

AMENDMENTS TO LB 1021

Introduced by Education.

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Sections 1 to 16 of this act shall be known
4 and may be cited as the High School Activities Association Meetings
5 and Records Accessibility Act.

6 Sec. 2. It is the policy of this state that meetings
7 of an association that governs interscholastic competition in
8 high school activities are of public interest and may not be
9 conducted in secret. Every meeting of an association that governs
10 interscholastic competition in high school activities in Nebraska
11 shall be open to the public in order that citizens may exercise the
12 democratic privilege of attending and speaking at meetings of such
13 an association, except as otherwise provided by the Constitution of
14 Nebraska, federal law, and the High School Activities Association
15 Meetings and Records Accessibility Act. The public shall be
16 afforded access to records of such an association, except as
17 otherwise provided by the Constitution of Nebraska, federal law,
18 and the High School Activities Association Meetings and Records
19 Accessibility Act.

20 Sec. 3. For purposes of the High School Activities
21 Association Meetings and Records Accessibility Act:

22 (1) Activities means sanctioned interscholastic
23 competitions and contests in the fields of athletics, music, drama,

1 speech, debate, and journalism;

2 (2) Association means any organization or entity of which
3 schools in the state which provide for student participation in
4 activities are members and the purpose of which is the statewide
5 administration, management, and enforcement of activities;

6 (3) Association governing body means any board,
7 commission, committee, or other such administrative body
8 established within an association to carry out specific functions
9 and duties of the association on a regional or statewide basis.
10 Association governing body does not include subcommittees of an
11 association governing body unless a quorum of the association
12 governing body attends a subcommittee meeting or unless such
13 subcommittees are holding hearings, making policy, or taking formal
14 action on behalf of the association governing body as a whole;

15 (4) Meeting means any regular, special, or called
16 meeting, formal or informal, of an association governing body
17 for the purposes of briefing, discussion of association business,
18 formation of tentative policy, or taking any action of the
19 association;

20 (5) Member school means a public or nonpublic Nebraska
21 school which (a) operates any grade or grades above grade six and
22 (b) holds an active paid membership with an association; and

23 (6) Videoconferencing means conducting a meeting
24 involving participants at two or more locations through the use of
25 audio-video equipment which allows participants at each location
26 to hear and see each meeting participant at each other location,
27 including public input. Interaction between meeting participants

1 shall be possible at all meeting locations.

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

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

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

17 (c) Investigative proceedings regarding allegations of
18 criminal misconduct; or

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

22 An association governing body shall not hold a closed
23 session for discussion of the appointment or election of a new
24 member to such body.

25 (2) The vote to hold a closed session shall be taken
26 in open session. The entire motion, the vote of each member on
27 the motion to hold a closed session, and the time when the closed

1 session commenced and concluded shall be recorded in the minutes.
2 If the motion to hold a closed session passes, the presiding
3 officer immediately prior to the closed session shall restate on
4 the record the limitation of the subject matter of the closed
5 session. The association governing body holding such closed session
6 shall restrict its consideration of matters during the closed
7 portions to only those purposes set forth in the motion to hold a
8 closed session as the reason for the closed session. The meeting
9 shall be reconvened in open session before any formal action may
10 be taken. For purposes of this section, formal action means a
11 collective decision or a collective commitment or promise to make
12 a decision on any question, motion, proposal, resolution, order,
13 or ordinance or formation of a position or policy but does not
14 include negotiating guidance given by members of the association
15 governing body to legal counsel or other negotiators in closed
16 sessions authorized under subdivision (1)(a) of this section.

17 (3) Any member of any association governing body has the
18 right to challenge the continuation of a closed session if the
19 member determines that the session has exceeded the reason stated
20 in the original motion to hold a closed session or if the member
21 contends that the closed session is neither clearly necessary
22 for (a) the protection of the public participation or (b) the
23 prevention of needless injury to the reputation of an individual.
24 Such challenge may be overruled only by a majority vote of the
25 members of the association governing body. Such challenge and its
26 disposition shall be recorded in the minutes.

27 (4) This section does not require that any meeting be

1 closed to the public. No person or association governing body shall
2 fail to invite a portion of its members to a meeting, and no
3 association governing body shall designate itself a subcommittee of
4 the whole body, for the purpose of circumventing the High School
5 Activities Association Meetings and Records Accessibility Act. No
6 closed session, informal meeting, chance meeting, social gathering,
7 email, fax, or other electronic communication shall be used for the
8 purpose of circumventing the requirements of the act.

9 (5) The act does not apply to chance meetings or to
10 attendance at or travel to conventions or workshops of members of
11 an association governing body at which there is no meeting of the
12 body intentionally convened, if there is no vote or other action
13 taken regarding any matter over which the association governing
14 body has supervision, control, jurisdiction, or advisory power.

15 Sec. 5. (1) An association governing body shall give
16 reasonable advance publicized notice of the time and place of each
17 meeting by a method designated by the association governing body
18 and recorded in its minutes. Such notice shall be transmitted to
19 all members of the association governing body and to the public.
20 Such notice shall contain an agenda of subjects known at the
21 time of the publicized notice or a statement that the agenda,
22 which shall be kept continually current, shall be readily available
23 for public inspection at the principal office of the association
24 governing body during normal business hours. Agenda items shall be
25 sufficiently descriptive to give the public reasonable notice of
26 the matters to be considered at the meeting. Except for items of
27 an emergency nature, the agenda shall not be altered later than

1 twenty-four hours before the scheduled commencement of the meeting.

2 An association governing body shall have the right to modify the
3 agenda to include items of an emergency nature only at such public
4 meeting.

5 (2) A meeting of an association governing body may be
6 held by means of videoconferencing if:

7 (a) Reasonable advance publicized notice is given;

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

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

17 (d) At least one member of the association governing body
18 is present at each site of the videoconference conference; and

19 (e) No more than one-half of the association governing
20 body's meetings in a calendar year are held by videoconference.

21 Videoconferencing or conferencing by other electronic
22 communication shall not be used to circumvent any of the purposes
23 established in the High School Activities Association Meetings and
24 Records Accessibility Act.

25 (3) A meeting of an association governing board may be
26 held by telephone conference call if:

27 (a) The territory represented by the association

1 governing board covers more than one county;

2 (b) Reasonable advance publicized notice is given which
3 identifies each telephone conference location at which a member of
4 the association governing body will be present;

5 (c) All telephone conference meeting sites identified in
6 the notice are located within public buildings used by members of
7 the association governing body or at a place which will accommodate
8 the anticipated audience;

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

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

18 (f) At least one member of the association governing body
19 is present at each site of the telephone conference call identified
20 in the public notice;

21 (g) The telephone conference call lasts no more than one
22 hour; and

23 (h) No more than one-half of the association governing
24 board's meetings in a calendar year are held by telephone
25 conference call.

26 This subsection does not prevent the participation of
27 consultants, members of the press, and other nonmembers of the

1 association governing body at sites not identified in the public
2 notice. Telephone conference calls shall not be used to circumvent
3 any of the public participation purposes established in the High
4 School Activities Association Meetings and Records Accessibility
5 Act.

6 (4) The secretary or other designee of each association
7 governing body shall maintain a list of the news media requesting
8 notification of meetings and shall make reasonable efforts to
9 provide advance notification to them of the time and place of each
10 meeting and the subjects to be discussed at that meeting.

11 (5) When it is necessary to hold an emergency meeting
12 without reasonable advance public notice, the nature of the
13 emergency shall be stated in the minutes and any formal action
14 taken in such meeting shall pertain only to the emergency.
15 Such emergency meetings may be held by means of electronic or
16 telecommunication equipment. The association governing body shall
17 comply with the provisions of subsection (4) of this section in
18 conducting emergency meetings. Complete minutes of such emergency
19 meetings specifying the nature of the emergency and any formal
20 action taken at the meeting shall be made available to the public
21 by no later than the end of the next regular business day.

22 (6) An association governing body may allow a member
23 of the public or any other witness other than a member of the
24 association governing body to appear before it by means of video or
25 telecommunications equipment.

26 Sec. 6. (1) Subject to the High School Activities
27 Association Meetings and Records Accessibility Act, the public

1 has the right to attend and the right to speak at meetings of
2 association governing bodies, and all or any part of a meeting of
3 an association governing body, except for closed sessions called
4 pursuant to section 4 of this act, may be videotaped, televised,
5 photographed, broadcast, or recorded by any person in attendance
6 by means of a tape recorder, camera, video equipment, or any other
7 means of pictorial or sonic reproduction or in writing.

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

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

23 (4) No association governing body shall, for the purpose
24 of circumventing the High School Activities Association Meetings
25 and Records Accessibility Act, hold a meeting in a place known by
26 the association governing body to be too small to accommodate the
27 anticipated audience.

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

4 (6) An association governing body shall, upon request,
5 make a reasonable effort to enable the public to hear the
6 discussion and testimony presented at the meeting.

7 (7) An association governing body shall make available
8 at the meeting or the instate location for a telephone conference
9 call or videoconference, for examination and copying by members of
10 the public, at least one copy of all reproducible written material
11 to be discussed at an open meeting. An association governing
12 body shall make available at least one current copy of the High
13 School Activities Association Meetings and Records Accessibility
14 Act posted in the meeting room at a location accessible to members
15 of the public. At the beginning of the meeting, the public shall be
16 informed about the location of the posted information.

17 Sec. 7. (1) An association governing body shall keep
18 minutes of all meetings showing the time, place, members present
19 and absent, and the substance of all matters discussed.

20 (2) Any action taken on any question or motion duly
21 moved and seconded shall be by roll call vote of the association
22 governing body in open session, and the record shall state how
23 each member voted or if the member was absent or not voting. The
24 requirements of a roll call or viva voce vote shall be satisfied by
25 an association governing body which utilizes an electronic voting
26 device which allows the yeas and nays of each member of such
27 association governing body to be readily seen by the public.

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

4 (4) The minutes of all meetings and evidence and
5 documentation received or disclosed in open session shall be
6 public records of the association and open to public inspection
7 during normal business hours.

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

11 Sec. 8. (1) The Attorney General and the county attorney
12 of the county in which the association governing body ordinarily
13 meets shall enforce the High School Activities Association Meetings
14 and Records Accessibility Act.

15 (2) Any citizen of this state may commence a suit in the
16 district court of the county in which the association governing
17 body ordinarily meets or in which the plaintiff resides for the
18 purpose of requiring compliance with or preventing violations
19 of the High School Activities Association Meetings and Records
20 Accessibility Act, for the purpose of declaring an action of an
21 association governing body void, or for the purpose of determining
22 the applicability of the act to discussions or decisions of the
23 association governing body. It shall not be a defense that the
24 citizen attended the meeting and failed to object at such time.
25 The court may order payment of reasonable attorney's fees and
26 court costs to a successful plaintiff in a suit brought under this
27 section.

1 (3) Any motion, resolution, rule, regulation, or formal
2 action of an association governing body made or taken in violation
3 of the High School Activities Association Meetings and Records
4 Accessibility Act shall be declared void by the district court if
5 suit is commenced within one hundred twenty days after the meeting
6 of the association governing body at which the alleged violation
7 occurred. Any motion, resolution, rule, regulation, ordinance, or
8 formal action of an association governing body made or taken in
9 substantial violation of the High School Activities Association
10 Meetings and Records Accessibility Act shall be voidable by the
11 district court if suit is commenced more than one hundred twenty
12 days after but within one year after the meeting of the public body
13 in which the alleged violation occurred. A suit to void any final
14 action shall be commenced within one year after the action.

15 (4) Any member of an association governing body who
16 knowingly violates or conspires to violate or who attends or
17 remains at a meeting knowing that the association governing body
18 is in violation of any provision of the High School Activities
19 Association Meetings and Records Accessibility Act commits a Class
20 IV misdemeanor for a first offense and a Class III misdemeanor for
21 a second or subsequent offense.

22 Sec. 9. (1) Except as otherwise expressly provided by
23 federal or state statute, all citizens of this state and all
24 other persons interested in the examination of the public records
25 described in section 10 of this act may (a) examine such records
26 and make memoranda, copies using their own copying or photocopying
27 equipment in accordance with subsection (2) of this section, and

1 abstracts thereof, all free of charge, during the hours the office
2 of an association is kept open for the ordinary transaction of
3 business and (b) unless federal copyright law otherwise provides,
4 obtain copies of public records of the association in accordance
5 with subsection (3) of this section during the hours such office is
6 kept open for the ordinary transaction of business.

7 (2) Copies made by citizens or other persons using their
8 own copying or photocopying equipment pursuant to subdivision
9 (1)(a) of this section shall be made at the office of the
10 association or at a location mutually agreed to by the requester
11 and the custodian.

12 (3)(a) Copies may be obtained pursuant to subdivision
13 (1)(b) of this section only if the association has copying
14 equipment reasonably available. Such copies may be obtained in any
15 form designated by the requester in which the public record of the
16 association is maintained or produced, including, but not limited
17 to, printouts, electronic data, discs, tapes, and photocopies.

18 (b) Except as otherwise provided by statute, the
19 association may charge a fee for providing copies of such public
20 record pursuant to subdivision (1)(b) of this section, which fee
21 shall not exceed the actual cost of making the copies available.
22 For purposes of this subdivision, (i) for photocopies, the actual
23 cost of making the copies available shall not exceed the amount
24 of the reasonably calculated actual cost of the photocopies, (ii)
25 for printouts of computerized data on paper, the actual cost of
26 making the copies available shall include the reasonably calculated
27 actual cost of computer run time and the cost of materials for

1 making the copy, and (iii) for electronic data, the actual cost of
2 making the copies available shall include the reasonably calculated
3 actual cost of the computer run time, any necessary analysis and
4 programming, and the production of the report in the form furnished
5 to the requester.

6 (c) This section does not require the association or an
7 association governing body to produce or generate any public record
8 of the association in a new or different form or format modified
9 from that of the original public record of the association.

10 (d) If copies requested in accordance with subdivision
11 (1)(b) of this section are estimated by the association to cost
12 more than fifty dollars, the association may require the requester
13 to furnish a deposit prior to fulfilling such request.

14 (4) Upon receipt of a written request for access to or
15 copies of a public record of the association, the association shall
16 provide to the requester as soon as is practicable and without
17 delay, but not more than four business days after actual receipt of
18 the request, (a) access to or, if copying equipment is reasonably
19 available, copies of the public record of the association, (b) if
20 there is a legal basis for denial of access or copies, a written
21 denial of the request together with the information specified in
22 section 12 of this act, or (c) a written explanation if the entire
23 request cannot with reasonable good faith efforts be fulfilled
24 within four business days after actual receipt of the request due
25 to the significant difficulty or the extensiveness of the request,
26 including the earliest practicable date for fulfilling the request,
27 an estimate of the expected cost of any copies, and an opportunity

1 for the requester to modify or prioritize the items within the
2 request.

3 Sec. 10. (1) Except when any other federal or state
4 statute expressly provides that particular information or records
5 shall not be made public, public records of an association shall
6 include all records and documents, regardless of physical form, of
7 or belonging to the association or any governing body thereof. Data
8 which is a public record of the association in its original form
9 shall remain a public record of the association when maintained in
10 computer files.

11 (2) When an association provides to a member of the
12 public, upon request, a copy of a public record of the association
13 by transmitting it from a modem to an outside modem, a reasonable
14 fee may be charged for such specialized service. Such fee
15 may include a reasonable amount representing a portion of the
16 amortization of the cost of computer equipment, including software,
17 necessarily added in order to provide such specialized service.
18 This subsection does not require the association or an association
19 governing body to acquire computer capability to generate public
20 records of the association in a new or different form when that new
21 form would require additional computer equipment or software not
22 already possessed by the association or association governing body.

23 (3) Sections 9 to 11 of this act shall be liberally
24 construed whenever any association fiscal records, audit, warrant,
25 voucher, invoice, purchase order, requisition, payroll, check,
26 receipt, or other record of receipt, cash, or expenditure involving
27 public funds is involved in order that the citizens of this state

1 have the full right to know of and have full access to information
2 on activities of an association or an association governing body.

3 Sec. 11. Any person denied any rights granted by sections
4 9 and 10 of this act may:

5 (1) File for speedy relief by a writ of mandamus in the
6 district court within whose jurisdiction the association officer
7 who has custody of the public record of the association can be
8 served; or

9 (2) Petition the Attorney General to review the matter to
10 determine whether a record of the association may be withheld from
11 public inspection or whether the association, or the association
12 governing body that is custodian of such record, has otherwise
13 failed to comply with such sections. This determination shall be
14 made within fifteen calendar days after the submission of the
15 petition. If the Attorney General determines that the record may
16 not be withheld or that the association is otherwise not in
17 compliance, the association shall be ordered to disclose the record
18 immediately or otherwise comply. If the association continues to
19 withhold the record or remain in noncompliance, the person seeking
20 disclosure or compliance may (a) bring suit in the trial court of
21 general jurisdiction or (b) demand in writing that the Attorney
22 General bring suit in the name of the state in the trial court of
23 general jurisdiction for the same purpose. If such demand is made,
24 the Attorney General shall bring suit within fifteen calendar days
25 after its receipt. The requester shall have an absolute right to
26 intervene as a full party in the suit at any time.

27 (3) In any suit filed under this section, the court has

1 jurisdiction to enjoin the association from withholding records,
2 to order the disclosure, and to grant such other equitable relief
3 as may be proper. The court shall determine the matter de novo
4 and the burden is on the association to sustain its action.
5 The court may view the records in controversy in camera before
6 reaching a decision, and in the discretion of the court other
7 persons, including the requester, counsel, and necessary expert
8 witnesses, may be permitted to view the records, subject to
9 necessary protective orders.

10 (4) Proceedings arising under this section, except as to
11 the cases the court considers of greater importance, shall take
12 precedence on the docket over all other cases and shall be assigned
13 for hearing, trial, or argument at the earliest practicable date
14 and expedited in every way.

15 Sec. 12. (1) Any person denied any rights granted by
16 sections 9 to 11 of this act shall receive in written form from the
17 association governing body which denied the request for records of
18 the association at least the following information:

19 (a) A description of the contents of the records
20 of the association withheld and a statement of the specific
21 reasons for the denial, correlating specific portions of the
22 records of the association to specific reasons for the denial,
23 including citations to the particular statute and subsection
24 thereof expressly providing the exception relied on as authority
25 for the denial;

26 (b) The name of the association official or employee
27 responsible for the decision to deny the request; and

1 (c) Notification to the requester of any administrative
2 or judicial right of review under section 11 of this act.

3 (2) Each association governing body shall maintain a file
4 of all letters of denial of request for records of the association.
5 This file shall be made available to any person on request.

6 Sec. 13. The following records of the association,
7 unless publicly disclosed in open court, an open administrative
8 proceeding, or an open meeting or disclosed by an association
9 governing body pursuant to its duties, may be withheld from the
10 public by the custodian of the records:

11 (1) Personal information in records regarding a student,
12 prospective student, or former student of any member school when
13 such records are maintained by and in the possession of the
14 association or an association governing body, other than routine
15 directory information specified and made public consistent with 20
16 U.S.C. 1232g, as such section existed on January 1, 2010;

17 (2) Medical records in any form concerning any person;

18 (3) Proprietary or commercial information which if
19 released would give advantage to business competitors and serve no
20 public purpose;

21 (4) Records which represent the work product of an
22 attorney and the association which are related to preparation for
23 litigation, labor negotiations, or claims made by or against the
24 association or which are confidential communications as defined in
25 section 27-503;

26 (5) Appraisals or appraisal information and negotiation
27 records concerning the purchase or sale, by the association, of any

1 interest in real or personal property, prior to completion of the
2 purchase or sale;

3 (6) Personal information in records regarding personnel
4 of the association other than salaries and routine directory
5 information;

6 (7) Information solely pertaining to protection of
7 the security of association property and persons on or within
8 association property, such as specific, unique vulnerability
9 assessments or specific, unique response plans, either of which is
10 intended to prevent or mitigate criminal acts the public disclosure
11 of which would create a substantial likelihood of endangering
12 the safety of association personnel or property; computer or
13 communications network schema, passwords, and user identification
14 names; guard schedules; or lock combinations;

15 (8) Job application materials submitted by applicants,
16 other than finalists, who have applied for employment by the
17 association. For purposes of this subdivision, (a) job application
18 materials means employment applications, resumes, reference
19 letters, and school transcripts and (b) finalist means any
20 applicant (i) who reaches the final pool of applicants, numbering
21 four or more, from which the successful applicant is to be
22 selected, (ii) who is an original applicant when the final pool
23 of applicants numbers less than four, or (iii) who is an original
24 applicant and there are four or fewer original applicants; and

25 (9) Any social security numbers; credit card, charge
26 card, or debit card numbers and expiration dates; and financial
27 account numbers in the possession of the association.

1 Sec. 14. Any reasonably segregable public portion of a
2 record of the association shall be provided to the public as a
3 public record of the association upon request after deletion of the
4 portions which may be withheld.

5 Sec. 15. The provisions of sections 7 and 9 to 16 of this
6 act pertaining to access to public records of the association may
7 be enforced by equitable relief, whether or not any other remedy
8 is also available. In any case in which the complainant seeking
9 access has substantially prevailed, the court may assess against
10 the association reasonable attorney's fees and other litigation
11 costs reasonably incurred by the complainant.

12 Sec. 16. Any official who violates any of the provisions
13 of sections 9 to 15 of this act commits a Class III misdemeanor and
14 is subject to removal.