

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 778

Introduced by Chambers, 11; Ashford, 20.

Read first time January 10, 2014

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to political subdivisions; to amend section
2 49-14,103.01, Reissue Revised Statutes of Nebraska, and
3 section 84-1409, Revised Statutes Cumulative Supplement,
4 2012; to require certain entities to make documents
5 available for public examination as prescribed and comply
6 with statutory provisions regarding conflicts of interest
7 and the Open Meetings Act; to harmonize provisions; and
8 to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Any entity jointly formed or constituted
2 between a political subdivision and another entity shall:

3 (1) Require compliance with sections 49-14,103.01 to
4 49-14,103.06 by the members of the governing board of the entity;

5 (2) Comply with the Open Meetings Act; and

6 (3) Make available for public examination documents and
7 business records disclosed at a public meeting of the governing board
8 of the entity on or after the effective date of this act or required
9 to be approved by the governing board at a public meeting on or after
10 the effective date of this act but shall not be required to make
11 available trade secrets and other proprietary or commercial
12 information which if released would give advantage to business
13 competitors and serve no public purpose.

14 Sec. 2. Section 49-14,103.01, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 49-14,103.01 (1) For purposes of sections 49-14,103.01 to
17 49-14,103.06, unless the context otherwise requires, officer means
18 (a) a member of the board of directors of a natural resources
19 district, (b) a member of any board or commission of any county,
20 school district, city, or village which spends and administers its
21 own funds, who is dealing with a contract made by such board or
22 commission, (c) any elected county, school district, educational
23 service unit, city, or village official, ~~and~~—(d) a member of any
24 board of directors or trustees of a hospital district as provided by
25 the Nebraska Local Hospital District Act or a county hospital as

1 provided by sections 23-3501 to 23-3519, and (e) a member of a
2 governing board of an entity required to comply with sections
3 49-14,103.01 to 49-14,103.06 under section 1 of this act. Officer
4 does not mean volunteer firefighters or ambulance drivers with
5 respect to their duties as firefighters or ambulance drivers.

6 (2) Except as provided in section 49-1499.04 or
7 70-624.04, no officer may have an interest in any contract to which
8 his or her governing body, or anyone for its benefit, is a party. The
9 existence of such an interest in any contract shall render the
10 contract voidable by decree of a court of competent jurisdiction as
11 to any person who entered into the contract or took assignment of
12 such contract with actual knowledge of the prohibited conflict.

13 (3) An action to have a contract declared void under this
14 section may be brought by the county attorney, the governing body, or
15 any resident within the jurisdiction of the governing body and shall
16 be brought within one year after the contract is signed or assigned.
17 The decree may provide for the reimbursement of any person for the
18 reasonable value of all money, goods, material, labor, or services
19 furnished under the contract, to the extent that the governing body
20 has benefited thereby.

21 (4) The prohibition in this section shall apply only when
22 the officer or his or her parent, spouse, or child (a) has a business
23 association as defined in section 49-1408 with the business involved
24 in the contract or (b) will receive a direct pecuniary fee or
25 commission as a result of the contract.

1 (5) The prohibition in this section does not apply if the
2 contract is an agenda item approved at a board meeting and the
3 interested officer:

4 (a) Makes a declaration on the record to the governing
5 body responsible for approving the contract regarding the nature and
6 extent of his or her interest prior to official consideration of the
7 contract;

8 (b) Does not vote on the matters of granting the
9 contract, making payments pursuant to the contract, or accepting
10 performance of work under the contract, or similar matters relating
11 to the contract, except that if the number of members of the
12 governing body declaring an interest in the contract would prevent
13 the body with all members present from securing a quorum on the
14 issue, then all members may vote on the matters; and

15 (c) Does not act for the governing body which is party to
16 the contract as to inspection or performance under the contract in
17 which he or she has an interest.

18 (6) An officer who (a) has no business association as
19 defined in section 49-1408 with the business involved in the contract
20 or (b) will not receive a direct pecuniary fee or commission as a
21 result of the contract shall not be deemed to have an interest within
22 the meaning of this section.

23 (7) The receiving of deposits, cashing of checks, and
24 buying and selling of warrants and bonds of indebtedness of any such
25 governing body by a financial institution shall not be considered a

1 contract for purposes of this section. The ownership of less than
2 five percent of the outstanding shares of a corporation shall not
3 constitute an interest within the meaning of this section.

4 (8) If an officer's parent, spouse, or child is an
5 employee of his or her governing body, the officer may vote on all
6 issues of the contract which are generally applicable to (a) all
7 employees or (b) all employees within a classification and do not
8 single out his or her parent, spouse, or child for special action.

9 (9) Section 49-14,102 does not apply to contracts covered
10 by sections 49-14,103.01 to 49-14,103.06.

11 (10)(a) This section does not prohibit a director of a
12 natural resources district from acting as a participant in any of the
13 conservation or other general district programs which are available
14 for like participation to other residents and landowners of the
15 district or from granting, selling, or otherwise transferring to such
16 district any interest in real property necessary for the exercise of
17 its powers and authorities if the cost of acquisition thereof is
18 equal to or less than that established by a board of three
19 credentialed real property appraisers or by a court of competent
20 jurisdiction in an eminent domain proceeding.

21 (b) District payments to a director of a natural
22 resources district of the market value for real property owned by him
23 or her and needed for district projects, or for cost sharing for
24 conservation work on such director's land or land in which a director
25 may have an interest, shall not be deemed subject to this section.

1 Sec. 3. Section 84-1409, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 84-1409 For purposes of the Open Meetings Act, unless the
4 context otherwise requires:

5 (1)(a) Public body means (i) governing bodies of all
6 political subdivisions of the State of Nebraska, (ii) governing
7 bodies of all agencies, created by the Constitution of Nebraska,
8 statute, or otherwise pursuant to law, of the executive department of
9 the State of Nebraska, (iii) all independent boards, commissions,
10 bureaus, committees, councils, subunits, or any other bodies created
11 by the Constitution of Nebraska, statute, or otherwise pursuant to
12 law, (iv) all study or advisory committees of the executive
13 department of the State of Nebraska whether having continuing
14 existence or appointed as special committees with limited existence,
15 (v) advisory committees of the bodies referred to in subdivisions
16 (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities
17 exercising essentially public functions, including entities required
18 to comply with the Open Meetings Act under section 1 of this act; and

19 (b) Public body does not include (i) subcommittees of
20 such bodies unless a quorum of the public body attends a subcommittee
21 meeting or unless such subcommittees are holding hearings, making
22 policy, or taking formal action on behalf of their parent body,
23 except that all meetings of any subcommittee established under
24 section 81-15,175 are subject to the Open Meetings Act, and (ii)
25 entities conducting judicial proceedings unless a court or other

1 judicial body is exercising rulemaking authority, deliberating, or
2 deciding upon the issuance of administrative orders;

3 (2) Meeting means all regular, special, or called
4 meetings, formal or informal, of any public body for the purposes of
5 briefing, discussion of public business, formation of tentative
6 policy, or the taking of any action of the public body; and

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

13 Sec. 4. Original section 49-14,103.01, Reissue Revised
14 Statutes of Nebraska, and section 84-1409, Revised Statutes
15 Cumulative Supplement, 2012, are repealed.