

LEGISLATIVE BILL 325

Approved by the Governor May 27, 1975

Introduced by Anderson, 37

AN ACT to amend sections 79-327 and 85-104, Reissue Revised Statutes of Nebraska, 1943, relating to public meetings; to provide for open public meetings; to provide protection of the public interest; to provide public notice; to provide opportunity to speak at public meetings; to provide remedies; to provide a penalty; to provide severability; to repeal the original sections, and also sections 84-1401 to 84-1407, Revised Statutes Supplement, 1974; and to declare an emergency.

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

Section 1. It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of the State of Nebraska, federal statutes, and this act.

Sec. 2. As used in this act, 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, or any other bodies, now or hereafter created by Constitution, statute, or otherwise pursuant to law, (d) 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. This act shall not apply to subcommittees of such bodies unless such subcommittees have been given authority to take formal action on behalf of their parent body or 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 of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any formal action.

Sec. 3. (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.

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

Sec. 4. (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 available for public inspection at the principal office of the public body during normal business hours. 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.

Sec. 5. (1) Subject to the provisions of this act, 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 may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction or in writing.

(2) Any public body may make and enforce reasonable rules and regulations regarding the conduct of persons attending 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.

Sec. 6. (1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted, or if the member was absent or not voting.

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

(4) The minutes shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written and available for inspection within ten working days, or prior to the next convened meeting, whichever occurs earlier.

Sec. 7. That section 79-327, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-327. (1) The State Board of Education shall meet regularly and periodically in the office of the State Department of Education at the State Capitol at least four times annually. ~~;~~ ~~Provided,~~ ~~that~~ ~~meetings~~ ~~Meetings~~ shall be held during the first full week in June and during the first full week in December of each year. It may meet at such other times and places as the board may determine necessary for the proper and efficient conduct of its duties. Special meetings may be called by ~~the presiding officer upon written notice given at least five days preceding the meeting or, in the absence of such call by the presiding officer, the Commissioner of Education shall call such special meeting upon written request of a majority of the board~~ in accordance with this act. Five members of the board shall constitute a quorum.

(2) The public shall be admitted to all meetings of the State Board of Education except to such executive closed sessions as the board may direct in accordance with this act. The board shall cause to be kept a record of all public meetings and proceedings of the board. The commissioner, or his designated representative, shall be present at all meetings except when the order of business for the board is the selection of a Commissioner of Education.

(3) The members of the State Board of Education shall receive no compensation for their services but shall be reimbursed for actual and essential expenses incurred in attending meetings or incurred in the performance of duties as directed by the board.

Sec. 8. That section 85-104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

85-104. All meetings of the Board of Regents shall be open to the public. ~~;~~ ~~Provided,~~ ~~however,~~ ~~the~~ ~~The~~ board may hold executive closed sessions ~~when in the judgment of the board the interests of the university require it~~ in accordance with this act. Public record

shall be made and kept of all meetings and proceedings of the board. The regents shall meet at least twice each year at the administration building. They shall receive for their services no compensation, but they may be reimbursed their actual expenses incurred in the performance of their official duties.

Sec. 9. (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 1 to 8 of this act shall be declared void by the district court. 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 this act.

(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 this act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of this act 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 any provision of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than fifty dollars.

Sec. 10. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 11. That original sections 79-327 and 85-104, Reissue Revised Statutes of Nebraska, 1943, and also sections 84-1401 to 84-1407, Revised Statutes Supplement, 1974, are repealed.

Sec. 12. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.