A: S.D.L. 1-25-1.4 requires state boards, commissions, or departments to make public meeting materials available on http://boardsandcommissions.sd.gov. S.D.L. 1-27-1.16 requires that any public body must post meeting materials on the public body’s website (where one exists), or make those materials available to the public at least twenty-four hours prior to the meeting or when made available to the members of the public body, which requires that draft minutes of public meetings must be made available to the public at the principal place of business for the public body within 10 business days after the meeting (or made available on the website for the public body within five business days). These laws are in addition to any specific requirements for public bodies (i.e., publication requirements in state laws contained in S.D.C.L. ch. 1-27 are handled by the public body or political subdivision, or public body if its members provide information or attend the official meeting of another political subdivision or public body for which the notice requirements of § 1-25-1.1 have been met.)

Q: WHAT RECORDS MUST BE AVAILABLE TO THE PUBLIC IN CONJUNCTION WITH PUBLIC MEETINGS;
A: The public body's website, at least one copy of the printed material, or the video recording of the meeting is required to be open to the public pursuant to § 1-25-2.

Q: WHAT REQUIREMENTS APPLY TO TASK FORCES, COMMITTEES AND WORKING GROUPS;
A: Task forces and committees that exercise “sovereign power” and are created by statute, ordinance, or proclamation and, or are advisory only may not be subject to the open meetings law. S.D.L. 1-25-1. Task forces, committees, and working groups that are not created by statute, ordinance, or proclamation and, or are advisory only may be subject to the open meetings law. S.D.L. 1-25-1.

Q: ARE EMAIL DISCUSSIONS “MEETINGS” FOR PURPOSES OF THIS LAW?
A: The definition of an “official meeting” in S.D.L. 1-25-1.1 references teleconferences. The definition of a “teleconference” in S.D.L. 1-25-1.2 includes the exchange of information via the internet or any other electronic medium.

Q: CONDUCT THE PUBLIC’S BUSINESS IN PUBLIC
A: A guide to South Dakota’s Open Meetings Law (Revised Fall 2017) Prepared by representatives of the:
S.D. Attorney General’s Office
S.D. Municipal League
S.D. Association of School Boards
S.D. Association of County Commissioners
S.D. Newspaper Association
S.D. Broadcasters Association
S.D. Association of Towns and Rushmore Press

Published by:
South Dakota Open Meetings Commission
1125 32nd Ave. Brookings, SD 57006

Q: ARE MEETING MINUTES REQUIRED;
A: The minutes of a meeting shall be available to members of the local news media who have requested notice. The information in the minutes shall be delivered to person by mail, by email, or by telephone, except the teleconference minutes. For any special or rescinded meeting, each state board, commission, or department shall provide public notice of closed meeting minutes to the extent required by § 1-25-3.

Q: ARE MEETING AGENDAS REQUIRED;
A: The analysis of these two definitions leads to the conclusion that a public meeting has not occurred as defined in § 1-25-1.2. A teleconference is not an official meeting performed by or pursuant to an administrative action unless it is conducted under § 1-25-1.2. A member is deemed present if the member participates in the meeting by video or teleconference for the purpose of determining a quorum. Each vote of an official meeting is recorded in writing by the presiding officer or a member of the public body.

Q: ARE MEETING AGENDAS FOR CLOSED MEETINGS REQUIRED;
A: The official meeting of a state board, commission, or department held pursuant to § 1-25-1.2, or at a location open to the public, arrangements shall be provided for one or more places for the public to listen to the teleconference. In the case of a state board, commission, or department a public body conducts an official meeting by teleconference, the state, the public body, or the political subdivision at the location open to the public, arrangements shall be provided for one or more places for the public to listen to the teleconference. In the case of any other public body, the requirement to provide one or more places for the public to listen to the teleconference does not apply to an executive or closed meeting.

Q: ARE MEETING AGENDAS FOR EXECUTIVE SESSIONS (MINUTES)
A: A quorum of town board members, road district trustees, or trustees for a municipality of the third class only must be present for the purpose of conducting an executive session. An executive session means any illegal action is made at an official meeting if the notice requirements of § 1-25-1, but the information in the notice shall be delivered in person, by mail, or by email, or by telephone, except the teleconference minutes. For any special or rescinded meeting, each state board, commission, or department shall provide public notice of closed meeting minutes to the extent required by § 1-25-3.

Q: ARE MEETING AGENDAS FOR OPEN MEETINGS REQUIRED;
A: For the purposes of this section, a political subdivision or law, or as the case may be, a municipality, county, city, school district, special district, or entity that is created by state law, is a public body. A political subdivision or public body if its members provide information or attend the official meeting of another political subdivision or public body for which the notice requirements of § 1-25-1.1 have been met.

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Q: ARE MEETING AGENDAS REQUIRED FOR EXECUTIVE SESSIONS (MINUTES);
Q: WHAT IS SOUTH DAKOTA’S OPEN MEETINGS LAW?
A: South Dakota’s open meetings law embodies the principle that the public is entitled to the greatest possible information about public affairs and is intended to encourage public participation in government. SDCL 1-25-1 requires that official meetings of public bodies must be public and notice is to be given of such meetings 24 hours in advance of the meeting. The State Constitution’s “right of access” clause authorizes the courts to order notification of special or rescheduled meetings at least annually. SDCL 1-25-1.3 varies slightly from SDCL 1-25-1 and requires the State, and each state board, commission, or department to give notice by posting a proposed agenda at least 72 continuous hours before a meeting is scheduled to start (this does not include the day the agenda is posted, or any weekend or legal holiday). Each state board, commission, or department is required to give notice of a public meeting by posting its proposed agenda on http://boardsandcommissions.sd.gov.

Q: WHO ARE LOCAL NEWS MEDIA?
A: There is no definition of “local news media” in SDCL ch. 1-25. “News media” is defined in SDCL 13-1-57 generally as those personnel of a newspaper, periodical, news service, radio station, or television station regardless of the medium through which their content is delivered. The Attorney General is of the opinion that “local news media” is all news media – broadcast and print – that regularly carry news to the community.

Q: CAN PUBLIC MEETINGS BE RECORDED?
A: Yes, SDCL 1-25-11 requires public bodies to allow recording (audio or video) of their meetings as long as the recording is reasonable, obvious, and not disruptive.

Q: WHEN CAN A MEETING BE CLOSED TO THE PUBLIC AND MEDIA?
A: SDCL 1-25-2 allows a public body to close a meeting for the following reasons: (1) to discuss personnel issues pertaining to officers or employees; (2) consideration of the performance or discipline of a student, or the student’s participation in interscholastic activities; (3) consulting with or reviewing communications from legal counsel; (4) pending litigation or contractual matters; (5) employee contract negotiations; or (6) to discuss marketing or pricing strategies of a publicly-owned competitive business. The statute also recognizes that executive session may be appropriate to comport with other laws that require confidentiality or permit executive or closed meetings. Federal law pertaining to students and medical records will also cause school districts and other entities to conduct executive sessions or conduct meetings so as to refrain from releasing any student information. Meetings may also be closed by states and counties for certain economic development matters. SDCL 9-34-19. Note that SDCL 1-25-2 and SDCL 9-34-19 do not require meetings to be closed in any of these circumstances. Any official action based on discussions in executive session must, however, be made at an open meeting.

Q: WHAT IS THE PROPER PROCEDURE FOR EXECUTIVE SESSIONS?
A: Motions for executive sessions must refer to the specific state or federal law allowing for the executive session (i.e. “pursuant to SDCL 1-25-2(3).” Also, best practice to avoid possible sanctions is to allow public participation in teleconferences where less than a quorum is present at the meeting.

Q: WHAT HAPPENS IF THE MEDIA OR PUBLIC IS IMPROPERLY EXCLUDED FROM A MEETING OR OTHER VIOLATIONS OF THE OPEN MEETINGS LAW OCCUR?
A: Excluding the media or public from a meeting that has not been properly closed subjects the public body or the members involved to (a) prosecution as a Class 2 misdemeanor punishable by a maximum sentence of 30 days in jail, a $500 fine or both or (b) a reprimand by the Open Meeting Commission. SDCL 1-25-10(1)(a)(A). The Open Meeting Commission may order the meeting be held again if the meeting for the property is not properly posted or other open meeting violations occur. Also, action taken during any meeting that is not open or has not been properly noticed could, if challenged, be declared null and void. It could even result in personal liability for members of the governing body involved, depending upon the action taken.

Q: HOW ARE ISSUES REFERRED TO THE OPEN MEETINGS COMMISSION (OMC)?
A: Persons alleging violations of the open meetings laws must make their complaints with law enforcement or the Attorney General’s Office in the county where the offense occurred. After a signed notified complaint is made under oath, and any necessary investigation is conducted, the State’s Attorney may (a) prosecute the case as a misdemeanor, (b) find that the matter has been properly closed, or (c) file a petition with the circuit court for statistical purposes or (c) forward the complaint to the Attorney General for a determination. The OMC is comprised of five State’s Attorneys appointed by the Attorney General. The OMC examines any violation has occurred and makes written public findings explaining its reasons. If you have questions on the procedures or status of a pending case, you may contact the Attorney General’s Office at 605-773-3215 to talk to an assistant for the OMC. The procedures for the OMC are posted on the website for the Office of Attorney General. http://atg.sd.gov.

Q: WHAT DOES THE TERM “SOVEREIGN POWER” MEAN?
A: The open meetings law does not define this term, but it generally means the power to levy taxes, impose penalties, make special assessments, create ordinances, abate nuisances, regulate the conduct of others, or perform other traditional government functions. The term may include the exercise of many other governmental functions. If an entity is unclear whether it is exercising “sovereign power” it should consult with legal counsel.

Q: MAY AGENDA ITEMS BE CONSIDERED IF THEY ARE ADDED LESS THAN 24 HOURS BEFORE A MEETING?
A: Proposed agendas for public meetings must be posted at least 24 hours in advance of the meeting. The purpose of the advance notice is to give the public a chance to discuss the topics to be discussed at a meeting is to provide information to interested members of the public concerning the governing body’s anticipated business. Typically the public body adopts the final agenda upon convening the meeting. At this time, the governing body may add or delete agenda items and may also change the order of business. In 2012, the South Dakota Supreme Court affirmed a South Dakota Circuit Court’s decision holding that the Board of Education’s primary agenda may be amended when the board takes action to formally adopt the meeting agenda. See Hagen v. Brown-Deuel School Dist. 25-1, 2012 SD 138. New items cannot be added after the agenda has been adopted by the governing body. Public bodies are strongly encouraged to provide 24 hours notice before adding any agenda items so as to be fair to the public and to avoid dispute. For special or rescheduled meetings, public bodies are to comply to the extent circumstances permit. In other words, posting less than 24 hours in advance may be permissible in emergencies.

Q: ARE TELECONFERENCES CONSIDERED PUBLIC MEETINGS?
A: Yes. The open meetings law allows meetings, including executive or closed meetings, to be conducted by teleconference – defined as an exchange of information between a physical location and a remote location through electronic means such as video, audio, or electronic means (including the internet) – if a place is provided for the public to participate. In addition, for teleconferences where less than a quorum is present at the location open to the public, arrangements must also be made for the public to listen by telephone or internet (except for portions of meetings properly closed for executive sessions). The media – broadcast and print – that regularly carry news to the community are also entitled to the greatest possible access to public meetings. SDCL 1-25-2. See also SDCL 1-25-6, the Records Retention and Destruction Rule, which requires public bodies to make their records available for inspection.

Q: WHO DOES THE OPEN MEETINGS LAW APPLY TO?
A: The open meetings law applies to all public bodies “of the state and its political subdivisions” that exercise “sovereign power derived from state law.” SDCL 1-25-1. This includes cities, counties, school boards and other public bodies created by ordinance or resolution, such as appointed boards, task forces, and committees, so long as they have authority to actually exercise sovereign power. Although no court decisions have been issued on the subject, this probably does not include bodies that are not created by statute, ordinance, or resolution, or that serve only in an advisory capacity. The state Constitution allows the Legislature and the Unified Judicial System to create rules regarding their own separate functions.

Q: WHEN PUBLIC BUSINESS IS BEING DISCUSSED?
A: When public business is being discussed, the media – broadcast and print – that regularly carry news to the community have the same notice requirements as any other meeting. All votes shall be taken by roll call. After a signed notarized complaint is made under oath, and any necessary investigation is conducted, the State’s Attorney may (a) prosecute the case as a misdemeanor, (b) find that the matter has been properly closed, or (c) file a petition with the circuit court for statistical purposes or (c) forward the complaint to the Attorney General for a determination. The OMC is comprised of five State’s Attorneys appointed by the Attorney General. The OMC examines any violation has occurred and makes written public findings explaining its reasons. If you have questions on the procedures or status of a pending case, you may contact the Attorney General’s Office at 605-773-3215 to talk to an assistant for the OMC. The procedures for the OMC are posted on the website for the Office of Attorney General. http://atg.sd.gov.

Q: HOW DOES THE OPEN MEETINGS LAW APPLY TO TELECONFERENCES?
A: SDCL 1-25-1 requires that official meetings of public bodies must be public and notice is to be given of such meetings 24 hours in advance of the meeting. The State Constitution’s “right of access” clause authorizes the courts to order notification of special or rescheduled meetings at least annually. SDCL 1-25-1.3 varies slightly from SDCL 1-25-1 and requires the State, and each state board, commission, or department to give notice by posting a proposed agenda at least 72 continuous hours before a meeting is scheduled to start (this does not include the day the agenda is posted, or any weekend or legal holiday). Each state board, commission, or department is required to give notice of a public meeting by posting its proposed agenda on http://boardsandcommissions.sd.gov.

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