



South Dakota Board of Funeral Service

Mailing Address:
810 North Main Street, Suite 298
Spearfish, SD 57783

Phone: (605) 642-1600
E-Mail: office@sdlicensing.com
Home Page: funeralboard.sd.gov

DRAFT **BOARD MEETING AGENDA**

TO: Board Members

FROM: Brooke Tellinghuisen Geddes, Executive Secretary

MEETING DATE: November 12, 2025

MEETING TIME: 2:00pm MST/3:00pm CST

MEETING LOCATION: Video Conference

The public is invited to attend the meeting via Microsoft Teams at the following link:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_NGQ2ODk1MjctODM3Mi00NGUwLTgxMmUtZTk0MmI5NDA3ZjZl%40thread.v2/0?context=%7b%22Tid%22%3a%22e69efb98-56ef-4797-a76b-e1ec658a639c%22%2c%22Oid%22%3a%22ee0a24e7-6d2c-4495-ade5-4377098865d2%22%7d

Or by calling: 1-469-770-0416, Passcode: 406749653#

If members of the public would like to be sent the Microsoft Teams invitation to the meeting instead of using the above link, please contact the board office prior to the meeting at office@sdlicensing.com. If you are having issues accessing the link, please contact the board office at 605-642-1600.

Note: Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact the Board office at office@sdlicensing.com or 605-642-1600 in advance of the meeting to make any necessary arrangements.

Agenda Item Number:

1. Call to order/welcome and introductions-Jones
2. Roll call-Jones
3. Corrections or additions to the agenda
4. Approval of the agenda
5. Public testimony/public comment period
6. Approval of the minutes from May 7, 2025
7. FY financial update
8. Inspection Update
9. Trainee Updates
10. Re-Entry Applications (Out-of-State vs. SD Licensee) Discussion
11. ICFSEB 122nd Annual Meeting- February 24-26, 2026, Louisville, Kentucky

12. Annual Review of Open Meeting Laws (SDCL 1-25-13)
13. Executive Session-pursuant to SDCL 1-25-2
 - a. Complaints/Investigations
 - b. General Contract Review with counsel
14. Vote on Complaints-if necessary
15. Honorarium Contract Policy
16. Schedule next meeting
17. Any other business coming in between date of mailing and date of meeting
18. Adjourn



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DRAFT BOARD MINUTES FOR MAY 7, 2025 BOARD MEETING/TELECONFERENCE

Members Present: James Jones, President
Chad Osthus, Vice-President
Michael Carlsen, Member
Sharel Delzer, Lay Member (via Microsoft Teams)
Shawna Flax, Dept. of Health (Non-voting member)

Members Absent: Randy Brennick, Secretary/Treasurer

Others Present: Brooke Tellinghuisen Geddes, Executive Secretary;
Megan Borchert, General Counsel; Katie Funke, Executive
Assistant; Jasper Diegel, SDFDA; Katie Sieverding, SDFDA;
Jonathan Dyck, SDFDA; Michael Sharkey, SDFDA; Shauna Kjos-
Miotke, SDFDA; Nic Polly, SDFDA; Aubrey Hofmeister,
SDFDA; Tim Bachman, SDFDA; Mitch Steinhoff, SDFDA;
Logan Brandriet, SDFDA; Tim Bishop, Kuhler Funeral Home;
Kelly Hyke, SDFDA.

Call to Order/Welcome and Introductions: Jones called the meeting to order at 2:02 p.m. MDT.

Roll Call: Jones, yes; Osthus, yes; Carlsen, yes; Delzer, yes; Flax, yes; Brennick, absent. A quorum was present.

Public Hearing to Adopt Proposed Rules: The public rules hearing was conducted by Jones. Borchert provided a report on the draft rules and recommendations from LRC and requested two corrections for typographical errors. Carlsen made a motion to adopt the draft rules with LRC edits for form, style, clarity and legality and corrections to typographical errors. Osthus seconded the motion. **MOTION PASSED** by roll call vote: Jones, yes; Carlsen, yes; Delzer, yes; Osthus, yes; Brennick, absent.

The public hearing ended at 2:23 and the board entered into the regularly scheduled meeting at 2:25.

Corrections or additions to the agenda: None

Approval of the agenda: Osthus made a motion to approve the agenda. Carlsen seconded the motion. **MOTION PASSED** by unanimous voice vote.

Public Comment: A member of the public submitted a document to the board members during the meeting. No verbal comments were made.

Approval of the minutes from February 25, 2025: Osthus made a motion to approve the minutes from February 25, 2025. Carlsen seconded the motion. **MOTION PASSED** by unanimous voice vote.

FY Financial Update: Tellinghuisen Geddes reported fiscal year-to-date figures as of March 31, 2025: revenue of \$74,570.55; expenditures of \$73,926.55 and a cash balance of \$82,102.05.

Legislative Updates: Borchert provided an update on HB 1059 which clarifies the meaning of teleconference for purposes of open meetings and SB 74 which will require publication and review of an explanation of open meeting laws of this state.

Election of Officers: Osthus made a motion to keep the current slate of officers. Carlsen seconded the motion. **MOTION PASSED** by unanimous voice vote.

SDFDA FY27 Contract Renewal (Vote): Carlsen made a motion to table this agenda item until a later date. Osthus seconded the motion. **MOTION PASSED** by unanimous voice vote.

ICFSEB Annual Meeting Report-Jones & Borchert: Jones and Borchert attended the 2025 Annual Meeting for the International Conference of Funeral Service Education Examining Boards in Palm Springs, which was fully funded by ICFSEB. Topics included various licensure types, alkaline hydrolysis, changes in state exams, improper disposal of bodies, and FTC Funeral Rule.

Complaints/Investigations: Osthus made a motion to enter executive session at 2:44 pm MDT. Carlsen seconded the motion. **MOTION PASSED** by unanimous voice vote. All others exited the meeting. Jones declared an end to executive session at 3:30 pm MDT.

Schedule Next Meeting: The next meeting is tentatively scheduled for November 12, 2025, at 2:00 MDT/3:00 CDT via Microsoft Teams.

Any other business coming in between date of mailing and date of meeting: None.

Osthus made a motion to adjourn the meeting at 3:35 p.m. MDT. Carlsen seconded the motion. **MOTION PASSED** by unanimous voice vote.

Respectfully submitted,

Brooke Tellinghuisen Geddes

Brooke Tellinghuisen Geddes
Executive Secretary

1-27-1.17. Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.

DRAFT

STATE OF SOUTH DAKOTA
REVENUE SUMMARY BY BUDGET UNIT
FOR PERIOD ENDING: 06/30/2025

AGENCY 09 HEALTH
BUDGET UNIT 09204 BOARD OF FUNERAL SERVICE - INFO

CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE
COMPANY NO 6503					
COMPANY NAME PROFESSIONAL & LICENSING BOARDS					
092040061812	6503	4293955	FUNERAL LICENSE FEE	75.00	71,200.00
ACCT: 4293			BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	75.00	71,200.00 *
ACCT: 42			LICENSES, PERMITS & FEES	75.00	71,200.00 **
092040061812	6503	4920045	NONOPERATING REVENUES	.00	4,045.55
ACCT: 4920			NONOPERATING REVENUE	.00	4,045.55 *
ACCT: 49			OTHER REVENUE	.00	4,045.55 **
CNTR: 092040061812				75.00	75,245.55 ***
CNTR: 092040061				75.00	75,245.55 ****
CNTR: 0920400				75.00	75,245.55 *****
COMP: 6503				75.00	75,245.55 *****
B UNIT: 09204				75.00	75,245.55 *****

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BAL409R1

STATE OF SOUTH DAKOTA
CASH CENTER BALANCES
AS OF: 06/30/2025

AGENCY: 09 HEALTH
BUDGET UNIT: 09204 BOARD OF FUNERAL SERVICE - INFO

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092000061812	1140000	60,661.95	DR	BOARD OF FUNERAL SERVICES
COMPANY/SOURCE TOTAL 6503 618			60,661.95	DR *	
COMP/BUDG UNIT TOTAL 6503 09204			60,661.95	DR **	
BUDGET UNIT TOTAL 09204			60,661.95	DR ***	

Funeral Trainee Instructions

Please be sure to **thoroughly** read through the requirements so you understand what is required of both the trainee and the sponsor. A copy of Administrative Rule 20:45:03:02 which outlines the requirements of the trainee program, as well as ARSD 20:45:03:02.03, which outlines the supervision requirements for the sponsor are included.

The traineeship must be a minimum of one year (and no less than 2,080 hours) and completed within three years of the **initial registration date**. Your initial trainee license will be effective for 24 months from the initial registration date. If the final 12 months (for a total of 36 months or 3 years) are needed, you must contact the board office for instructions on how to update the license. Beyond that, South Dakota law prohibits any extensions. A trainee must apply for licensure within 5 years of completing the traineeship, or the traineeship must be repeated.

If the trainee is terminated by the sponsor or changes sponsors, the trainee must **reapply** and be granted registration under a new sponsor before a trainee resumes work. The initial registration date of the traineeship is still the initial registration date with the **first** sponsor. The trainee must notify the board in writing with any changes in circumstances or supervision within ten days of the event. *If a trainee was granted their license under the requirement of being enrolled in a mortuary program, versus completed with a mortuary program, it is the trainee's responsibility to notify the board if they are no longer enrolled in the mortuary program, as they would no longer be eligible to hold their license as a trainee. It is not the responsibility of the board to track the ongoing education status of the trainee. The administrative rule specifically requires the trainee to notify the board of those changes. You've already agreed to this by signing the trainee application.

During the traineeship, the trainee must:

- 1) Work at least 2,080 hours (this is equivalent to full time work for 1 year)
- 2) Complete 25 acceptable embalming case reports
- 3) Complete monthly report cards
- 4) Assist in directing 25 funerals
- 5) Present 5 sets of funeral arrangements

All forms can be found on the board website: <https://doh.sd.gov/licensing-and-records/boards/funeral/licensing-requirements/>

Please carefully review the information on how to submit reports as this process has changed

*Please note, activities being completed for credit towards an accredited mortuary program may not also be used to satisfy the requirements above. You've already agreed to this on the application for your traineeship by signing it.

Supervisor Requirements

Sponsors, be sure to carefully review ARSD 20:45:02:03 to understand the requirements of supervision. Failure to comply with this section is grounds for licensure action pursuant to SDCL 36-19-38. Please be advised that:

- 1) Sponsors must be **physically present** at the same funeral establishment as the trainee to directly supervise the trainee's **first five** embalming cases. Thereafter, if the sponsor determines the trainee has demonstrated competency and professionalism, the trainee may only work if the sponsor is immediately available in person or by telecommunications.
- 2) The sponsor must notify the board in writing within 10 days if they terminate the traineeship.
- 3) If the sponsor is no longer available, the trainee may not perform any work until the trainee has applied for and received registration under a new sponsor.
- 4) The sponsor is responsible for the trainee's actions and work in funeral service, and for ensuring the trainee completes all required reports and forms.
- 5) As a sponsor, you may not supervise more than one trainee at a time.
- 6) A trainee's registration must be displayed at the establishment
- 7) Please be reminded, a funeral service licensee may NOT:
 - a. Allow an individual to do the work of a trainee if the individual is not registered with the board
 - b. Allow an individual who has completed the traineeship to continue to do the work of a trainee (ie, once the license of the trainee is expired, it is expired, there are no exceptions)

Submitting reports, this process has changed, please read carefully:

All reports and forms will need to be submitted at the end of the traineeship, in numerical order, at once. Everything should be dated for when the service occurs. It is the responsibility of the trainee and sponsor to ensure forms are completed correctly and entirely. The board review officer will only review the forms once a complete packet is submitted. Do not send individual forms or reports in. Make sure you keep all reports and forms in a safe place until they are ready to be submitted, as you are responsible for them.

All reports can be found, here: <https://doh.sd.gov/licensing-and-records/boards/funeral/licensing-requirements/> under "types and forms" and then "trainee forms".

If the board office can be of assistance to you, please do not hesitate to contact us at 605-642-1600.

36-19-21. Funeral service--License requirements.

The board may issue a license to practice funeral service to any person who:

- (1) Is at least eighteen years of age;
- (2) Submits an application on a form prescribed by the board;
- (3) Pays the application fee established by the board, in accordance with § [36-19-12.1](#);
- (4) Has completed at least ninety credit hours offered by an accredited institution of higher education and obtained a degree or a certificate from a mortuary science or funeral service program that is accredited by the American Board of Funeral Service Education;
- (5) Has completed a traineeship supervised by a person licensed pursuant to this chapter;
- (6) Has passed the national board examination, administered by the International Conference of Funeral Service Examining Board; and
- (7) Has not committed any act that constitutes a ground for denying, suspending, or revoking a license under this chapter.

Source: SDC 1939, § 27.1406 as amended by [SL 1939, ch 102](#), § 4; [SL 1951, ch 132](#), § 1; [SL 1963, ch 154](#), § 3; revised pursuant to [SL 1972, ch 15](#), § 4; [SL 2020, ch 168](#), § 8; [SL 2023, ch 137](#), § 11; [SL 2025, ch 159](#), § 4.

36-1D-1. Eligibility--Licensure by endorsement.

Notwithstanding any existing provisions related to licensure by endorsement or licensure by reciprocity in any applicable licensing statute, a licensing board or a department secretary, if the secretary is responsible for issuing the license, shall issue a license, certificate, registration, or permit to an applicant to allow practice in this state if, upon application to the licensing board, the applicant satisfies all of the following conditions:

- (1) Holds a current license, certificate, registration, or permit from another state, territory, or country and the licensing board determines that state's, territory's, or country's requirements are substantially equivalent to or exceed the requirements established in this state;
- (2) Demonstrates competency in the profession or occupation through methods determined by the licensing board or a department secretary, if the secretary is responsible for issuing the license;
- (3) Has not committed any act that constitutes grounds for refusal, suspension, or revocation of a license, certificate, registration, or permit to practice that profession or occupation in this state unless the licensing board determines, in its discretion, that the act should not be an impediment to the granting of a license, certificate, registration, or permit to practice in this state;
- (4) Is in good standing and has not been disciplined by the jurisdiction that issued the license, certificate, registration, or permit unless the licensing board determines, in its discretion, that the discipline should not be an impediment to the granting of a license, certificate, registration, or permit to practice in this state; and
- (5) Pays any fees established by the licensing board by rules promulgated pursuant to chapter [1-26](#).

Source: SL 2021, ch 169, § 1; SL 2023, ch 133, § 1.

1-25-7. REFERRAL TO OMC. Upon receiving a referral from a state's attorney or the attorney general, the South Dakota Open Meetings Commission shall examine the complaint and investigatory file submitted by the state's attorney or the attorney general and shall also consider signed written submissions by the persons or entities that are directly involved. Based on the investigatory file submitted by the state's attorney or the attorney general and any written responses, the commission shall issue a written determination on whether the conduct violates this chapter, including a statement of the reasons therefor and findings of fact on each issue and conclusions of law necessary for the proposed decision. The final decision shall be made by a majority of the commission members, with each member's vote set forth in the written decision. The final decision shall be filed with the attorney general and shall be provided to the public entity and or public officer involved, the state's attorney, and any person that has made a written request for such determinations. If the commission finds a violation of this chapter, the commission shall issue a public reprimand to the offending official or governmental entity. However, no violation found by the commission may be subsequently prosecuted by the state's attorney or the attorney general. All findings and public censures of the commission shall be public records pursuant to § 1-27-1. Sections 1-25-6 to 1-25-9, inclusive, are not subject to the provisions of chapter 1-26.

1-25-8. OMC MEMBERS. The South Dakota Open Meeting Commission shall be comprised of five state's attorneys appointed by the attorney general. Each commissioner shall serve at the pleasure of the attorney general. A chair of the commission shall be chosen annually from the membership of the commission by a majority of its members.

1-25-12. DEFINITIONS. Terms used in this chapter mean:

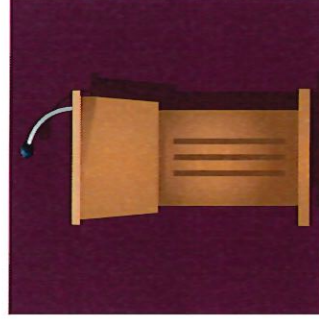
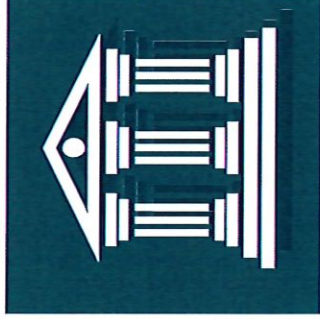
- (1) "Political subdivision," any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, or other local government entity that is created or appointed by statute, ordinance, or resolution and is vested with the authority to exercise any sovereign power derived from state law;
- (2) "Public body," any political subdivision and the state;
- (3) "Official meeting," any meeting of a quorum of a public body at which official business or public policy of that public body is discussed or decided by the public body, whether in person or by means of teleconference;
- (4) "Teleconference," information exchanged by any audio, video, or electronic medium, including the internet;
- (5) "State," each board, commission,

department, or agency of the State of South Dakota. The term, state, does not include the Legislature.

1-27-1-16. MEETING PACKETS AND MATERIALS. If a meeting is required to be open to the public pursuant to § 1-25-1 and if any printed material relating to an agenda item of the meeting is prepared or distributed by or at the direction of the governing body or any of its employees and the printed material is distributed before the meeting to all members of the governing body, the material shall either be posted on the governing body's website or made available at the official business office of the governing body at least twenty-four hours prior to the meeting or at the time the material is distributed to the governing body, whichever is later. If the material is not posted to the governing body's website, at least one copy of the printed material shall be available in the meeting room for inspection by any person while the governing body is considering the printed material. However, the provisions of this section do not apply to any printed material or record that is specifically exempt from disclosure under the provisions of this chapter or to any printed material or record regarding the agenda item of an executive or closed meeting held in accordance with § 1-25-2. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to printed material, records, or exhibits involving contested case proceedings held in accordance with the provisions of chapter 1-26.

1-27-1-17. DRAFT MINUTES. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.

1-27-1-18. WORKING GROUP REPORTS. Any final recommendations, findings, or reports that result from a meeting of a committee, subcommittee, task force, or other working group which does not meet the definition of a political subdivision or public body pursuant to § 1-25-1, but was appointed by the governing body, shall be reported in open meeting to the governing body which appointed the committee, subcommittee, task force, or other working group. The governing body shall delay taking any official action on the recommendations, findings, or reports until the next meeting of the governing body.



Conducting the Public's Business in Public

A guide to South Dakota's
Open Meetings Laws
(Revised 2023)

Prepared by:
S.D. Attorney General's Office
in partnership with the
S.D. NewsMedia Association

Published by:
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1125 32nd Ave. Brookings, SD 57006

Q: WHAT ARE SOUTH DAKOTA'S OPEN MEETINGS LAWS?

A: South Dakota's open meetings laws embody the principle that the public is entitled to the greatest possible information about public affairs and are intended to encourage public participation in government. SDCL Ch. 1-25 requires that official meetings of public bodies must be public and advance notice is to be given of such meetings. The statutes define an "official meeting" as one where a quorum of the public body is present and at which official business or public policy of the body is discussed or decided. Openness in government is encouraged.

Q: WHO DOES THE OPEN MEETINGS LAWS APPLY TO?

A: The open meetings laws apply to all public bodies "of the state and its political subdivisions." 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 exercise sovereign power. SDCL 1-25-1(f). Although no court decisions have been issued on the subject, this probably does not include bodies 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: ARE TELECONFERENCES CONSIDERED PUBLIC MEETINGS?

A: Yes. The open meetings laws allow meetings, including executive or closed meetings, to be conducted by teleconference – defined as an exchange of information by audio, video, 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 of the public body 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 and public must be notified of teleconference meetings under the same notice requirements as any other meeting.

Q: HOW ARE THE PUBLIC AND MEDIA NOTIFIED WHEN PUBLIC BUSINESS IS BEING DISCUSSED?

A: SDCL 1-25-11 requires that all state and its boards, commissions, or departments as provided in § 1-25-1(3) prominently post a notice and copy of the proposed agenda at the political subdivision's principal office. At a minimum, the proposed agenda must include the date, time, and location of the meeting and must be visible, readable, and accessible to the public for 24 continuous hours immediately preceding the meeting. Also, if the political subdivision has its own website, the notice must be posted on the website upon dissemination of the notice. For special or rescheduled meetings, political subdivisions must comply with the regular meeting notice requirements as much as circumstances permit. The notice must be delivered in person, by mail, by email, or by telephone to all local news media who have asked to be notified. It is good practice for local media to renew requests for notification of special or rescheduled meetings at least annually.

SDCL 1-25-1.3 varies slightly from SDCL 1-25-11 and requires the State and its boards, commissions, or departments to give notice by posting a proposed agenda at least 72 continuous hours before a meeting is scheduled to start (this does not include any weekend or legal holiday). The State is also required to give notice of a public meeting by posting its proposed agenda on <http://boardsandcommissions.sd.gov>.

The requirement to provide one or more places for the public to listen to the teleconference does not apply to official meetings closed to the public pursuant to specific law.

1-25-2. EXECUTIVE SESSION. Executive or closed meetings may be held for the sole purposes of:

(1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term, employee, does not include any independent contractor;

(2) Discussing the expulsion, suspension, discipline, assignment of or the educational program of a student or the eligibility of a student to participate in interscholastic activities provided by the South Dakota High School Activities Association;

(3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;

(4) Preparing for contract negotiations or negotiating with employees or employee representatives;

(5) Discussing marketing or pricing strategies by a board or commission of a business owned by the state or any of its political subdivisions, when public discussion may be harmful to the competitive position of the business; or

(6) Discussing information pertaining to the protection of public or private property and any person on or within public or private property specific to:

(a) Any vulnerability assessment or response plan intended to prevent or mitigate criminal acts;

(b) Emergency management or response;

(c) Public safety information that would create a substantial likelihood of endangering public safety or property, if disclosed;

(d) Cyber security plans, computer, communications network schema, passwords, or user identification names;

(e) Guard schedules;

(f) Lock combinations;

(g) Any blueprint, building plan, or infrastructure record regarding any building or facility that would expose or create vulnerability through disclosure of the location, configuration, or security of critical systems of the building or facility; and

(h) Any emergency or disaster response plans or protocols, safety or security audits or reviews, or lists of emergency or disaster response personnel or material; any location or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other military or law enforcement equipment or personnel.

However, any official action concerning the matters pursuant to this section shall be made

at an open official meeting. An executive or closed meeting must be held only upon a majority vote of the members of the public body present and voting, and discussion during the closed meeting is restricted to the purpose specified in the closure motion. Nothing in § 1-25-1 or this section prevents an executive or closed meeting if the federal or state Constitution or the federal or state statutes require or permit it. A violation of this section is a class 2 misdemeanor.

9-34-19. EXECUTIVE SESSIONS (MUNICIPAL AND COUNTIES). Any documentary material or data compiled or received by a municipal corporation, county, or an economic development corporation receiving municipal or county funds, for the purpose of furnishing assistance to a business, to the extent that such material or data consists of trade secrets or commercial or financial information regarding the operation of such business, is not a public record. Any discussion or consideration of such trade secrets or commercial or financial information by a municipal corporation or county may be done in executive session closed to the public.

1-25-6. DUTY OF STATE'S ATTORNEY. If a complaint alleging a violation of chapter 1-25 is made pursuant to § 23A-2-1, the state's attorney shall take one of the following actions:

(1) Prosecute the case pursuant to Title 23A; (2) Determine that there is no merit to prosecuting the case. Upon doing so, the state's attorney shall send a copy of the complaint and any investigation file to the attorney general. The attorney general shall use the information for statistical purposes and may publish abstracts of such information, including the name of the government body involved for purposes of public education; or (3) Send the complaint and any investigation file to the South Dakota Open Meetings Commission for further action.

1-25-6.1. DUTY OF STATES ATTORNEY (COUNTY COMMISSION ISSUES). If a complaint alleges a violation of this chapter by a board of county commissioners, the state's attorney shall take one of the following actions:

(1) Prosecute the case pursuant to Title 23A; (2) Determine that there is no merit to prosecuting the case. The attorney general shall use the information for statistical purposes and may publish abstracts of the information as provided by § 1-25-6;

(3) Send the complaint and any investigation file to the South Dakota Open Meetings Commission for further action; or

(4) Refer the complaint to another state's attorney or to the attorney general for action pursuant to § 1-25-6.

PERTINENT S.D. OPEN MEETINGS STATUTES
(other specific provisions may apply depending on the public body involved)

1-25-1. OPEN MEETINGS. The official meetings of the state and its political subdivisions are open to the public unless a specific law is cited by the state or the political subdivision to close the official meeting to the public.

It is not an official meeting of one public body if its members provide information or attend the official meeting of another public body for which the notice requirements of § 1-25-11 or 1-25-13 have been met. It is not an official meeting of a public body if its members attend a press conference called by a representative of the public body.

For any event hosted by a nongovernmental entity to which a quorum of the public body is invited and public policy may be discussed, but the public body does not control the agenda, the political subdivision may post a public notice of a quorum, in lieu of an agenda. The notice of a quorum shall meet the posting requirements of § 1-25-11 or 1-25-13 and shall contain, at a minimum, the date, time, and location of the event.

The public body shall reserve at every official meeting a period for public comment, limited at the public body's discretion as to the time allowed for each topic and the total time allowed for public comment but not so limited as to provide for no public comment.

Public comment is not required at official meetings held solely for the purpose of meeting in executive session, an inauguration, swearing in of newly elected officials, or presentation of an annual report to the governing body regardless of whether or not such activity takes place at the time and place usually reserved for a regularly scheduled meeting.

If a quorum of township supervisors, road district trustees, or trustees for a municipality of the third class meet solely for purposes of implementing previously publicly adopted policy; carrying out ministerial functions of that township, district, or municipality; or undertaking a factual investigation of conditions related to public safety; the meeting is not subject to the provisions of this chapter. A violation of this section is a Class 2 misdemeanor.

1-25-11. PUBLIC NOTICE OF POLITICAL SUBDIVISIONS. Each political subdivision shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting. The proposed agenda shall include the date, time, and location of the meeting. The notice shall also be posted on the political subdivision's website upon dissemination of the notice, if a

website exists. For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice. For any special or rescheduled meeting, each political subdivision shall also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit. A violation of this section is a Class 2 misdemeanor.

1-25-13. PUBLIC NOTICE OF STATE. The state shall provide public notice of a meeting by posting a copy of the proposed agenda at the principal office of the board, commission, or department holding the meeting. The proposed agenda shall include the date, time, and location of the meeting, and be visible, readable, and accessible to the public. The agenda shall be posted at least seventy-two hours before the meeting is scheduled to start according to the agenda. The seventy-two hours does not include Saturday, Sunday, or legal holidays. The notice shall also be posted on a state website, designated by the commissioner of the Bureau of Finance and Management. For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice. For any special or rescheduled meeting, the state shall also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit. A violation of this section is a Class 2 misdemeanor.

1-25-15. TELECONFERENCE MEETING. Any official meeting may be conducted by teleconference. A teleconference may be used to conduct a hearing or take final disposition regarding an administrative rule pursuant to § 1-26-4. A member is deemed present if the member answers present to the roll call conducted by teleconference for the purpose of determining a quorum. Each vote at an official meeting held by teleconference may be taken by voice vote. If any member votes in the negative, the vote shall proceed to a roll call vote.

1-25-16. TELECONFERENCE PARTICIPATION. At any official meeting conducted by teleconference, there shall be provided one or more places at which the public may listen to and participate in the teleconference meeting. For any official meeting held by teleconference, that has less than a quorum of the members of the public body participating in the meeting who are present at the location open to the public, arrangements shall be provided for the public to listen to the meeting via telephone or internet.

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: IS A PUBLIC COMMENT PERIOD REQUIRED AT PUBLIC MEETINGS?

A: Yes. Public bodies are required to provide at every official meeting a period of time on their agenda for public comment. Each public body has the discretion to limit public comment as to the time allowed for each topic commented on, and as to the total time allowed for public comment. A public comment period is not required for meetings held solely for the purpose of executive session.

Q: CAN PUBLIC MEETINGS BE RECORDED?

A: Yes. SDCL 1-25-11 requires public bodies to allow recording (audio or video) of their meetings if the recording is reasonable, obvious, and not disruptive. This requirement does not apply to those portions of a meeting confidential or closed to the public.

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 purposes: 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 legal counsel, or reviewing communications from legal counsel

about proposed or pending litigation or contractual matters; 4) employee contract negotiations; 5) to discuss marketing or pricing strategies of a publicly-owned competitive business; or 6) to discuss information related to the protection of public or private property such as emergency management response plans or other public safety information. 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 to refrain from releasing confidential information. Meetings may also be closed by cities 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 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 public confusion would be that public bodies explain the reason for going into executive session. For example, the motion might state "motion to go into executive session pursuant to SDCL 1-25-2(f) for the purposes of discussing a personnel matter," or "motion to go into executive session pursuant to SDCL 1-25-2(3) for the purposes of consulting with legal counsel."

Discussion in the executive session must be strictly limited to the announced subject. No official votes may be taken on any matter during an executive session. The public body must return to open session before any official action can be taken. Board members could be held personally liable for the results of an official vote

taken illegally during an executive session. For example, a contract approved only during an executive session could be found void and the board members could be required to repay any public funds spent under the contract.

Q: WHAT HAPPENS IF THE MEDIA OR PUBLIC IS IMPROPERLY EXCLUDED FROM A MEETING OR OTHER VIOLATIONS OF THE OPEN MEETING LAWS 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 ("OMC"). The same penalties apply if the agenda for the meeting 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 officials in the county where the offense occurred. After a signed and 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 no merits and file a report with the Attorney General for statistical purposes; or (c) forward the complaint to the OMC for a determination. The OMC is comprised of five State's Attorneys appointed by the Attorney General. The OMC examines whether a 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. 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 laws do 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 providing advance notice of 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 the time the final agenda is adopted, the governing body may add or delete agenda items and may also change the order of business. See In re Yankton County Commission, Open Meetings Commission Decision # 20-03, December 31, 2020. New items cannot be added after the agenda has been adopted by the governing body.

Public bodies are strongly encouraged to provide at least 24 hours' notice of all 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 EMAIL DISCUSSIONS "MEETINGS" FOR PURPOSES OF THE OPEN MEETINGS LAWS?

A: The definition of an "official meeting" in SDCL 1-25-12(3) references teleconferences. The definition of a "teleconference" in SDCL 1-25-12(4) includes the exchange of information via the internet or any other electronic medium. The analysis of these two definitions leads to the conclusion that email discussions that include a quorum of a public body and which discuss the official business of that body could be considered "meetings" for purposes of the open meetings laws. Email participation in scheduling or similar activity would not, under this analysis, constitute a public meeting.

Q: WHAT RECORDS MUST BE AVAILABLE TO THE PUBLIC IN CONJUNCTION WITH PUBLIC MEETINGS?

A: SDCL 1-25-1.4 requires state boards, commissions, or departments to make public meeting materials available on <http://boardsandcommissions.sd.gov>. SDCL 1-27-116 requires that any other public body must post meeting materials on the public body's website or make those materials available to the public at least twenty-four hours prior to the hearing or when made available to the members of the public body, whichever is later. Finally, SDCL 1-27-117 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 pertaining to cities, counties, or school districts). Enforcement of public records laws contained in SDCL Ch. 1-27 are handled by separate procedures found in SDCL 1-27-35, et. seq. rather than the open meeting procedures described above. Violations of SDCL 1-27-116 and 1-27-117 are also Class 2 misdemeanors.

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 are required to comply with the open meetings laws. SDCL 1-25-12(1). Task forces, committees, and working groups that are not created by statute, ordinance, or proclamation, or are advisory only, may not be subject to the open meetings laws, but are encouraged to comply to the extent possible when public matters are discussed. Ultimately, if such advisory task forces, committees and working groups present any reports or recommendations to public bodies, the public bodies must wait until the next meeting (or later) before taking final action on the recommendations. SDCL 1-27-118.