

NEBRASKA STATE BOARD OF EDUCATION MEETING NOTIFICATION AND AGENDA

- Meeting Date:** Thursday, January 7, 2021 1:00 PM
- Meeting Title:** State Board of Education Annual Orientation and Notification and Agenda (10:00 AM - 12:00 PM New Board Members) and (1:00 - 4:00 PM All Board Members)
- Location:** Zoom
301 Centennial Mall S
Lincoln, NE 68508
- Web Streaming:** Live web streaming will be available through the State Board of Education website: www.education.ne.gov/StateBoard/
- Agenda:** Except for emergency items added at the time of the meeting, the agenda will not be changed less than 24 hours prior to the start of the meeting and any changes will be immediately posted on the website. The Board will attempt to adhere to the sequence of the published agenda, but reserves the right to adjust the order of items if necessary and may elect to take action on any of the items listed.
- Interpreter:** If you need interpreter services or other reasonable accommodations, please contact the Nebraska Department of Education at (402) 471-5059 five (5) days prior to the meeting to coordinate arrangements.
- Website:** An electronic version of the agenda and support materials are available on the State Board of Education's Agenda page: www.education.ne.gov/StateBoard/Agendas.html
- Lunch:** On Thursday, January 7, 2021, if necessary, the State Board of Education may break for lunch at 12:00 p.m. The lunch will take place in Conference Room C at the State Office Building, Sixth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The Board may resume work on the agenda at approximately 1:00 p.m.

1. CALL TO ORDER

President Nickels

1. Roll Call

President Nickels

2. Announcement of the placement of the Open Meetings Act information

President Nickels

3. COVID-19 Meeting Protocol

Ryan Foor

2. ANNUAL BOARD ORIENTATION
Ryan Foor

3. ADJOURNMENT
President Nickels

The regularly scheduled meeting of the State Board of Education will reconvene at 9:00 a.m. on January 8, 2021.



STATE *of* NEBRASKA
OFFICE OF THE GOVERNOR
LINCOLN

EXECUTIVE ORDER No. 20-36

CORONA VIRUS – PUBLIC MEETINGS REQUIREMENT LIMITED WAIVER

WHEREAS, In order to provide flexibility to assist in meeting the emergency conditions and subsequent impacts brought on from COVID-19, a state of emergency was declared in Nebraska on March 13, 2020; and

WHEREAS, the State of Nebraska is committed to providing seamless government operations to the people of Nebraska throughout the state of emergency; and

WHEREAS, state and local governmental boards, commissions and other public bodies must comply with the Open Meetings Act so that citizens may exercise their democratic privilege of participating in meetings of public bodies; and

WHEREAS, for public health purposes, meetings and gatherings have now been limited to no more than 10 people and may be further limited if the presence of COVID-19 warrants;

NOW THEREFORE, I Pete Ricketts, Governor of the State of Nebraska, by virtue of the authority vested in me by the Constitution and laws of Nebraska, hereby issue this limited waiver of certain requirements of the Nebraska Open Meetings Act.

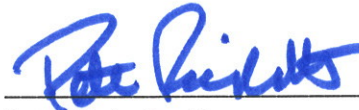
Pursuant to this declaration, I hereby order the following:

1. This executive order applies to public bodies as defined in Neb. Rev. Stat. §84-1409 (1) and to all public meetings as defined in Neb. Rev. Stat. §84-1409 (2).
2. All governing bodies may meet by videoconference or by telephone conferencing or by conferencing by other electronic communication so long as there is made available at such meeting access to members of the public and to members of the media.

3. The advanced publicized notice and the agenda requirements for meetings that are set forth in Neb. Rev. Stat. §84-1411 and the remaining provisions of Nebraska's Open Meetings Act shall continue to be complied with by all public bodies and are not waived by this executive order.
4. This waiver shall apply to all public governing body meetings that occur from December 1, 2020 through January 31, 2021.

IN WITNESS THEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska to be affixed on this 25th day of November, 2020.

ATTEST:



Pete Ricketts, Governor



Robert B. Evnen, Secretary of State



OPEN MEETING ACT

(2020)

84-1407. Act, how cited.

Sections 84-1407 to 84-1414 shall be known and may be cited as the Open Meetings Act.

Source:Laws 2004, LB 821, § 34.

84-1408. Declaration of intent; meetings open to public.

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 Nebraska, federal statutes, and the Open Meetings Act.

Source:Laws 1975, LB 325, § 1; Laws 1996, LB 900, § 1071; Laws 2004, LB 821, § 35.

84-1409. Terms, defined.

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) 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, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on

behalf of their parent body, except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders;

(2) Meeting means 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 action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

Source:Laws 1975, LB 325, § 2; Laws 1983, LB 43, § 1; Laws 1989, LB 429, § 42; Laws 1989, LB 311, § 14; Laws 1992, LB 1019, § 124; Laws 1993, LB 635, § 1; Laws 1996, LB 1044, § 978; Laws 1997, LB 798, § 37; Laws 2004, LB 821, § 36; Laws 2007, LB296, § 810; Laws 2011, LB366, § 2.

84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.

(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. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. 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, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

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

(c) Investigative proceedings regarding allegations of criminal misconduct;

(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;

(e) For the Community Trust created under section 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster; or

(f) For public hospitals, governing board peer review activities, professional review activities, review and discussion of medical staff investigations or disciplinary actions, and any strategy session concerning transactional negotiations with any referral source that is required by federal law to be conducted at arms length.

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

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. 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 motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(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, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does 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, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

Source:Laws 1975, LB 325, § 3; Laws 1983, LB 43, § 2; Laws 1985, LB 117, § 1; Laws 1992, LB 1019, § 125; Laws 1994, LB 621, § 1; Laws 1996, LB 900, § 1072; Laws 2004, LB 821, § 37; Laws 2004, LB 1179, § 1; Laws 2006, LB 898, § 1; Laws 2011, LB390, § 29; Laws 2012, LB995, § 17.

84-1411. Meetings of public body; notice; method; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.

(1)(a) Each public body shall give reasonable advance publicized notice of the time and place of each meeting as provided in this subsection. Such notice shall be transmitted to all members of the public body and to the public.

(b)(i) Except as provided in subdivision (1)(b)(ii) of this section, in the case of a public body described in subdivision (1)(a)(i) of section 84-1409 or such body's advisory committee, such notice shall be published in a newspaper of general circulation within the public body's jurisdiction and, if available, on such newspaper's web site.

(ii) In the case of the governing body of a city of the second class or village or such body's advisory committee, such notice shall be published by:

(A) Publication in a newspaper of general circulation within the public body's jurisdiction and, if available, on such newspaper's web site; or

(B) Posting written notice in three conspicuous public places in such city or village. Such notice shall be posted in the same three places for each meeting.

(iii) In the case of a public body not described in subdivision (1)(b)(i) or (ii) of this section, such notice shall be given by a method designated by the public body.

(c) In addition to a method of notice required by subdivision (1)(b)(i) or (ii) of this section, such notice may also be provided by any other appropriate method designated by such public body or such advisory committee.

(d) Each public body shall record the methods and dates of such notice in its minutes.

(e) 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. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (i) twenty-four hours before the scheduled commencement of the meeting or (ii) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than one county in this state, of the governing body of a public power and irrigation district having a chartered territory of more than one county in this state, of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, or of a community college board of governors may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

(a) Reasonable advance publicized notice is given as provided in subsection (1) of this section;

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

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

(d) At least one member of the state entity, advisory committee, board, council, or governing body is present at each site of the videoconference or telephone conference, except that a member of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis, an organization created under the Municipal Cooperative Financing Act, or a governing body of a risk management pool or an advisory committee of such organization or pool may designate a nonvoting designee, who shall not be included as part of the quorum, to be present at any site; and

(e)(i) Except as provided in subdivision (2)(e)(ii) of this section, no more than one-half of the state entity's, advisory committee's, board's, council's, or governing body's meetings in a calendar year are held by videoconference or telephone conference; or

(ii) In the case of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis or an organization created under the Municipal Cooperative Financing Act, such organization holds at least one meeting each calendar year that is not by videoconferencing or telephone conferencing.

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

(3) A meeting of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk

Management Act, of a community college board of governors, of the governing body of a public power district, of the governing body of a public power and irrigation district, or of the Nebraska Brand Committee may be held by telephone conference call if:

(a) The territory represented by the educational service unit, member educational service units, community college board of governors, public power district, public power and irrigation district, Nebraska Brand Committee, or member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given as provided in subsection (1) of this section which identifies each telephone conference location at which there will be present: (i) A member of the educational service unit board, council, community college board of governors, governing body of a public power district, governing body of a public power and irrigation district, Nebraska Brand Committee, or entity's or pool's governing body; or (ii) A nonvoting designee designated under subdivision (3)(f) of this section;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, Nebraska Brand Committee, or entity or pool or at a place which will accommodate the anticipated audience;

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

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

(f) At least one member of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, Nebraska Brand Committee, or governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice, except that a member of an organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis, an organization created under the

Municipal Cooperative Financing Act, or a governing body of a risk management pool or an advisory committee of such organization or pool may designate a nonvoting designee, who shall not be included as part of the quorum, to be present at any site;

(g) The telephone conference call lasts no more than five hours; and

(h) No more than one-half of the board's, council's, governing body's, committee's, entity's, or pool's meetings in a calendar year are held by telephone conference call, except that:

(i) The governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing; and

(ii) An organization created under the Interlocal Cooperation Act that sells electricity or natural gas at wholesale on a multistate basis or an organization created under the Municipal Cooperative Financing Act may hold more than one-half of its meetings by telephone conference call if the organization holds at least one meeting each calendar year that is not by videoconferencing or telephone conference call.

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

(4) 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.

(5) 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 (4) 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.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

Source:Laws 1975, LB 325, § 4; Laws 1983, LB 43, § 3; Laws 1987, LB 663, § 25; Laws 1993, LB 635, § 2; Laws 1996, LB 469, § 6; Laws 1996, LB 1161, § 1; Laws 1999, LB 47, § 2; Laws 1999, LB 87, § 100; Laws 1999, LB 461, § 1; Laws 2000, LB 968, § 85; Laws 2004, LB 821, § 38; Laws 2004, LB 1179, § 2; Laws 2006, LB 898, § 2; Laws 2007, LB199, § 9; Laws 2009, LB361, § 2; Laws 2012, LB735, § 1; Laws 2013, LB510, § 1; Laws 2017, LB318, § 1; Laws 2019, LB212, § 5; Laws 2020, LB148, § 3.

Effective Date: November 14, 2020

84-1412. Meetings of public body; rights of public; public body; powers and duties.

(1) Subject to the Open Meetings Act, the public has 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 public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not 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 nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may 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 Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

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

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

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

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

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

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

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

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

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

(7) 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.

(8) Public bodies shall make available at the meeting or the instate location for a telephone conference call or videoconference, 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. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible

to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

Source:Laws 1975, LB 325, § 5; Laws 1983, LB 43, § 4; Laws 1985, LB 117, § 2; Laws 1987, LB 324, § 5; Laws 1996, LB 900, § 1073; Laws 2001, LB 250, § 2; Laws 2004, LB 821, § 39; Laws 2006, LB 898, § 3; Laws 2008, LB962, § 1.

84-1413. Meetings; minutes; roll call vote; secret ballot; when.

(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. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

(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 of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written, except as provided in subsection (6) of this section, and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

(6) Minutes of the meetings of the board of a school district or educational service unit may be kept as an electronic record.

Source:Laws 1975, LB 325, § 6; Laws 1978, LB 609, § 3; Laws 1979, LB 86, § 9; Laws 1987, LB 663, § 26; Laws 2005, LB 501, § 1; Laws 2009, LB361, § 3; Laws 2015, LB365, § 2; Laws 2016, LB876, § 1.

84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act 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 the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after 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 Open Meetings 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 the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

Source:Laws 1975, LB 325, § 9; Laws 1977, LB 39, § 318; Laws 1983, LB 43, § 5; Laws 1992, LB 1019, § 126; Laws 1994, LB 621, § 2; Laws 1996, LB 900, § 1074; Laws 2004, LB 821, § 40; Laws 2006, LB 898, § 4.

ATTORNEY GENERAL GUIDANCE ON EXECUTIVE ORDER NO. 20-36 CORONAVIRUS — PUBLIC MEETINGS REQUIREMENT LIMITED WAIVER

Posted:

Monday, November 30, 2020

On November 25, 2020, Governor Ricketts issued Executive Order No. 20-36, “Corona Virus — Public Meetings Requirement Limited Waiver” (“Order”). This Order is essentially identical to Executive Order No. 20-03, issued at the onset of the pandemic on March 17, 2020. Like the previous executive order, this Order provides a limited waiver of certain requirements of the Nebraska Open Meetings Act (“Act”), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2018, Supp. 2019). The Order permits public bodies in the state to meet by videoconferencing, telephone conference call, or other electronic means so long as members of the public and the media are provided access to the meetings. The Order requires that any public body that elects to meet by electronic means (1) provide reasonable advance publicized notice of its meeting and (2) prepare an agenda of items to be discussed at the meeting. See Neb. Rev. Stat § 84-1411(1) (Supp. 2019). Public bodies must meet all other requirements of the Act. The Order applies to all public meetings beginning December 1 through January 31, 2021.

All guidance previously issued by the Attorney General pertaining to Executive Order No. 20-03 is applicable to the new Order. Our previous guidance is set out below.

Posted: Tuesday, March 17, 2020

Nebraskans are facing unprecedented challenges to conduct open, public meetings in the face of the Coronavirus pandemic. Recommendations to limit social gatherings to fight the spread of the virus have generated several questions and concerns about the ability of public bodies to meet electronically. In response, earlier today Governor Ricketts issued Executive Order No. 20—03 (“Order”), which provides a limited waiver of certain requirements of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2018, Supp. 2019). The Order permits all public bodies in the state to meet by videoconferencing, telephone conference call, and other telecommunications applications, so long as members of the public and the media are provided access to the meetings in some manner. The Order requires that any public body that elects to meet by these means (1) provide reasonable advance publicized notice of its meeting and (2) prepare an agenda of items to be discussed at the meeting. See Neb. Rev. Stat § 84-1411(1) (Supp. 2019). Provisions in Neb. Rev. Stat. § 84-1411(2) and (3) requiring public access to videoconference sites and telephone conference sites are waived by the Order. All other requirements of the Act relating to closed sessions, voting, minutes, etc., must be met. The Order applies to all public meetings beginning today through May 31, 2020.

Posted: Thursday, March 19, 2020

Since the issuance of the Order, our office has received numerous calls about its meaning and application. Some callers have interpreted the Order to mean that they can continue to have regular “in-person” meetings, but exclude the public from such meetings. Some have indicated that they plan to close the meeting and post a sign on the door giving the public a call-in number to the meeting being conducted.

Please keep in mind that the Order is a *limited* waiver of some of the provisions of the Open Meetings Act, specifically relating to videoconference and telephone conference meetings. The Order permits all public bodies in the state to meet by videoconferencing, telephone conference call, and other telecommunications applications, so long as access to the meeting is provided to members of the public and the media. All other provisions of the Open Meetings Act have not been waived. If a public body elects to have an in-person meeting, there is no legal basis in the Open Meetings Act or the Order to close the meeting to the members of the public and press who wish to attend.

Our conclusion above is also applicable to instances where there is a “mixed meeting”—i.e., a portion of the public body meets in person and a portion participates electronically. This office has indicated on multiple occasions that a “meeting” subject to the Open Meetings Act occurs when there is a quorum present and the members of the quorum are engaged in any of the activities included in the definition of “meeting” set out in Neb. Rev. Stat. § 84-1409(2) (2014). If a quorum of the public body elects to physically meet to discuss public business, even though other members may be participating electronically, then members of the public and media should be allowed physical access to the meeting.

The Attorney General highly recommends that public bodies that wish to conduct virtual meetings in accordance with the Order indicate this in the meeting notice. The notice should clearly state how the members of the public and media may access the meeting. The notice should also indicate that since the meeting will be held electronically, and no quorum of the public body will be physically present together, there will be no public in-person attendance.

The Attorney General urges members of public bodies in Nebraska to use their best judgment in deciding how to proceed in light of the Coronavirus pandemic and the Governor’s Order.

Posted: Thursday, April 2, 2020

The Attorney General is issuing this additional guidance in response to continuing inquiries from individuals and governmental entities across Nebraska with respect to Executive Order No. 20-03 (“Order”) and its impact on the Open Meetings Act. We are fully aware of the numerous difficulties facing public bodies in light of the current public health concerns brought on by the COVID-19 pandemic. We are also aware that public bodies must balance the need to remain operational while ensuring the safety of their members, the public and the media. However, notwithstanding these challenges, there is still a need to maintain governmental accountability and transparency.

The Nebraska Emergency Management Act provides that “[t]he Governor shall be responsible for meeting the dangers to the state and people presented by disasters, emergencies, and civil defense emergencies Neb. Rev. Stat. § 81-829.40(1) (2014). Consistent with this statutory responsibility to protect Nebraska and its citizens, Governor Ricketts issued the Order to allow

all governmental entities subject to the Open Meetings Act the ability to conduct public business by videoconference or telephone conference call, or any other electronic means, so long as members of the public and the media have access to the meeting. Current requirements in the Open Meetings Act relating to public access to videoconference or telephone conference sites have been waived to avoid face-to-face contact. Public bodies conducting meetings in accordance with the Order must still provide advance publicized notice and comply with the agenda requirements in Neb. Rev. Stat. § 84-1411(1) (Supp. 2019). All other provisions of the Open Meetings Act remain in full force and effect.

The Governor's Order is in no way unique. Other states, with laws similar to Nebraska's, have issued orders suspending provisions of their open meetings law to deal with the public health concerns of the pandemic. For example, in Texas, the governor approved a request by the attorney general to "relax . . . open-meeting requirements to allow for telephonic or videoconference meetings of governmental bodies, without the need for face-to-face contact during a pandemic." Texas Attorney General News Release (March 16, 2020), <https://www.texasattorneygeneral.gov/news/releases/governors-office-clears-path-governmental-bodies-meet-telephonically-or-videoconference-during>. The Governor of Louisiana has ordered that "[a]ll state agencies, boards and commissions, and local political subdivisions of the state shall provide for attendance at essential governmental meetings via teleconference or video conference and such attendance shall be allowed during the pendency of this emergency." Proclamation Number JBE 2020-30—Additional Measures for COVID-19 Public Health Emergency (March 16, 2020), <https://gov.louisiana.gov/assets/ExecutiveOrders/JBE-EO-30.pdf>. In Rhode Island, "[p]ublic bodies conducting meetings . . . are hereby relieved from the prohibitions regarding use of telephonic or electronic communication to conduct meetings . . . provided that the public body is meeting for an essential purpose and makes provisions to ensure public access to the meeting of the public body for members of the public through adequate, alternative means." Executive Order 20-05 (March 16, 2020), Third Supplemental Emergency Declaration – Public Meetings and Public Records Requests, <http://www.governor.ri.gov/documents/orders/Executive-Order-20-05.pdf>. On March 20, 2020, the Tennessee governor suspended certain provisions of the open meetings law "to allow a governing body . . . to meet and conduct its essential business by electronic means, rather than being required to gather a quorum of members physically present at the same location, if the governing body determines that meeting electronically is necessary to protect the health, safety and welfare of Tennesseans in light of the COVID-19 outbreak" State of Tennessee, Executive Order by the Governor, No. 16 (March 20, 2020), <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee16.pdf>.

Nebraskans are currently functioning under states of emergency at the state and federal levels. Public health officials are urging people to avoid social gatherings and practice social distancing. Officials are also advising older persons and persons with underlying health conditions to remain home. Consequently, we believe the Order represents an appropriate measure to limit the community spread of COVID-19 by eliminating public gatherings but still enable public bodies to conduct public business. We would urge public bodies that conduct meetings under the Order to keep in mind that we are all operating under an emergency situation. We recommend that only essential, time-sensitive matters that require action by the public body be considered.

Finally, this guidance has been issued to assist public bodies to understand the impact of the Order on the Open Meetings Act, over which we share concurrent enforcement authority with the state's county attorneys. However, it is up to each public body to decide whether to conduct meetings electronically. The Attorney General does not represent local governmental entities, and cannot provide these entities legal advice. All local governmental entities should confer with their legal counsel to determine the best way to reconcile compliance with the Open Meetings Act with the interests of public health and safety.



NEBRASKA

DEPARTMENT OF EDUCATION

Nebraska State Board of Education Meeting Protocol

Meeting date/time: Thursday, January 7, 2021; 1:00 pm.
Friday, January 8, 2021; 9:00 am.

Meeting location: State Board Room, Nebraska Department of Education, 6th floor,
Nebraska State Office Building, 301 Centennial Mall S, Lincoln,
NE, 68509

Purpose

The purpose of this document is to outline and detail measures and protocols that seek to protect and ensure the health, welfare, and safety of the public in light of the COVID-19 pandemic. For the purposes of this protocol document, “attende” shall mean any individual person who is attending the meeting, but not limited to: state board members, Nebraska Department of Education staff members, other State of Nebraska employees, hearing respondents, and members of the public.

Maximum attendance

Maximum attendance at the meeting is limited to the rated capacity of the meeting room. However in order to maintain six feet of physical distancing between individuals, the room will be setup to accommodate seating for about six (6) members of the public in addition to the eight state board members and limited NDE staff who will be in attendance. If there are more members of the public who attend than for which there is seating available, members of the public will be asked to wait in the lobby until seating becomes available.

Considerations for Attendees to Access Public Meetings

Attendees are asked to comply with the following directives:

- a. **Accessibility:** Entrance and exit to the State Board Room for members of the public will be restricted to the east entrance to the room. If the board enters executive session, the room will be vacated except for board members and select staff and counsel. Other attendees may exit directly to the lobby through the east door at this time.
- b. **Masks:** Masks that cover the mouth and nose are strongly recommended. All attendees are strongly encouraged to wear a mask at all times. A limited supply of masks will be provided for attendees who do not have a mask.
- c. **Hand sanitizer:** Hand sanitizer will be provided at the entrance to the room, and at other locations throughout the room. Use of hand sanitizer is strongly recommended upon entrance to the meeting room and after attendees touch their face, cough, or sneeze.

- d. **Physical distancing:** The meeting room will be arranged to ensure that all attendees are able to practice physical distancing with a space of at least six feet between individuals. Arranged chairs and tables are not to be moved. Attendees should avoid shaking hands or making physical contact with other attendees. When members of the public leave the meeting room, occupied seats will be wiped with disinfecting sanitizer by an NDE staff member. After each use of the podium for public comment and other address to the board, an NDE staff person will wipe the surfaces with disinfecting sanitizer.
- e. **Personal questionnaire:** Attendees will be presented with the following questions on signage at the entrance to the meeting room and asked to self-identify responses of “Yes” or “No” to each question.
1. Are you experiencing, or experienced any of the following symptoms in the last 14 days?
 - i. Fever or chills
 - ii. Cough
 - iii. Shortness of breath or difficulty breathing
 - iv. Fatigue
 - v. Muscle or body aches
 - vi. Headache
 - vii. New loss of taste or smell
 - viii. Sore throat
 - ix. Congestion or runny nose
 - x. Nausea or vomiting
 - xi. Diarrhea
 2. Have you been in physical contact with or in close proximity to anyone who tested positive for COVID-19 in the last 14 days?
 3. Have you traveled outside of the United States in the last 14 days?
 4. Have you been in physical contact with or in close proximity to anyone who has traveled outside of the country, or who has been ill?
 5. Do you have a temperature of greater than 100.4 degrees Fahrenheit?

Should an attendee be able to identify a “Yes” response to any of these question, the Attendee should self-select to not enter the meeting room and leave the building.



NEBRASKA

DEPARTMENT OF EDUCATION

STATE BOARD OF EDUCATION
ANNUAL ORIENTATION
Thursday, January 7, 2021
1:00 PM

- I. **Review of Schedule**
- II. **What is the State Board of Education?**
- III. **Legal Topics**
- IV. **Board Policy**
- V. **Parliamentary Procedure**
- VI. **Board Operations Q&A/Discussion**
- VII. **Additional Information for 2021**
- VIII. **Review of Agenda for Friday, January 8, 2021**