

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 391

Introduced by Mines, 18

Read first time January 16, 2007

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to public records and meetings; to amend
2 sections 84-712, 84-1411, and 84-1412, Revised Statutes
3 Cumulative Supplement, 2006; to change provisions
4 relating to copies of records and speaking at meetings;
5 and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-712, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 84-712 (1) Except as otherwise expressly provided by
4 statute, all citizens of this state, and all other persons
5 interested in the examination of the public records, as defined
6 in section 84-712.01, are hereby fully empowered and authorized
7 to (a) examine the same, and make memoranda, copies using their
8 own copying or photocopying equipment in accordance with subsection
9 (2) of this section, and abstracts therefrom, all free of charge,
10 during the hours the respective offices may be kept open for
11 the ordinary transaction of business and (b) except if federal
12 copyright law otherwise provides, obtain copies of public records
13 in accordance with subsection (3) of this section during the
14 hours the respective offices may be kept open for the ordinary
15 transaction of business.

16 (2) Copies made by citizens or other persons using their
17 own copying or photocopying equipment pursuant to subdivision
18 (1)(a) of this section shall be made on the premises of the
19 custodian of the public record or at a location mutually agreed to
20 by the requester and the custodian.

21 (3)(a) Copies may be obtained pursuant to subdivision
22 (1)(b) of this section only if the custodian has copying equipment
23 reasonably available. Such copies may be obtained in any form
24 designated by the requester in which the public record is
25 maintained or produced, including, but not limited to, printouts,

1 electronic data, discs, tapes, and photocopies.

2 (b) Except as otherwise provided by statute, the
3 custodian of a public record may charge a fee for providing copies
4 of such public record pursuant to subdivision (1)(b) of this
5 section, which fee shall not exceed the actual cost of making
6 the copies available. For purposes of this subdivision, (i) for
7 photocopies, the actual cost of making the copies available shall
8 not exceed the amount of the reasonably calculated actual cost of
9 the photocopies, (ii) for printouts of computerized data on paper,
10 the actual cost of making the copies available shall include the
11 reasonably calculated actual cost of computer run time and the
12 cost of materials for making the copy, and (iii) for electronic
13 data, the actual cost of making the copies available shall include
14 the reasonably calculated actual cost of the computer run time,
15 any necessary analysis and programming, and the production of the
16 report in the form furnished to the requester. State agencies
17 which provide electronic access to public records through a gateway
18 service shall obtain approval of their proposed reasonable fees for
19 such records pursuant to sections 84-1205.02 and 84-1205.03, if
20 applicable, and the actual cost of making the copies available may
21 include the approved fee for the gateway service.

22 (c) This section shall not be construed to require a
23 public body or custodian of a public record to copy, produce, or
24 generate (i) any public record in a new or different form or format
25 modified from that of the original public record or (ii) all public

1 records created within a certain time frame, without requesting a
2 specific subject matter.

3 (d) If copies requested in accordance with subdivision
4 (1)(b) of this section are estimated by the custodian of such
5 public records to cost more than fifty dollars, the custodian may
6 require the requester to furnish a deposit prior to fulfilling such
7 request.

8 (4) Upon receipt of a written request for access to or
9 copies of a public record or both access and copies relating to a
10 specific subject matter, the custodian of such record shall provide
11 to the requester as soon as is practicable and without delay,
12 but not more than four business days after actual receipt of the
13 request, ~~either~~ (a) access to such public record if requested and
14 ~~or, if copying equipment is reasonably available,~~ copies of the
15 public record, if requested and copying equipment is reasonably
16 available, (b) if there is a legal basis for denial of access
17 or copies, a written denial of the request together with the
18 information specified in section 84-712.04, or (c) if the entire
19 request cannot with reasonable good faith efforts be fulfilled
20 within four business days after actual receipt of the request
21 due to the significant difficulty or the extensiveness of the
22 request, a written explanation, including the earliest practicable
23 date for fulfilling the request, an estimate of the expected cost
24 of any copies, and an opportunity for the requester to modify or
25 prioritize the items within the request.

1 Sec. 2. Section 84-1411, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 84-1411 (1) Each public body shall give reasonable
4 advance publicized notice of the time and place of each meeting
5 by a method designated by each public body and recorded in its
6 minutes. Such notice shall be transmitted to all members of the
7 public body and to the public. Such notice shall contain an
8 agenda of subjects known at the time of the publicized notice
9 or a statement that the agenda, which shall be kept continually
10 current, shall be readily available for public inspection at the
11 principal office of the public body during normal business hours.
12 Agenda items shall be sufficiently descriptive to give the public
13 reasonable notice of the matters to be considered at the meeting.
14 Except for items of an emergency nature, the agenda shall not
15 be altered later than (a) twenty-four hours before the scheduled
16 commencement of the meeting or (b) forty-eight hours before the
17 scheduled commencement of a meeting of a city council or village
18 board scheduled outside the corporate limits of the municipality.
19 The public body shall have the right to modify the agenda to
20 include items of an emergency nature only at such public meeting.

21 (2) A meeting of a state agency, state board, state
22 commission, state council, or state committee, of an advisory
23 committee of any such state entity, of an organization created
24 under the Interlocal Cooperation Act, the Joint Public Agency Act,
25 or the Municipal Cooperative Financing Act, of the governing body

1 of a public power district having a chartered territory of more
2 than fifty counties in this state, or of the governing body of
3 a risk management pool or its advisory committees organized in
4 accordance with the Intergovernmental Risk Management Act may be
5 held by means of videoconferencing or, in the case of the Judicial
6 Resources Commission in those cases specified in section 24-1204,
7 by telephone conference, if:

8 (a) Reasonable advance publicized notice is given;

9 (b) Reasonable arrangements are made to accommodate the
10 public's right to attend, hear, and speak at the meeting, including
11 seating, recordation by audio or visual recording devices, and
12 a reasonable opportunity for input such as public comment or
13 questions to at least the same extent as would be provided if
14 videoconferencing or telephone conferencing was not used;

15 (c) At least one copy of all documents being considered
16 is available to the public at each site of the videoconference or
17 telephone conference;

18 (d) At least one member of the state entity, advisory
19 committee, or governing body is present at each site of the
20 videoconference or telephone conference; and

21 (e) No more than one-half of the state entity's, advisory
22 committee's, or governing body's meetings in a calendar year are
23 held by videoconference or telephone conference.

24 Videoconferencing, telephone conferencing, or
25 conferencing by other electronic communication shall not be used

1 to circumvent any of the public government purposes established
2 in the Open Meetings Act.

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

8 (a) The territory represented by the member public
9 agencies of the entity or pool covers more than one county;

10 (b) Reasonable advance publicized notice is given which
11 identifies each telephone conference location at which a member of
12 the entity's or pool's governing body will be present;

13 (c) All telephone conference meeting sites identified in
14 the notice are located within public buildings used by members
15 of the entity or pool or at a place which will accommodate the
16 anticipated audience;

17 (d) Reasonable arrangements are made to accommodate the
18 public's right to attend, hear, and speak at the meeting, including
19 seating, recordation by audio recording devices, and a reasonable
20 opportunity for input such as public comment or questions to
21 at least the same extent as would be provided if a telephone
22 conference call was not used;

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

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

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

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

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

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

20 (5) When it is necessary to hold an emergency meeting
21 without reasonable advance public notice, the nature of the
22 emergency shall be stated in the minutes and any formal action
23 taken in such meeting shall pertain only to the emergency.
24 Such emergency meetings may be held by means of electronic or
25 telecommunication equipment. The provisions of subsection (4)

1 of this section shall be complied with in conducting emergency
2 meetings. Complete minutes of such emergency meetings specifying
3 the nature of the emergency and any formal action taken at the
4 meeting shall be made available to the public by no later than the
5 end of the next regular business day.

6 (6) A public body may allow a member of the public or
7 any other witness other than a member of the public body to appear
8 before the public body and speak on agenda items by means of video
9 or telecommunications equipment.

10 Sec. 3. Section 84-1412, Revised Statutes Cumulative
11 Supplement, 2006, is amended to read:

12 84-1412 (1) Subject to the Open Meetings Act, the public
13 has the right to attend and the right to speak at meetings of
14 public bodies, ~~and all~~ on agenda items as allowed by the individual
15 presiding over the meeting. All or any part of a meeting of a
16 public body, except for closed sessions called pursuant to section
17 84-1410, may be videotaped, televised, photographed, broadcast, or
18 recorded by any person in attendance by means of a tape recorder,
19 camera, video equipment, or any other means of pictorial or sonic
20 reproduction or in writing.

21 (2) It shall not be a violation of subsection (1)
22 of this section for any public body to make and enforce
23 reasonable rules and regulations regarding the conduct of persons
24 attending, speaking on agenda items at, videotaping, televising,
25 photographing, broadcasting, or recording its meetings. A body may

1 not be required to allow citizens to speak on agenda items at
2 each meeting, but it may not forbid public participation at all
3 meetings. Each public body shall have a form on which citizens
4 may recommend subjects for discussion as possible agenda items at
5 a future meeting. Copies of such form shall be made available at
6 every meeting and at the principal office of the public body during
7 normal business hours. Within ten business days after receiving
8 such form, the secretary or other designee of the public body
9 shall, by first class mail, send the citizen a written statement
10 regarding the status of the request.

11 (3) No public body shall require members of the public to
12 identify themselves as a condition for admission to the meeting.
13 The body may require any member of the public desiring to address
14 the body on agenda items to identify himself or herself.

15 (4) No public body shall, for the purpose of
16 circumventing the Open Meetings Act, hold a meeting in a place
17 known by the body to be too small to accommodate the anticipated
18 audience.

19 (5) No public body shall be deemed in violation of this
20 section if it holds its meeting in its traditional meeting place
21 which is located in this state.

22 (6) No public body shall be deemed in violation of this
23 section if it holds a meeting outside of this state if, but only
24 if:

25 (a) A member entity of the public body is located outside

1 of this state and the meeting is in that member's jurisdiction;

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

5 (c) Reasonable arrangements are made to accommodate the
6 public's right to attend, hear, and speak on agenda items at the
7 meeting, including making a telephone conference call available
8 at an instate location to members, the public, or the press, if
9 requested twenty-four hours in advance;

10 (d) No more than twenty-five percent of the public body's
11 meetings in a calendar year are held out-of-state;

12 (e) Out-of-state meetings are not used to circumvent any
13 of the public government purposes established in the Open Meetings
14 Act;

15 (f) Reasonable arrangements are made to provide viewing
16 at other instate locations for a videoconference meeting if
17 requested fourteen days in advance and if economically and
18 reasonably available in the area; and

19 (g) The public body publishes notice of the out-of-state
20 meeting at least twenty-one days before the date of the meeting in
21 a legal newspaper of statewide circulation.

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

25 (8) Public bodies shall make available at the meeting

1 or the instate location for a telephone conference call or
2 videoconference, for examination and copying by members of the
3 public, at least one copy of all reproducible written material to
4 be discussed at an open meeting. Public bodies shall make available
5 at least one current copy of the Open Meetings Act posted in the
6 meeting room at a location accessible to members of the public. At
7 the beginning of the meeting, the public shall be informed about
8 the location of the posted information.

9 Sec. 4. Original sections 84-712, 84-1411, and 84-1412,
10 Revised Statutes Cumulative Supplement, 2006, are repealed.