

LEGISLATIVE BILL 199

Approved by the Governor May 16, 2007

Introduced by Schimek, 27

FOR AN ACT relating to public bodies; to amend sections 18-2420, 18-2422, 18-2425, 18-2436, and 18-2439, Reissue Revised Statutes of Nebraska, and sections 18-2410, 18-2427, 18-2438, and 84-1411, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to municipal cooperative financing and open meetings; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 18-2410, Revised Statutes Cumulative Supplement, 2006, is amended to read:

18-2410 Municipality shall mean (1) any city or village incorporated under the laws of this state, ~~or any equivalent entity incorporated under the laws of another state, or any separate municipal utility which has autonomous control and was established by such a city, village, or equivalent entity or by the citizens thereof for the purpose of providing electric energy for such municipality~~ or (2) any public entity organized under Chapter 70, article 6, and incorporated under the laws of this state for the sole purpose of providing wholesale electric energy to a single municipality which is incorporated under the laws of this state.

Sec. 2. Section 18-2420, Reissue Revised Statutes of Nebraska, is amended to read:

18-2420 The governing body of each of the municipalities participating in the creation of such agency shall ~~adopt an ordinance determining by appropriate action by ordinance or resolution determine~~ that there is a need for such agency and ~~setting set~~ forth the names of the proposed participating municipalities of the agency. Such an ~~ordinance may be adopted~~ action may be taken by a municipality's governing body on its own motion upon determining, in its discretion, that a need exists for an agency. In determining whether such a need exists, a governing body may take into consideration the present and future needs of the municipality with respect to the commodities and services which an agency may provide, the adequacy and suitability of the supplies of such commodities and services to meet such needs, and economic or other advantages or efficiencies which may be realized by cooperative action through an agency. Upon the adoption of an ordinance or passage of a resolution as provided in this section, the mayor, in the case of a city, ~~or the chairperson of the board of trustees~~, in the case of a village, or the chairperson of the governing body, of each of the proposed participating municipalities, with the approval of the respective governing body, shall appoint a director who shall be an elector of the municipality for which he or she acts as director. The directors shall constitute the board in which shall be vested all powers of the agency.

Sec. 3. Section 18-2422, Reissue Revised Statutes of Nebraska, is amended to read:

18-2422 The directors shall file with the Secretary of State a certificate signed by them setting forth (1) the names of all the proposed participating municipalities, (2) the name and residence of each of the directors so far as known to them, (3) a certified copy of each of the ordinances or resolutions of the participating municipalities determining the need for such an agency, (4) a certified copy of the proceedings of each municipality evidencing the director's right to office, and (5) the name of the agency. The certificate shall be subscribed and sworn to by such directors before an officer or officers authorized by the laws of the state to administer and certify oaths.

Sec. 4. Section 18-2425, Reissue Revised Statutes of Nebraska, is amended to read:

18-2425 After the creation of an agency, any other municipality may become a participating municipality therein upon (1) application to such agency, (2) the adoption of an ordinance or passage of a resolution by the governing body of the municipality setting forth the determination prescribed in section 18-2420 and authorizing such municipality to become a participating municipality, and (3) at least a majority vote of the directors, except that an agency's bylaws may require a greater percentage of approval for such authorization. Thereupon such municipality shall become a participating municipality entitled to appoint a director or directors of such agency in the manner prescribed by section 18-2420 and to otherwise participate in such agency to the same extent as if such municipality had participated in

the creation of the agency. Upon the filing with the Secretary of State of certified copies of the ordinances and resolutions described in this section, the Secretary of State shall issue an amended certificate of incorporation setting forth the names of the participating municipalities.

Sec. 5. Section 18-2427, Revised Statutes Cumulative Supplement, 2006, is amended to read:

18-2427 Upon adoption of ordinances or resolutions in accordance with section 18-2420, a petition shall be addressed to the Nebraska Power Review Board stating that it is the intent and purpose to create an agency pursuant to sections 18-2426 to 18-2434, subject to approval by the Nebraska Power Review Board. The petition shall state the name of the proposed agency, the names of the proposed participating municipalities, the name and residence of each of the directors so far as known, a certified copy of each of the ordinances or resolutions of the participating municipalities determining the need for such an agency, a certified copy of the proceedings of each municipality evidencing the director's right to office, a general description of the operation in which the agency intends to engage, and the location and method of operation of the proposed plants and systems of the agency.

Sec. 6. Section 18-2436, Reissue Revised Statutes of Nebraska, is amended to read:

18-2436 Each participating municipality shall be entitled to appoint one director, but with the approval of each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof, an agency's bylaws may contain a provision entitling any of the participating municipalities to appoint more than one director and specifying the number of directors to be appointed by each of the participating municipalities of the agency. The number of directors may be increased or decreased from time to time by an amendment to the bylaws approved by each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof. Each participating municipality shall at all times be entitled to appoint at least one director. Each director shall be entitled to one vote, but with the approval of each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof, an agency's bylaws may contain a provision entitling any director or directors to cast more than one vote and specifying the number or numbers of votes such director or directors may cast. Unless the bylaws of the agency shall require a larger number, a quorum of the board shall be constituted for the purpose of conducting the business and exercising the powers of the agency and for all other purposes when directors are present who are entitled to cast a majority of the total votes which may be cast by all of the board's directors. Action may be taken upon a vote of a majority of the votes which the directors present are entitled to cast unless the bylaws of the agency shall require a larger number. The manner of scheduling regular board meetings and the method of calling special board meetings, including the giving or waiving notice thereof, shall be as provided in the bylaws. Such meetings may be held by any means permitted by the Open Meetings Act.

Sec. 7. Section 18-2438, Revised Statutes Cumulative Supplement, 2006, is amended to read:

18-2438 The board of an agency may create an executive committee the composition of which shall be set forth in the bylaws of the agency. The executive committee shall have and exercise the power and authority of the board during intervals between the board's meetings in accordance with the board's bylaws, rules, motions, or resolutions. The terms of office of the members of the executive committee and the method of filling vacancies shall be fixed by the bylaws of the agency. The board may also create one or more committees to which the board may delegate such powers and duties as the board shall specify. In no event shall any committee be empowered to authorize the issuance of bonds. The membership and voting requirements for action by a committee shall be specified by the board. An agency which contracts with municipalities outside the State of Nebraska may hold meetings outside the State of Nebraska if such meetings are held only in such contracting municipalities. Meetings of any committee which is a public body for purposes of the Open Meetings Act may be held by any means permitted by the act.

Sec. 8. Section 18-2439, Reissue Revised Statutes of Nebraska, is amended to read:

18-2439 An agency shall be dissolved upon the adoption, by the governing bodies of at least half of the participating municipalities, of an ordinance or resolution setting forth the determination that the need for such municipality to act cooperatively through an agency no longer exists. An agency shall not be dissolved so long as the agency has bonds outstanding, unless provision for full payment of such bonds and interest thereon, by escrow or otherwise, has been made pursuant to the terms of such bonds or

the ordinance, resolution, trust indenture, or security instrument securing such bonds. If the governing bodies of one or more, but less than a majority, of the participating municipalities adopt such an ordinance or resolution, such municipalities shall be permitted to withdraw from participation in the agency, but such withdrawal shall not affect the obligations of such municipality pursuant to any contracts or other agreements with such agency. Such withdrawal shall not impair the payment of any outstanding bonds or interest thereon. In the event of the dissolution of an agency, its board shall provide for the disposition, division, or distribution of the agency's assets among the participating municipalities by such means as such board shall determine, in its sole discretion, to be fair and equitable.

Sec. 9. Section 84-1411, Revised Statutes Cumulative Supplement, 2006, is amended to read:

84-1411 (1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

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

- (a) Reasonable advance publicized notice is given;
- (b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;
- (c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;
- (d) At least one member of the state entity, advisory committee, or governing body is present at each site of the videoconference or telephone conference; and
- (e) No more than one-half of the state entity's, advisory committee's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

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

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

- (a) The territory represented by the member public agencies of the entity or pool covers more than one county;
- (b) Reasonable advance publicized notice is given which identifies each telephone conference location at which a member of the entity's or pool's governing body will be present;
- (c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the entity or pool or at a place which will accommodate the anticipated audience;
- (d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input

such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

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

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

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

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

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

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

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

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

Sec. 10. Original sections 18-2420, 18-2422, 18-2425, 18-2436, and 18-2439, Reissue Revised Statutes of Nebraska, and sections 18-2410, 18-2427, 18-2438, and 84-1411, Revised Statutes Cumulative Supplement, 2006, are repealed.