

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 951

Introduced by Linehan, 39.

Read first time January 04, 2024

Committee: Government, Military and Veterans Affairs

- 1 A BILL FOR AN ACT relating to public officials; to adopt the Public
- 2 Officials on Private Boards Open Meetings Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 8 of this act shall be known and may be
2 cited as the Public Officials on Private Boards Open Meetings Act.

3 Sec. 2. (1) It is hereby declared to be the policy of this state
4 that meetings of the governing boards of private entities which include a
5 majority of public officials are public business and may not be conducted
6 in secret.

7 (2) Every meeting of a governing board shall be open to the public
8 in order that residents may exercise their privilege of attending and
9 speaking at meetings of governing boards, except as otherwise provided by
10 the Constitution of Nebraska, federal statutes, and the Public Officials
11 on Private Boards Open Meetings Act.

12 Sec. 3. For purposes of the Public Officials on Private Boards Open
13 Meetings Act:

14 (1)(a) Covered entity means any private or quasi-public entity,
15 whether operated on a for-profit or nonprofit basis.

16 (b) Covered entity does not include a public body as defined in
17 section 84-1409;

18 (2)(a) Governing board means the board of directors, supervisory
19 committee, or other governing body of a covered entity:

20 (i) That sets policy for, makes decisions for, or supervises a
21 covered entity; and

22 (ii) Of which a majority of the members are public officials.

23 (b) Governing board does not include a subcommittee or subunit of a
24 governing board unless a quorum of the members of the governing board is
25 present or unless such subcommittee or subunit is making policy or taking
26 formal action on behalf of the governing board;

27 (3) Meeting means all regular, special, or called meetings, formal
28 or informal, of any governing board for the purposes of briefing,
29 discussion of business, formation of tentative policy, or the taking of
30 any action of the governing board or covered entity;

31 (4) Public official means any elected or appointed official of the

1 state or a political subdivision or any government employee or official
2 in an upper level of management, including, but not limited to, school
3 superintendents; and

4 (5) Virtual conferencing means conducting or participating in a
5 meeting electronically or telephonically with interaction among the
6 participants subject to subsection (2) of section 5 of this act.

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

15 (a) Strategy sessions with respect to collective bargaining, real
16 estate purchases, pending litigation, or litigation which is imminent as
17 evidenced by communication of a claim or threat of litigation to or by
18 the governing board or the covered entity;

19 (b) Discussion regarding deployment of security personnel or
20 devices;

21 (c) Discussion of trade secrets; and

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

25 Nothing in this section shall permit a closed session for discussion
26 of the appointment or election of a new member to any governing board.

27 (2) The vote to hold a closed session shall be taken in open
28 session. The entire motion, the vote of each member on the question of
29 holding a closed session, and the time when the closed session commenced
30 and concluded shall be recorded in the minutes. If the motion to close
31 passes, then the presiding officer immediately prior to the closed

1 session shall restate on the record the limitation of the subject matter
2 of the closed session. The governing board holding such a closed session
3 shall restrict its consideration of matters during the closed portions to
4 only those purposes set forth in the motion to close as the reason for
5 the closed session. The meeting shall be reconvened in open session
6 before any formal action may be taken. For purposes of this section,
7 formal action shall mean a collective decision or a collective commitment
8 or promise to make a decision on any question, motion, proposal,
9 resolution, or order or formation of a position or policy of the
10 governing board or covered entity but shall not include negotiating
11 guidance given by members of the governing board to legal counsel or
12 other negotiators in closed sessions authorized under subdivision (1)(a)
13 of this section.

14 (3) Any member of any governing board shall have the right to
15 challenge the continuation of a closed session if the member determines
16 that the session has exceeded the reason stated in the original motion to
17 hold a closed session or if the member contends that the closed session
18 is neither clearly necessary for (a) the protection of the public
19 interest or (b) the prevention of needless injury to the reputation of an
20 individual. Such challenge shall be overruled only by a majority vote of
21 the members of the governing board. Such challenge and its disposition
22 shall be recorded in the minutes.

23 (4) Nothing in this section shall be construed to require that any
24 meeting be closed to the public. No person or governing board shall fail
25 to invite a portion of its members to a meeting, and no governing board
26 shall designate itself a subcommittee of the whole board for the purpose
27 of circumventing the Public Officials on Private Boards Open Meetings
28 Act. No closed session, informal meeting, chance meeting, social
29 gathering, email, fax, or other electronic communication shall be used
30 for the purpose of circumventing the requirements of the act.

31 (5) The act does not apply to chance meetings or to attendance at or

1 travel to conventions or workshops of members of a governing board at
2 which there is no meeting of the board then intentionally convened, if
3 there is no vote or other action taken regarding any matter over which
4 the governing board has supervision, control, jurisdiction, or advisory
5 power.

6 Sec. 5. (1)(a) Each governing board shall give reasonable advance
7 publicized notice of the time and place of each meeting as provided in
8 this subsection. Such notice shall be transmitted to all members of the
9 governing board and to the public.

10 (b) Such notice shall be published in a newspaper of general
11 circulation within the county of the covered entity's headquarters or
12 principal place of business in this state and, if available, on such
13 newspaper's website. If the covered entity's headquarters or principal
14 place of business are located outside of this state, then such notice
15 shall be published in a newspaper of general circulation within this
16 state and, if available, on such newspaper's website.

17 (c) Such notice may also be provided by any method determined by the
18 governing board.

19 (d) Each governing board shall record the methods and dates of such
20 notice in its minutes.

21 (e) Such notice shall contain an agenda of subjects known at the
22 time of the publicized notice or a statement that the agenda, which shall
23 be kept continually current, shall be readily available for public
24 inspection on the covered entity's website. Agenda items shall be
25 sufficiently descriptive to give the public reasonable notice of the
26 matters to be considered at the meeting. Except for items of an emergency
27 nature, the agenda shall not be altered later than twenty-four hours
28 before the scheduled commencement of the meeting. The governing board
29 shall have the right to modify the agenda to include items of an
30 emergency nature only at such public meeting.

31 (2)(a) A governing board may hold a meeting by means of virtual

1 conferencing if the requirements of subdivision (2)(b) of this section
2 are met.

3 (b) The requirements for holding a meeting by means of virtual
4 conferencing are as follows:

5 (i) Reasonable advance publicized notice is given as provided in
6 subsection (1) of this section, including providing access to a dial-in
7 number or link to the virtual conference;

8 (ii) In addition to the public's right to participate by virtual
9 conferencing, reasonable arrangements are made to accommodate the
10 public's right to attend at a physical site and participate as provided
11 in section 6 of this act, including reasonable seating, in at least one
12 designated site in a building open to the public for such meeting and
13 identified in the notice, with: At least one member of the entity holding
14 such meeting, or his or her designee, present at each site; a recording
15 of the hearing by audio or visual recording devices; and a reasonable
16 opportunity for input, such as public comment or questions, is provided
17 to at least the same extent as would be provided if virtual conferencing
18 was not used;

19 (iii) At least one copy of all documents being considered at the
20 meeting is available at any physical site open to the public where
21 individuals may attend the virtual conference. The governing board shall
22 also provide links to an electronic copy of the agenda, all documents
23 being considered at the meeting, and the current version of the Public
24 Officials on Private Boards Open Meetings Act; and

25 (iv) No more than one-half of the meetings of the governing board
26 are held by virtual conferencing in a calendar year.

27 (3) Virtual conferencing, emails, faxes, or other electronic
28 communication shall not be used to circumvent any of the purposes
29 established in the Public Officials on Private Boards Open Meetings Act.

30 (4) The secretary or other designee of each governing board shall
31 maintain a list of the news media requesting notification of meetings and

1 shall make reasonable efforts to provide advance notification to them of
2 the time and place of each meeting and the subjects to be discussed at
3 that meeting.

4 (5) When it is necessary to hold an emergency meeting without
5 reasonable advance public notice, the nature of the emergency shall be
6 stated in the minutes and any formal action taken in such meeting shall
7 pertain only to the emergency. Such emergency meetings may be held by
8 virtual conferencing. The provisions of subsection (4) of this section
9 shall be complied with in conducting emergency meetings. Complete minutes
10 of such emergency meetings specifying the nature of the emergency and any
11 formal action taken at the meeting shall be made available to the public
12 by no later than the end of the next regular business day.

13 (6) A governing board may allow a member of the public or any other
14 witness to appear before the governing board by means of virtual
15 conferencing.

16 (7)(a) Notwithstanding subsections (2) and (5) of this section, if
17 an emergency is declared by the Governor pursuant to the Emergency
18 Management Act as defined in section 81-829.39, the governing board of a
19 covered entity which has its principal place of business or headquarters
20 in the area covered by the emergency declaration, in whole or in part,
21 may hold a meeting by virtual conferencing during such emergency if the
22 governing board gives reasonable advance publicized notice as described
23 in subsection (1) of this section. The notice shall include information
24 regarding access for the public and news media. In addition to any formal
25 action taken pertaining to the emergency, the governing board may hold
26 such meeting for the purpose of briefing, discussion of public business,
27 formation of tentative policy, or the taking of any action by the
28 governing board.

29 (b) The governing board shall provide access by providing a dial-in
30 number or a link to the virtual conference. The governing board shall
31 also provide links to an electronic copy of the agenda, all documents

1 being considered at the meeting, and the current version of the Public
2 Officials on Private Boards Open Meetings Act. Reasonable arrangements
3 shall be made to accommodate the public's right to hear and speak at the
4 meeting and record the meeting. Subsection (4) of this section shall be
5 complied with in conducting such meetings.

6 (c) The nature of the emergency shall be stated in the minutes.
7 Complete minutes of such meeting specifying the nature of the emergency
8 and any formal action taken at the meeting shall be made available for
9 inspection as provided in subsection (5) of section 7 of this act.

10 Sec. 6. (1) Subject to the Public Officials on Private Boards Open
11 Meetings Act, the public has the right to attend and the right to speak
12 at meetings of governing boards, and all or any part of a meeting of a
13 governing board, except for closed sessions called pursuant to section 4
14 of this act, may be videotaped, televised, photographed, broadcast, or
15 recorded by any person in attendance by means of a tape recorder, a
16 camera, video equipment, or any other means of pictorial or sonic
17 reproduction or in writing.

18 (2) It shall not be a violation of subsection (1) of this section
19 for any governing board to make and enforce reasonable rules regarding
20 the conduct of persons attending, speaking at, videotaping, televising,
21 photographing, broadcasting, or recording its meetings, including
22 meetings held by virtual conferencing. A governing board may not be
23 required to allow citizens to speak at each meeting, but it may not
24 forbid public participation at all meetings.

25 (3) No governing board shall require members of the public to
26 identify themselves as a condition for admission to the meeting nor shall
27 such board require that the name of any member of the public be placed on
28 the agenda prior to such meeting in order to speak about items on the
29 agenda. The governing board shall require any member of the public
30 desiring to address the board to identify himself or herself, including
31 an address and the name of any organization represented by such person

1 unless the address requirement is waived to protect the security of the
2 individual.

3 (4) No governing board shall, for the purpose of circumventing the
4 Public Officials on Private Boards Open Meetings Act, hold a meeting in a
5 place known by the board to be too small to accommodate the anticipated
6 audience.

7 (5) No governing board shall be deemed in violation of this section
8 if it holds its meeting in its traditional meeting place which is located
9 in this state.

10 (6) No governing board shall be deemed in violation of this section
11 if it holds a meeting outside of this state if, but only if:

12 (a) A member entity of the governing board is located outside of
13 this state and the meeting is in that member's jurisdiction or the locale
14 of such member's headquarters or principal place of business;

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

18 (c) Reasonable arrangements are made to accommodate the public's
19 right to attend, hear, and speak at the meeting, including making virtual
20 conferencing available at an instate location to members, the public, or
21 the press, if requested twenty-four hours in advance;

22 (d) No more than twenty-five percent of the governing board's
23 meetings in a calendar year are held out-of-state;

24 (e) Out-of-state meetings are not used to circumvent any of the
25 public government purposes established in the Public Officials on Private
26 Boards Open Meetings Act; and

27 (f) The governing board publishes notice of the out-of-state meeting
28 at least twenty-one days before the date of the meeting in a legal
29 newspaper of statewide circulation.

30 (7) Each governing board shall, upon request, make a reasonable
31 effort to accommodate the public's right to hear the discussion and

1 testimony presented at a meeting.

2 (8) Each governing board shall make available at the meeting or the
3 instate location for virtual conferencing as required by subdivision (6)
4 (c) of this section, for examination and copying by members of the
5 public, at least one copy of all reproducible written material to be
6 discussed at an open meeting, either in paper or electronic form. The
7 governing board shall make available at least one current copy of the
8 Public Officials on Private Boards Open Meetings Act posted in the
9 meeting room at a location accessible to members of the public. At the
10 beginning of the meeting, the public shall be informed about the location
11 of the posted information.

12 Sec. 7. (1) Each governing board shall keep minutes of all meetings
13 showing the time, place, members present and absent, and the substance of
14 all matters discussed.

15 (2) Any action taken on any question or motion duly moved and
16 seconded shall be by roll call vote of the governing board in open
17 session, and the record shall state how each member voted or if the
18 member was absent or not voting. The requirements of a roll call or viva
19 voce vote shall be satisfied by a governing board which utilizes an
20 electronic voting device which allows the yeas and nays of each member of
21 such governing board to be readily seen by the public.

22 (3) The vote to elect leadership within a governing board may be
23 taken by secret ballot, but the total number of votes for each candidate
24 shall be recorded in the minutes.

25 (4) The minutes of all meetings and evidence and documentation
26 received or disclosed in open session shall be public records and open to
27 public inspection during normal business hours.

28 (5) Minutes shall be written or kept as an electronic record and
29 shall be available for inspection within ten working days or prior to the
30 next convened meeting, whichever occurs earlier.

31 (6) The governing board shall make available on its or the covered

1 entity's public website the agenda and minutes of any meeting of the
2 governing board. The agenda shall be placed on the website at least
3 twenty-four hours before the meeting of the governing board. Minutes
4 shall be placed on the website at such time as the minutes are available
5 for inspection as provided in subsection (5) of this section. This
6 information shall be available on the public website for at least six
7 months.

8 Sec. 8. (1) Any person who violates the Public Officials on Private
9 Boards Open Meetings Act shall be subject to a civil fine of ten thousand
10 dollars.

11 (2) The Attorney General and the county attorney of the county in
12 which the governing board ordinarily meets shall enforce the Public
13 Officials on Private Boards Open Meetings Act.

14 (3) Any resident of this state may commence a suit in the district
15 court of the county in which the governing board ordinarily meets or in
16 which the resident resides for the purpose of requiring compliance with
17 or preventing violations of the Public Officials on Private Boards Open
18 Meetings Act or for the purpose of determining the applicability of the
19 act to discussions or decisions of the governing board. It shall not be a
20 defense that the resident attended the meeting and failed to object at
21 such time. If a resident prevails in an action under this section, the
22 court shall order payment of reasonable attorney's fees and court costs.

23 (4) Any member of a governing board who knowingly violates or
24 conspires to violate or who attends or remains at a meeting knowing that
25 the governing board is in violation of any provision of the Public
26 Officials on Private Boards Open Meetings Act shall be guilty of a Class
27 IV misdemeanor for a first offense and a Class III misdemeanor for a
28 second or subsequent offense.