

AMENDMENTS TO LB287
(Amendments to AM2890)

Introduced by Linehan, 39.

1 1. Insert the following new sections:

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

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

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

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

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

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

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

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

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

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

1 formal action on behalf of the governing board;

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

6 (4) Public official means any elected or appointed official of the
7 state or a political subdivision or any government employee or official
8 in an upper level of management, including, but not limited to, school
9 superintendents; and

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

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

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

25 (b) Discussion regarding deployment of security personnel or
26 devices;

27 (c) Discussion of trade secrets; and

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

31 Nothing in this section shall permit a closed session for discussion

1 of the appointment or election of a new member to any governing board.

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

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

29 (4) Nothing in this section shall be construed to require that any
30 meeting be closed to the public. No person or governing board shall fail
31 to invite a portion of its members to a meeting, and no governing board

1 shall designate itself a subcommittee of the whole board for the purpose
2 of circumventing the Public Officials on Private Boards Open Meetings
3 Act. No closed session, informal meeting, chance meeting, social
4 gathering, email, fax, or other electronic communication shall be used
5 for the purpose of circumventing the requirements of the act.

6 (5) The act does not apply to chance meetings or to attendance at or
7 travel to conventions or workshops of members of a governing board at
8 which there is no meeting of the board then intentionally convened, if
9 there is no vote or other action taken regarding any matter over which
10 the governing board has supervision, control, jurisdiction, or advisory
11 power.

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

16 (b) Such notice shall be published in a newspaper of general
17 circulation within the county of the covered entity's headquarters or
18 principal place of business in this state and, if available, on such
19 newspaper's website. If the covered entity's headquarters or principal
20 place of business are located outside of this state, then such notice
21 shall be published in a newspaper of general circulation within this
22 state and, if available, on such newspaper's website.

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

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

27 (e) Such notice shall contain an agenda of subjects known at the
28 time of the publicized notice or a statement that the agenda, which shall
29 be kept continually current, shall be readily available for public
30 inspection on the covered entity's website. Agenda items shall be
31 sufficiently descriptive to give the public reasonable notice of the

1 matters to be considered at the meeting. Except for items of an emergency
2 nature, the agenda shall not be altered later than twenty-four hours
3 before the scheduled commencement of the meeting. The governing board
4 shall have the right to modify the agenda to include items of an
5 emergency nature only at such public meeting.

6 (2)(a) A governing board may hold a meeting by means of virtual
7 conferencing if the requirements of subdivision (2)(b) of this section
8 are met.

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

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

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

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

31 (iv) No more than one-half of the meetings of the governing board

1 are held by virtual conferencing in a calendar year.

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

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

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

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

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

1 such meeting for the purpose of briefing, discussion of public business,
2 formation of tentative policy, or the taking of any action by the
3 governing board.

4 (b) The governing board shall provide access by providing a dial-in
5 number or a link to the virtual conference. The governing board shall
6 also provide links to an electronic copy of the agenda, all documents
7 being considered at the meeting, and the current version of the Public
8 Officials on Private Boards Open Meetings Act. Reasonable arrangements
9 shall be made to accommodate the public's right to hear and speak at the
10 meeting and record the meeting. Subsection (4) of this section shall be
11 complied with in conducting such meetings.

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

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

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

31 (3) No governing board shall require members of the public to

1 identify themselves as a condition for admission to the meeting nor shall
2 such board require that the name of any member of the public be placed on
3 the agenda prior to such meeting in order to speak about items on the
4 agenda. The governing board shall require any member of the public
5 desiring to address the board to identify himself or herself, including
6 an address and the name of any organization represented by such person
7 unless the address requirement is waived to protect the security of the
8 individual.

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

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

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

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

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

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

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

30 (e) Out-of-state meetings are not used to circumvent any of the
31 public government purposes established in the Public Officials on Private

1 Boards Open Meetings Act; and

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

5 (7) Each governing board shall, upon request, make a reasonable
6 effort to accommodate the public's right to hear the discussion and
7 testimony presented at a meeting.

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

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

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

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

31 (4) The minutes of all meetings and evidence and documentation

1 received or disclosed in open session shall be public records and open to
2 public inspection during normal business hours.

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

6 (6) The governing board shall make available on its or the covered
7 entity's public website the agenda and minutes of any meeting of the
8 governing board. The agenda shall be placed on the website at least
9 twenty-four hours before the meeting of the governing board. Minutes
10 shall be placed on the website at such time as the minutes are available
11 for inspection as provided in subsection (5) of this section. This
12 information shall be available on the public website for at least six
13 months.

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

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

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

29 (4) Any member of a governing board who knowingly violates or
30 conspires to violate or who attends or remains at a meeting knowing that
31 the governing board is in violation of any provision of the Public

1 Officials on Private Boards Open Meetings Act shall be guilty of a Class
2 IV misdemeanor for a first offense and a Class III misdemeanor for a
3 second or subsequent offense.

4 2. Renumber the remaining sections and correct internal references
5 accordingly.

6 3. Correct the operative date and repealer sections so that the
7 sections added by this amendment become operative three calendar months
8 after the adjournment of this legislative session.