

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1076

Introduced by Karpisek, 32.

Read first time January 18, 2012

Committee:

A BILL

1 FOR AN ACT relating to public records and meetings; to amend sections
2 84-712 and 84-1412, Reissue Revised Statutes of Nebraska,
3 and section 84-1411, Revised Statutes Cumulative
4 Supplement, 2010; to change provisions relating to copies
5 of records and speaking at meetings; and to repeal the
6 original sections.

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

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

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

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

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

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

1 specifies a specific subject matter.

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

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

23 Sec. 2. Section 84-1411, Revised Statutes Cumulative
24 Supplement, 2010, is amended to read:

25 84-1411 (1) Each public body shall give reasonable

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

18 (2) A meeting of a state agency, state board, state
19 commission, state council, or state committee, of an advisory
20 committee of any such state entity, of an organization created under
21 the Interlocal Cooperation Act, the Joint Public Agency Act, or the
22 Municipal Cooperative Financing Act, of the governing body of a
23 public power district having a chartered territory of more than fifty
24 counties in this state, of a board of an educational service unit, or
25 of the governing body of a risk management pool or its advisory

1 committees organized in accordance with the Intergovernmental Risk
2 Management Act may be held by means of videoconferencing or, in the
3 case of the Judicial Resources Commission in those cases specified in
4 section 24-1204, by telephone conference, if:

5 (a) Reasonable advance publicized notice is given;

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

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

15 (d) At least one member of the state entity, advisory
16 committee, board, or governing body is present at each site of the
17 videoconference or telephone conference; and

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

21 Videoconferencing, telephone conferencing, or
22 conferencing by other electronic communication shall not be used to
23 circumvent any of the public government purposes established in the
24 Open Meetings Act.

25 (3) A meeting of a board of an educational service unit,

1 of the governing body of an entity formed under the Interlocal
2 Cooperation Act, the Joint Public Agency Act, or the Municipal
3 Cooperative Financing Act, or of the governing body of a risk
4 management pool or its advisory committees organized in accordance
5 with the Intergovernmental Risk Management Act may be held by
6 telephone conference call if:

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

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

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

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

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

1 call;

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

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

7 (h) No more than one-half of the board's, entity's, or
8 pool's meetings in a calendar year are held by telephone conference
9 call, except that a governing body of a risk management pool that
10 meets at least quarterly and the advisory committees of the governing
11 body may each hold more than one-half of its meetings by telephone
12 conference call if the governing body's quarterly meetings are not
13 held by telephone conference call or videoconferencing.

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

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

25 (5) When it is necessary to hold an emergency meeting

1 without reasonable advance public notice, the nature of the emergency
2 shall be stated in the minutes and any formal action taken in such
3 meeting shall pertain only to the emergency. Such emergency meetings
4 may be held by means of electronic or telecommunication equipment.
5 The provisions of subsection (4) of this section shall be complied
6 with in conducting emergency meetings. Complete minutes of such
7 emergency meetings specifying the nature of the emergency and any
8 formal action taken at the meeting shall be made available to the
9 public by no later than the end of the next regular business day.

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

14 Sec. 3. Section 84-1412, Reissue Revised Statutes of
15 Nebraska, is amended to read:

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

25 (2) It shall not be a violation of subsection (1) of this

1 section for any public body to make and enforce reasonable rules and
2 regulations regarding the conduct of persons attending, speaking on
3 agenda items at, videotaping, televising, photographing,
4 broadcasting, or recording its meetings. A body may not be required
5 to allow citizens to speak on agenda items at each meeting, but it
6 may not forbid such public participation on agenda items at all
7 meetings. Each public body shall have a form on which citizens may
8 recommend subjects for discussion as possible agenda items at a
9 future meeting. Copies of such form shall be made available at every
10 meeting and at the principal office of the public body during normal
11 business hours. Within ten business days after receiving such form,
12 the secretary or other designee of the public body shall, by first
13 class mail, send the citizen a written statement regarding the status
14 of the request.

15 (3) No public body shall require members of the public to
16 identify themselves as a condition for admission to the meeting nor
17 shall such body require that the name of any member of the public be
18 placed on the agenda prior to such meeting in order to speak about
19 items on the agenda. The body may require any member of the public
20 desiring to address the body on agenda items to identify himself or
21 herself.

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

25 (5) No public body shall be deemed in violation of this

1 section if it holds its meeting in its traditional meeting place
2 which is located in this state.

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

5 (a) A member entity of the public body is located outside
6 of this state and the meeting is in that member's jurisdiction;

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

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

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

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

20 (f) Reasonable arrangements are made to provide viewing
21 at other instate locations for a videoconference meeting if requested
22 fourteen days in advance and if economically and reasonably available
23 in the area; and

24 (g) The public body publishes notice of the out-of-state
25 meeting at least twenty-one days before the date of the meeting in a

1 legal newspaper of statewide circulation.

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

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

14 Sec. 4. Original sections 84-712 and 84-1412, Reissue
15 Revised Statutes of Nebraska, and section 84-1411, Revised Statutes
16 Cumulative Supplement, 2010, are repealed.