoconference or
10 telephone conference;

11 (d) At least one member of the state entity, advisory
12 committee, or governing body is present at each site of the
13 videoconference or telephone conference; and

14 (e) No more than one-half of the state entity's, advisory
15 committee's, or governing body's meetings in a calendar year are
16 held by videoconference or telephone conference.

17 Videoconferencing, telephone conferencing, or
18 conferencing by other electronic communication shall not be used
19 to circumvent any of the public government purposes established
20 in the Open Meetings Act.

21 (3) A meeting of the governing body of an entity formed
22 under the Interlocal Cooperation Act or the Joint Public Agency Act
23 or of the governing body of a risk management pool or its advisory
24 committees organized in accordance with the Intergovernmental Risk
25 Management Act may be held by telephone conference call if:

1 (a) The territory represented by the member public
2 agencies of the entity or pool covers more than one county;

3 (b) Reasonable advance publicized notice is given which
4 identifies each telephone conference location at which a member of
5 the entity's or pool's governing body will be present;

6 (c) All telephone conference meeting sites identified in
7 the notice are located within public buildings used by members
8 of the entity or pool or at a place which will accommodate the
9 anticipated audience;

10 (d) Reasonable arrangements are made to accommodate the
11 public's right to attend, hear, and speak at the meeting, including
12 seating, recordation by audio recording devices, and a reasonable
13 opportunity for input such as public comment or questions to
14 at least the same extent as would be provided if a telephone
15 conference call was not used;

16 (e) At least one copy of all documents being considered
17 is available to the public at each site of the telephone conference
18 call;

19 (f) At least one member of the governing body of the
20 entity or pool is present at each site of the telephone conference
21 call identified in the public notice;

22 (g) The telephone conference call lasts no more than one
23 hour; and

24 (h) No more than one-half of the entity's or pool's
25 meetings in a calendar year are held by telephone conference call.

1 Nothing in this subsection shall prevent the
2 participation of consultants, members of the press, and
3 other nonmembers of the governing body at sites not identified in
4 the public notice. Telephone conference calls, emails, faxes, or
5 other electronic communication shall not be used to circumvent any
6 of the public government purposes established in the Open Meetings
7 Act.

8 (4) The secretary or other designee of each public body
9 shall maintain a list of the news media requesting notification
10 of meetings and shall make reasonable efforts to provide advance
11 notification to them of the time and place of each meeting and the
12 subjects to be discussed at that meeting.

13 (5) When it is necessary to hold an emergency meeting
14 without reasonable advance public notice, the nature of the
15 emergency shall be stated in the minutes and any formal action
16 taken in such meeting shall pertain only to the emergency.
17 Such emergency meetings may be held by means of electronic or
18 telecommunication equipment. The provisions of subsection (4)
19 of this section shall be complied with in conducting emergency
20 meetings. Complete minutes of such emergency meetings specifying
21 the nature of the emergency and any formal action taken at the
22 meeting shall be made available to the public by no later than the
23 end of the next regular business day.

24 (6) A public body may allow a member of the public or
25 any other witness other than a member of the public body to appear

1 before the public body by means of video or telecommunications
2 equipment.

3 Sec. 3. Section 84-1412, Revised Statutes Cumulative
4 Supplement, 2004, is amended to read:

5 84-1412 (1) Subject to the Open Meetings Act, the public
6 has the right to attend and the right to speak at meetings of
7 public bodies, and all or any part of a meeting of a public body,
8 except for closed sessions called pursuant to section 84-1410, may
9 be videotaped, televised, photographed, broadcast, or recorded by
10 any person in attendance by means of a tape recorder, camera, video
11 equipment, or any other means of pictorial or sonic reproduction or
12 in writing.

13 (2) It shall not be a violation of subsection (1) of
14 this section for any public body to make and enforce reasonable
15 rules and regulations regarding the conduct of persons attending,
16 speaking at, videotaping, televising, photographing, broadcasting,
17 or recording its meetings. A body may not be required to allow
18 citizens to speak at each meeting, but it may not forbid public
19 participation at all meetings.

20 (3) No public body shall require members of the public to
21 identify themselves as a condition for admission to the meeting.
22 The body may require any member of the public desiring to address
23 the body to identify himself or herself.

24 (4) No public body shall, for the purpose of
25 circumventing the Open Meetings Act, hold a meeting in a place

1 known by the body to be too small to accommodate the anticipated
2 audience.

3 (5) No public body shall be deemed in violation of this
4 section if it holds its meeting in its traditional meeting place
5 which is located in this state.

6 (6) No public body shall be deemed in violation of this
7 section if it holds a meeting outside of this state if, but only
8 if:

9 (a) A member entity of the public body is located outside
10 of this state and the meeting is in that member's jurisdiction;

11 (b) All out-of-state locations identified in the notice
12 are located within public buildings used by members of the entity
13 or at a place which will accommodate the anticipated audience;

14 (c) Reasonable arrangements are made to accommodate the
15 public's right to attend, hear, and speak at the meeting, including
16 making a telephone conference call available at an instate location
17 to members, the public, or the press, if requested twenty-four
18 hours in advance;

19 (d) No more than twenty-five percent of the public body's
20 meetings in a calendar year are held out-of-state;

21 (e) Out-of-state meetings are not used to circumvent any
22 of the public government purposes established in the Open Meetings
23 Act;

24 (f) Reasonable arrangements are made to provide viewing
25 at other instate locations for a videoconference meeting if

1 requested fourteen days in advance and if economically and
2 reasonably available in the area; and

3 (g) The public body publishes notice of the out-of-state
4 meeting at least twenty-one days before the date of the meeting in
5 a legal newspaper of statewide circulation.

6 (7) The public body shall, upon request, make a
7 reasonable effort to accommodate the public's right to hear the
8 discussion and testimony presented at the meeting.

9 (8) Public bodies shall make available at the meeting
10 or the instate location for a telephone conference call or
11 videoconference, for examination and copying by members of the
12 public, at least one copy of all reproducible written material to
13 be discussed at an open meeting. Public bodies shall make available
14 at least one current copy of the Open Meetings Act posted in the
15 meeting room at a location accessible to members of the public. At
16 the beginning of the meeting, the public shall be informed about
17 the location of the posted information.

18 Sec. 4. Section 84-1414, Revised Statutes Cumulative
19 Supplement, 2004, is amended to read:

20 84-1414 (1) Any motion, resolution, rule, regulation,
21 ordinance, or formal action of a public body made or taken in
22 violation of the Open Meetings Act shall be declared void by the
23 district court if the suit is commenced within one hundred twenty
24 days of the meeting of the public body at which the alleged
25 violation occurred. Any motion, resolution, rule, regulation,

1 ordinance, or formal action of a public body made or taken in
2 substantial violation of the Open Meetings Act shall be voidable by
3 the district court if the suit is commenced more than one hundred
4 twenty days after but within one year of the meeting of the public
5 body in which the alleged violation occurred. A suit to void any
6 final action shall be commenced within one year of the action.

7 (2) The Attorney General and the county attorney of the
8 county in which the public body ordinarily meets shall enforce the
9 Open Meetings Act.

10 (3) Any citizen of this state may commence a suit
11 in the district court of the county in which the public body
12 ordinarily meets or in which the plaintiff resides for the purpose
13 of requiring compliance with or preventing violations of the Open
14 Meetings Act, for the purpose of declaring an action of a public
15 body void, or for the purpose of determining the applicability of
16 the act to discussions or decisions of the public body. It shall
17 not be a defense that the citizen attended the meeting and failed
18 to object at such time. The court may order payment of reasonable
19 attorney's fees and court costs to a successful plaintiff in a suit
20 brought under this section.

21 (4) Any member of a public body who knowingly violates or
22 conspires to violate or who attends or remains at a meeting knowing
23 that the public body is in violation of any provision of the Open
24 Meetings Act shall be guilty of a Class IV misdemeanor for a first
25 offense and a Class III misdemeanor for a second or subsequent

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1 offense.

2 Sec. 5. Original sections 84-1410, 84-1411, 84-1412,
3 and 84-1414, Revised Statutes Cumulative Supplement, 2004, are
4 repealed.