

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1076

Introduced by Cavanaugh, M., 6.

Read first time January 09, 2024

Committee:

- 1 A BILL FOR AN ACT relating to public contracts; to adopt the Public
- 2 Contract Provider 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 Contract Provider Open Meetings Act.

3 Sec. 2. For purposes of the Public Contract Provider Open Meetings
4 Act:

5 (1)(a) Governing board means the board of directors, supervisory
6 committee, or other governing body of a provider that sets policy for,
7 makes decisions regarding, or supervises matters relating to any public
8 contract to which the provider is a party.

9 (b) Governing board does not include a subcommittee or subunit of a
10 governing board unless a quorum of the members of the governing board is
11 present or unless such subcommittee or subunit is making policy or taking
12 formal action on behalf of the governing board relating to a public
13 contract.

14 (c) Governing board does not include a public body as defined in
15 section 84-1409;

16 (2) Meeting means all regular, special, or called meetings, formal
17 or informal, of any governing board for any of the following purposes if
18 related to a public contract: Briefing, discussion of business, formation
19 of tentative policy, or the taking of any action;

20 (3) Provider means any private entity which is a party to a public
21 contract; and

22 (4) Public contract means a contract with a state agency to provide
23 goods or services in exchange for state funds;

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

27 Sec. 3. (1) It is hereby declared to be the policy of this state
28 that meetings related to public contracts are public business and may not
29 be conducted in secret.

30 (2) Every meeting of a governing board shall be open to the public
31 in order that residents may exercise their privilege of attending and

1 speaking at meetings of governing boards, except as otherwise provided by
2 the Constitution of Nebraska, federal statutes, and the Public Contract
3 Provider Open Meetings Act.

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

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

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

18 (c) Discussion of trade secrets; and

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

22 (2) The vote to hold a closed session shall be taken in open
23 session. The entire motion, the vote of each member on the question of
24 holding a closed session, and the time when the closed session commenced
25 and concluded shall be recorded in the minutes. If the motion to close
26 passes, then the presiding officer immediately prior to the closed
27 session shall restate on the record the limitation of the subject matter
28 of the closed session. The governing board holding such a closed session
29 shall restrict its consideration of matters during the closed portions to
30 only those purposes set forth in the motion to close as the reason for
31 the closed session. The meeting shall be reconvened in open session

1 before any formal action may be taken. For purposes of this section,
2 formal action shall mean a collective decision or a collective commitment
3 or promise to make a decision on any question, motion, proposal,
4 resolution, or order or formation of a position or policy relating to a
5 public contract but shall not include negotiating guidance given by
6 members of the governing board to legal counsel or other negotiators in
7 closed sessions authorized under subdivision (1)(a) of this section.

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

17 (4) Nothing in this section shall be construed to require that any
18 meeting be closed to the public. No person or governing board shall fail
19 to invite a portion of its members to a meeting, and no governing board
20 shall designate itself a subcommittee of the whole board for the purpose
21 of circumventing the Public Contract Provider Open Meetings Act. No
22 closed session, informal meeting, chance meeting, social gathering,
23 email, fax, or other electronic communication shall be used for the
24 purpose of circumventing the requirements of the act.

25 (5) The act does not apply to chance meetings or to attendance at or
26 travel to conventions or workshops of members of a governing board at
27 which there is no meeting of the board then intentionally convened, if
28 there is no vote or other action taken regarding any matter relating to a
29 public contract over which the governing board has supervision, control,
30 jurisdiction, or advisory power.

31 Sec. 5. (1)(a) Each governing board shall give reasonable advance

1 publicized notice of the time and place of each meeting as provided in
2 this subsection. Such notice shall be transmitted to all members of the
3 governing board and to the public.

4 (b) Such notice shall be published in a newspaper of general
5 circulation within the county of the provider's headquarters or principal
6 place of business and, if available, on such newspaper's website.

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

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

11 (e) Such notice shall contain an agenda of subjects known at the
12 time of the publicized notice or a statement that the agenda, which shall
13 be kept continually current, shall be readily available for public
14 inspection at the principal office of the governing board during normal
15 business hours. Agenda items shall be sufficiently descriptive to give
16 the public reasonable notice of the matters to be considered at the
17 meeting. Except for items of an emergency nature, the agenda shall not be
18 altered later than twenty-four hours before the scheduled commencement of
19 the meeting. The governing board shall have the right to modify the
20 agenda to include items of an emergency nature only at such public
21 meeting.

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

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

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

30 (ii) In addition to the public's right to participate by virtual
31 conferencing, reasonable arrangements are made to accommodate the

1 public's right to attend at a physical site and participate as provided
2 in section 6 of this act, including reasonable seating, in at least one
3 designated site in a building open to the public for such meeting and
4 identified in the notice, with: At least one member of the entity holding
5 such meeting, or his or her designee, present at each site; a recording
6 of the hearing by audio or visual recording devices; and a reasonable
7 opportunity for input, such as public comment or questions, is provided
8 to at least the same extent as would be provided if virtual conferencing
9 was not used;

10 (iii) At least one copy of all documents being considered at the
11 meeting is available at any physical site open to the public where
12 individuals may attend the virtual conference. The governing board shall
13 also provide links to an electronic copy of the agenda, all documents
14 being considered at the meeting, and the current version of the Public
15 Contract Provider Open Meetings Act; and

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

18 (3) Virtual conferencing, emails, faxes, or other electronic
19 communication shall not be used to circumvent any of the purposes
20 established in the Public Contract Provider Open Meetings Act.

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

26 (5) When it is necessary to hold an emergency meeting without
27 reasonable advance public notice, the nature of the emergency shall be
28 stated in the minutes and any formal action taken in such meeting shall
29 pertain only to the emergency. Such emergency meetings may be held by
30 virtual conferencing. The provisions of subsection (4) of this section
31 shall be complied with in conducting emergency meetings. Complete minutes

1 of such emergency meetings specifying the nature of the emergency and any
2 formal action taken at the meeting shall be made available to the public
3 by no later than the end of the next regular business day.

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

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

20 (b) The governing board shall provide access by providing a dial-in
21 number or a link to 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 Contract Provider Open Meetings Act. Reasonable arrangements shall be
25 made to accommodate the public's right to hear and speak at the meeting
26 and record the meeting. Subsection (4) of this section shall be complied
27 with in conducting such meetings.

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

1 Sec. 6. (1) Subject to the Public Contract Provider Open Meetings
2 Act, the public has the right to attend and the right to speak at
3 meetings of governing boards, and all or any part of a meeting of a
4 governing board, except for closed sessions called pursuant to section 4
5 of this act, may be videotaped, televised, photographed, broadcast, or
6 recorded by any person in attendance by means of a tape recorder, a
7 camera, video equipment, or any other means of pictorial or sonic
8 reproduction or in writing.

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

16 (3) No governing board shall require members of the public to
17 identify themselves as a condition for admission to the meeting nor shall
18 such board require that the name of any member of the public be placed on
19 the agenda prior to such meeting in order to speak about items on the
20 agenda. The governing board shall require any member of the public
21 desiring to address the board to identify himself or herself, including
22 an address and the name of any organization represented by such person
23 unless the address requirement is waived to protect the security of the
24 individual.

25 (4) No governing board shall, for the purpose of circumventing the
26 Public Contract Provider Open Meetings Act, hold a meeting in a place
27 known by the board to be too small to accommodate the anticipated
28 audience.

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

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

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

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

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

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

15 (e) Out-of-state meetings are not used to circumvent any of the
16 public government purposes established in the Government Service Contract
17 Provider Open Meetings Act; and

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

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

24 (8) Each governing board shall make available at the meeting or the
25 instate location for virtual conferencing as required by subdivision (6)
26 (c) of this section, for examination and copying by members of the
27 public, at least one copy of all reproducible written material to be
28 discussed at an open meeting, either in paper or electronic form. The
29 governing board shall make available at least one current copy of the
30 Public Contract Provider Open Meetings Act posted in the meeting room at
31 a location accessible to members of the public. At the beginning of the

1 meeting, the public shall be informed about the location of the posted
2 information.

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

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

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

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

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

22 (6) The governing board shall make available on its provider's
23 public website the agenda and minutes of any meeting of the governing
24 board. The agenda shall be placed on the website at least twenty-four
25 hours before the meeting of the governing board. Minutes shall be placed
26 on the website at such time as the minutes are available for inspection
27 as provided in subsection (5) of this section. This information shall be
28 available on the public website for at least six months.

29 Sec. 8. (1) Any person who violates the Public Contract Provider
30 Open Meetings Act shall be subject to a civil fine of ten thousand
31 dollars.

1 (2) The Attorney General and the county attorney of the county in
2 which the governing board ordinarily meets shall enforce the Public
3 Contract Provider Open Meetings Act.

4 (3) Any resident of this state may commence a suit in the district
5 court of the county in which the governing board ordinarily meets or in
6 which the resident resides for the purpose of requiring compliance with
7 or preventing violations of the Public Contract Provider Open Meetings
8 Act or for the purpose of determining the applicability of the act to
9 discussions or decisions of the governing board. It shall not be a
10 defense that the resident attended the meeting and failed to object at
11 such time. If a resident prevails in an action under this section, the
12 court shall order payment of reasonable attorney's fees and court costs.

13 (4) Any member of a governing board who knowingly violates or
14 conspires to violate or who attends or remains at a meeting knowing that
15 the governing board is in violation of any provision of the Public
16 Contract Provider Open Meetings Act shall be guilty of a Class IV
17 misdemeanor for a first offense and a Class III misdemeanor for a second
18 or subsequent offense.