



South Dakota Board of Physical Therapy

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

Phone: (605) 642-1600
E-Mail: office@sdlicensing.com

Draft-Video Conference **BOARD MEETING AGENDA**

TO: All Board Members

FROM: Brooke Tellinghuisen Geddes

MEETING DATE: August 19, 2025

MEETING TIME: 11:00AM MDT/ 12:00PM CDT

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_NjE1Y2JkOTgtYTUzMy00ODYwLTlkZTkYTVlYzA3OTgxOTNk%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: 604765672#

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
2. Roll Call
3. Approval of the Agenda
4. Public Comment

5. Approval of the Minutes from May 13, 2025
6. Financial Update
7. SB 110/PTA Supervision Workgroup Update
8. PTA Supervision Guidelines
9. FSBPT Leadership Issues Forum, July 19-20, 2025- Arlington, VA- Weigel
10. Annual Review of Open Meeting Laws (SDCL 1-25-13)
11. Schedule Next Meeting(s)
12. Executive Session pursuant to SDCL 1-25-2
 - a. Complaints/Investigations- if any
 - b. Re-Entry Applications-if any
13. Ratification on Re-Entry Applications-if any
14. Any other Business
15. Adjourn

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OFFICIAL BOARD MINUTES FOR MAY 13, 2025 VIDEO CONFERENCE

MEMBERS PRESENT: Patti Berg-Poppe, President
Leonard Suel, Vice-President
Rebeca Schmitz, Secretary
Matthew Weigel, Member
Brad Thuringer, Member
Linda Ahrendt, Lay Member
Janelle Toman, Lay Member

MEMBERS ABSENT: None.

OTHERS PRESENT: Brooke Tellinghuisen Geddes, Executive Director
Katie Funke, Executive Assistant
Kelli Gabriel, Administrative Assistant
Howard Pallotta, SD Dept. of Health, General Counsel
Janelle VanOtterloo, Public Member, Sioux Falls

CALL TO ORDER: Berg-Poppe called the meeting to order at 12:00 PM CDT.

ROLL CALL: Tellinghuisen Geddes called the roll. Berg-Poppe, yes; Suel, yes; Schmitz, yes; Thuringer, yes; Toman, yes; Ahrendt, yes; Weigel, yes. A quorum was present.

APPROVAL OF THE AGENDA: Toman made a motion to approve the agenda. Suel seconded the motion. **MOTION PASSED** by unanimous voice vote.

PUBLIC COMMENT PERIOD: None.

APPROVAL OF THE MINUTES FROM FEBRUARY 25, 2025: Schmitz made a motion to approve the minutes from February 25, 2025. Toman seconded the motion. **MOTION PASSED** by unanimous voice vote.

FINANCIAL UPDATE: Tellinghuisen-Geddes reported year-to-date financials as of March 31, 2025: revenue of \$20,263.71, expenses of \$123,142.42 and a cash balance of \$1,162,270.86. It was also reported there was approximately \$39,000 in interest not showing on this report, but the revenue report should be corrected by the next meeting when financials are presented.

ELECTION OF OFFICERS: Thuringer made a motion to keep the current slate of officers with Berg-Poppe as President, Suel as Vice-President and Schmitz as Secretary. Toman seconded the motion. **MOTION PASSED** by unanimous voice vote.

ELECTION OF COMPACT COMMISSION DELEGATE AND CONTINGENT DELEGATE: Toman made a motion to elect Weigel as the compact commission delegate and Thuringer as the contingent delegate. Schmitz seconded the motion. **MOTION PASSED** by unanimous voice vote.

SB 110: Tellinghuisen Geddes reported SB 110 passed during the 2025 legislative session and has been signed by the Governor. It will become effective on July 1, 2025. Berg-Poppe advised that a letter will be drafted to be sent to licensees regarding the changes.

PTA SUPERVISION WORKGROUP UPDATES: Suel reported the workgroup is set to have their first meeting on May 21, 2025. The intent of the workgroup is to get feedback and opinions from various groups of licensees in an effort to identify areas that may need to be clarified. Thuringer reported the workgroup will consist of Physical Therapists and Physical Therapist Assistants within various areas of the state and various practice settings to identify supervision concerns they may have. Tellinghuisen Geddes recommended that if changes are needed, it may be more beneficial to consider bringing a bill in 2026 considering the supervision regulations are already in statute. Otherwise, the board could run into issues with administrative rules if there is not ample authority or conflicting language in statute. Pallotta agreed.

SCHEDULE NEXT MEETING(S): Two meetings are scheduled as follows: August 19, 2025, at 11AM MDT/ 12 PM CDT via Microsoft Teams and November 4, 2025, at 11AM MST/12 PM CST via Microsoft Teams. An additional meeting may be called if the board needs to address legislation.

EXECUTIVE SESSION PURSUANT TO SDCL 1-25-2: The Board did not have a need to enter executive session.

COMPLAINTS/INVESTIGATIONS: None to report.

RATIFICATION ON RE-ENTRY APPLICATIONS: None to report.

ANY OTHER BUSINESS: Berg-Poppe reported that CEU Locker was scheduled to be up and running May 1st but is waiting on official confirmation from SD-APTA. Once there is confirmation that CEU Locker is ready to be utilized, the board will send notification to licensees.

Suel made a motion to adjourn at 12:27 PM CDT. Weigel seconded the motion. **MOTION PASSED** by unanimous voice vote.

Brooke Tellinghuisen Geddes

Respectfully submitted,
Brooke Tellinghuisen Geddes
Executive Director

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 09214 BOARD OF PHYSICAL THERAPY - INFO

CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE
COMPANY NO 6503					
COMPANY NAME PROFESSIONAL & LICENSING BOARDS					
092140066701	6503	4293881	PT APPLICATION	1,080.00	8,640.00
092140066701	6503	4293882	PTA APPLICATION	240.00	3,360.00
092140066701	6503	4293883	PT RENEWAL	.00	4,260.00
092140066701	6503	4293886	COMPACT CHECKS	1,080.00	13,560.00
ACCT: 4293			BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	2,400.00	29,820.00 *
ACCT: 42			LICENSES, PERMITS & FEES	2,400.00	29,820.00 **
092140066701	6503	4599806	MISC SALES & SERVICE	.00	163.71
ACCT: 4599			OTHER CHARGES (NON-GOVERNMENTAL)	.00	163.71 *
ACCT: 45			CHARGES FOR SALES & SERVICES	.00	163.71 **
092140066701	6503	4920045	NONOPERATING REVENUES	.00	39,018.93
ACCT: 4920			NONOPERATING REVENUE	.00	39,018.93 *
ACCT: 49			OTHER REVENUE	.00	39,018.93 **
CNTR: 092140066701				2,400.00	69,002.64 ***
CNTR: 092140066				2,400.00	69,002.64 ****
CNTR: 0921400				2,400.00	69,002.64 *****
COMP: 6503				2,400.00	69,002.64 *****
B UNIT: 09214				2,400.00	69,002.64 *****
AGENCY: 09				23,931,615.09	161,661,184.71 *****

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

PAGE

133

AGENCY: 09 HEALTH
BUDGET UNIT: 09210 BOARD OF PODIATRY EXAMINERS - INFO

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092100061821	1140000	39,895.37	DR	BOARD OF PODIATRY EXAMINERS
COMPANY/SOURCE TOTAL 6503 618			39,895.37	DR *	
6503	092100066701	1140000	1,145,976.91	DR	PHYSICAL THERAPY BOARD
COMPANY/SOURCE TOTAL 6503 667			1,145,976.91	DR *	
COMP/BUDG UNIT TOTAL 6503 09210			1,185,872.28	DR **	
BUDGET UNIT TOTAL 09210			1,185,872.28	DR ***	

Guidance on PT-PTA Supervision and Delegation Frequently Asked Questions

1. How many PTAs can a PT supervise at one time in South Dakota?

Under South Dakota law, a physical therapist may supervise no more than the equivalent of two full-time PTAs (2.0 FTE) at one time. While South Dakota statutes do not define "full-time equivalent", it is generally understood in reference to a 40-hour workweek for each FTE. Keeping accurate staffing schedules and supervision logs ensures that compliance can be demonstrated.

Source: SDCL 36-10-35.8, 36-10-35.9

2. What does "immediately available" supervision mean?

While South Dakota statutes do not provide an exact definition, best practice is for the PT to be able to provide guidance or intervene without delay. This can mean being physically present in the same building or treatment location (direct supervision) or being reachable in real time via phone or video if the setting allows and payer rules permit (general supervision). In either case, patient safety should guide the supervision arrangement.

Source: SDCL 36-10-35.9; [APTA HOD P08-22-09-11](#)

3. How should supervision be documented?

Although South Dakota state law does not require a specific documentation format, it is wise to clearly reflect supervisory oversight in the medical record. This may include listing the supervising PT's name and license number in each PTA note, noting any PT/PTA communication related to patient care, and having the PT periodically review PTA notes. While co-signatures are not required, they can support verification of appropriate supervision.

Source: South Dakota Board of Physical Therapy advisory opinion

4. What roles do PTAs have in patient care?

PTAs work under the PT's direction and supervision to carry out selected components of the treatment plan and to gather and report patient data. Their contributions are essential to patient progress and team efficiency. The PT, however, is responsible for all elements of patient evaluation, plan of care development, updates, and final discharge decisions. This division of responsibility ensures that PTAs function within their scope while maintaining quality and safety.

Source: SDCL 36-10-35.8; [APTA HOD P08-22-09-11](#)

5. How often must a PT re-examine a patient when a PTA is involved?

When patient care is delegated to a PTA, South Dakota law requires the PT to re-examine the patient at least every 30 days or every 10 visits, whichever comes first. This re-examination should include an assessment of progress and any necessary updates to the plan of care. The APTA also emphasizes that a PT should visit in person whenever the PTA requests a re-examination, when the care plan changes, when the patient's medical status changes, or before ending

care.

Source: SDCL 36-10-35.9; [APTA HOD P08-22-09-11](#)

6. Can supervision be provided through telehealth?

Yes. South Dakota law allows PTs licensed in the state to supervise via telehealth, provided the PT remains compliant with all supervision standards. This includes being available for real-time communication and meeting re-examination requirements. Even in telehealth arrangements, the PT must ensure that patient safety and care quality are not compromised.

Source: SDCL 34-52; SDCL 36-10-35.8, 36-10-35.9

7. Can supervision of a PTA be transferred to another PT in South Dakota?

Yes. Another PT may take over the supervision of a PTA, but the change should be clearly documented in facility records. The PT supervising at the time of service is responsible for the appropriateness of delegated tasks, the quality of care provided, and patient safety.

Source: SDCL 36-10-35.8

8. What ethical principles guide PT/PTA supervision?

Both South Dakota's administrative rules and the APTA's Code of Ethics require PTs to accept only those supervisory arrangements that allow safe and effective care. PTs must also address and report unsafe or unethical practices. The PT remains accountable for all aspects of patient care, whether delivered directly or through a PTA, and should use professional judgment to guide delegation decisions.

Source: ARSD 20:66:02.01; [APTA Code of Ethics](#); [APTA HOD P08-22-09-11](#)

9. What is the difference between "examination" and "evaluation"?

An examination involves gathering patient data through history, tests, and measures. An evaluation is the PT's interpretation of that data to form a diagnosis, prognosis, and plan of care. While PTAs contribute valuable information through data collection, only the PT performs the examination and evaluation steps.

Source: *APTA Guide to Physical Therapist Practice*; SDCL 36-10-35.8

10. How does a PT decide when to involve a PTA?

The decision to involve a PTA is based on multiple considerations: the PTA's education, training, and competencies; the patient's complexity and predictability; the practice setting; regulatory requirements; and liability or risk factors. The PT weighs these elements to ensure that patient safety and optimal outcomes are maintained, while promoting efficient, team-based care.

Source: [APTA HOD P08-22-09-11](#)

PT/PTA Supervision and Delegation in South Dakota – Quick Reference Guide

Topic	South Dakota Law and Administrative Rules	APTA House of Delegates Position ¹
Supervision Ratios	A PT may supervise the equivalent of up to two full-time PTAs (2.0 FTE) at any one time. Use standard 40-hour/week calculations and maintain records. SDCL 36-10-35.8, 36-10-35.9	No specific numeric limit; supervision should ensure safe, effective care based on patient needs, PTA competence, and setting.
Definition of “Immediately Available”	Not explicitly defined. Best practice: PT can intervene without delay—either on-site or via real-time telecommunication (if allowed). SDCL 36-10-35.9	Recognizes both direct supervision (on-site, immediate access) and general supervision (PT available via telecommunications). Frequency of contact based on patient and PTA needs.
Documentation of Supervision	Should include supervising PT’s name and license number in each PTA note, record communication, and periodically review notes. Co-signatures are not required but encouraged. <i>SD Board of PT advisory opinion</i>	Documentation should demonstrate the PT’s ongoing direction, supervision, and review of PTA-provided services.
Role of PTA	Implements treatment from PT’s plan of care, collects and reports patient data. PT retains responsibility for evaluation, plan of care, changes, and discharge. SDCL 36-10-35.8	PTA assists in delivery of services but does not replace PT’s judgment. PT is responsible for evaluation, diagnosis, prognosis, and plan of care.
RE-examination Frequency	PT must re-examine every 30 days or 10 visits (whichever comes first) when a PTA is involved. SDCL 36-10-35.9	PT should also visit in person whenever PTA requests re-exam, plan changes, patient status changes, or before discharge; at least monthly on-site visits recommended.
Telehealth Supervision	Permitted if PT is licensed in SD and supervision meets all requirements, including real-time availability and timely re-exam. SDCL 34-52; 36-10-35.8; 36-10-35.9	Acceptable under general supervision if PT maintains real-time communication and fulfills re-examination and care review obligations.
Delegating Supervision to Another PT	Allowed, but must be clearly documented. PT supervising at time of service is responsible for care quality and safety. SDCL 36-10-35.8	Any transfer of supervisory responsibility should be documented and communicated to all involved to ensure continuity of care.
Ethical Considerations	PTs must refuse supervisory arrangements that compromise safety and must report unsafe or unethical practices. ARSD 20:66:02.01	PTs should base delegation decisions on professional judgment, patient needs, and PTA competence, in alignment with the APTA Code of Ethics.
Deciding to Involve a PTA	PT considers scope, safety, and legal compliance.	PT considers PTA education, competencies, patient complexity,

¹https://www.apta.org/contentassets/005d53c89e574979a20281ec60c1e7ad/directionsupervisionofpta_hodp08-22-09-11.pdf

		setting, regulations, and risk factors when deciding delegation.
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Unapproved Draft

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:

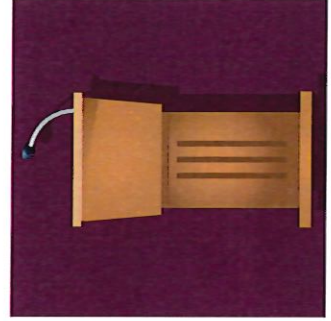
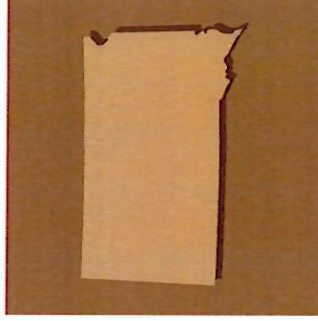
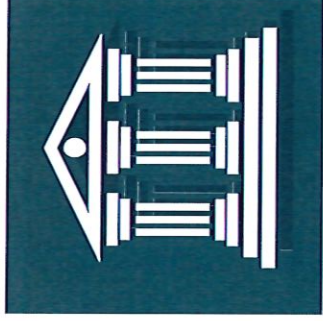
- (1) "Political subdivision," any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, or other local government entity that is created or appointed by statute, ordinance, or resolution and is vested with the authority to exercise 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.

1-27-116. 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.

1-27-117. 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.

1-27-118. 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:
South Dakota NewsMedia Association
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 1-25-12(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 political subdivisions (except the state and its boards, commissions, or departments as provided in § 1-25-13) 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 1-25-13 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 matters 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 STATES 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 § 1-25-1.1 or 1-25-1.3 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 § 1-25-1.1 or 1-25-1.3 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(1) 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 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 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.