

## LEGISLATIVE BILL 43

Approved by the Governor April 12, 1983

Introduced by Hoagland, 6; Nichol, 48

AN ACT to amend sections 84-1409, 84-1410, 84-1411, 84-1412, and 84-1414, Reissue Revised Statutes of Nebraska, 1943, relating to public meetings; to redefine terms; to change provisions relating to closed sessions; to provide duties for public bodies conducting public meetings; to provide restrictions and remedies; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. That section 84-1409, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1409. AS used in sections 79-327, 84-1408 to 84-1414, and 85-104, unless the context otherwise requires:

(1) Public body shall mean (a) governing bodies of all political subdivisions of the State of Nebraska, (b) governing bodies of all agencies, now or hereafter created by Constitution, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (c) all independent boards, commissions, bureaus, committees, councils, subunits, Certificate of Need appeal panels, or any other bodies, now or hereafter created by Constitution, statute, or otherwise pursuant to law, (3) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, and (e) advisory committees of the bodies referred to in subdivisions (a), (b), and (c) of this subdivision. Sections 79-327, 84-1408 to 84-1414, and 85-104 shall not apply to subcommittees of such bodies unless such subcommittees have been given authority to are holding hearings, making policy, or taking formal action on behalf of their parent body or nor shall such sections apply to judicial proceedings, unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders; and

(2) Meeting shall mean all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any formal action of the public body.

Sec. 2. That section 84-1410, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1410. (1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, or litigation;

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

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

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

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

(2) The vote to hold a closed session shall be taken in open session. The vote of each member on the question of holding a closed session, the reason for the closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the minutes as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken.

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

(4) Nothing in this section shall be construed

to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting nor shall a public body designate itself a subcommittee of the whole body for the purpose of circumventing sections 79-327, 84-1408 to 84-1414, or 85-104, nor shall any closed session, informal meeting, chance meeting, social gathering, or electronic communication be used for the purpose of circumventing the requirements of sections 79-327, 84-1408 to 84-1414, or 85-104.

(5) The provisions of sections 79-327, 84-1408 to 84-1414, and 85-104 shall not apply to chance meetings, or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened and there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

Sec. 3. That section 84-1411, Reissue Revised Statutes of Nebraska, 1947, be amended to read as follows:

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. Except for items of an emergency nature, the agenda shall not be enlarged later than twenty-four hours before the scheduled commencement of the meeting. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) 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.

(3) 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 (2) 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.

Sec. 4. That section 84-1412, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1412. (1) Subject to the provisions of sections 79-327, 84-1408 to 84-1414, and 85-104, the public shall have the right to attend and the right to speak at meetings of public bodies and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any Any public body to may make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings, and regarding their privilege to speak. A body is not required to allow citizens to speak at each meeting, nor may it forbid public participation at all meetings.

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

(4) No public body shall for the purpose of circumventing the provisions of sections 84-1408 to 84-1414 hold a meeting in a place known by the body to be too small to accommodate the anticipated audience. No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place.

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

(6) Public bodies shall make available at the meeting, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting.

Sec. 5. That section 84-1414, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1414. (1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of any of the provisions of sections 79-327, 84-1408 to 84-1413, and 85-104 shall be declared void by the district court if the suit is

commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of sections 79-327, 84-1408 to 84-1413, and 85-104 shall be voidable by the district court if the suit is commenced after one hundred twenty days but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the provisions of sections 79-327, 84-1408 to 84-1414, and 85-104.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of sections 79-327, 84-1408 to 84-1414, and 85-104, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of sections 79-327, 84-1408 to 84-1414, and 85-104 to discussions or decisions of the public body. The court may order payment of reasonable attorney fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body knowingly violating or conspiring to violate any provision of sections 79-327, 84-1408 to 84-1414, and 85-104 shall be guilty of a Class V misdemeanor.

Sec. 6. That original sections 84-1409, 84-1410, 84-1411, 84-1412, and 84-1414, Reissue Revised Statutes of Nebraska, 1943, are repealed.