Board of Minerals and Environment
523 East Capitol Avenue
Pierre, South Dakota 57501-3182
(605)773-3886

The public may participate in-person or remotely. To join the meeting via telephone dial **605-679-7263, Conference ID 490 462 056#**. The instructions for joining the meeting via Teams, the full board packet, and the link to listen to the live stream are available on the South Dakota Boards and Commissions Portal at https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67.

AGENDA

Board of Minerals and Environment
Matthew Training Center
523 East Capitol Avenue
Pierre, SD

October 15, 2026
10:00 a.m. Central Time

Call to order and roll call

Approve agenda

Approve August 20, 2026, meeting minutes

Mining issues consent calendar – Tom Cline

Transfer of Small Scale Mine Permit 479 from Robert W. Pace to Bret Aye – Eric Holm

Release of reclamation liability and surety for James Dean Exploration Notice of Intent 402 – Eric Holm

Annual review of open meeting laws in accordance with SDCL 1-25-13

Public comment period in accordance with SDCL 1-25-1 (limited to three minutes per person)

Upcoming meetings

Adjourn

Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605)773-5559 as soon as possible but no later than two business days prior to the meeting to ensure accommodations are available.

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at http://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67

Minutes of the
Board of Minerals and Environment
Matthew Training Center
523 East Capitol Avenue
Pierre, South Dakota

August 20, 2026
10:00 a.m. Central Time

CALL TO ORDER: The meeting was called to order by Chairman Glenn Blumhardt. The roll was called, and a quorum was present.

The meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

BOARD MEMBERS PRESENT: Glenn Blumhardt, Bob Ewing, Jessica Gruenwald, Tim Johns, Doyle Karpen, Rhett Miller, Bob Morris, Bruce Outka, and Laurie Schultz.

BOARD MEMBERS ABSENT: None.

OTHERS PRESENT: See attached attendance sheets.

APPROVE AGENDA: Motion by Karpen, seconded by Schultz, to approve the agenda. The motion carried unanimously.

APPROVAL OF MINUTES FROM JUNE 18, 2026, MEETING: Motion by Ewing, seconded by Morris, to approve the minutes from the June 18, 2026, Board of Minerals and Environment meeting. The motion carried unanimously.

MINING ISSUES CONSENT CALENDAR: Prior to the meeting the board received a copy of the consent calendar (see attachment).

Tom Cline, Minerals, Mining, and Superfund Program, was available for questions from the board. There were no questions.

Motion by Outka, seconded by Schultz, to approve the consent calendar, as presented. The motion carried unanimously.

POWERTECH (USA) INC. REQUEST FOR APPROVAL OF SOCIOECONOMIC CONTRACTOR FOR PROPOSED LARGE-SCALE MINE PERMIT APPLICATION: Eric Holm reported that Powertech (USA), Inc. has requested board approval of Western Water Consultants, Inc. dba WWC Engineering (WWC) as its socioeconomic contractor. Powertech (USA), Inc. is applying for a large-scale mine permit for a proposed uranium in-situ recovery mining operation.

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Under the mining statutes, an applicant for a large-scale mine is required to do a socioeconomic impact study and include it in its mine permit application. The law requires the applicant to get approval from the Board of Minerals and Environment for the contractor to conduct the study.

As part of its decision-making process on a mine permit application, the board has authority to consider the socioeconomic impacts of a mining operation. The board has authority to deny a mine permit application if it finds the adverse socioeconomic impacts of the proposed mining operation outweigh the benefits of the operation.

A copy of WWC's Statement of Qualifications was included in the packet that was sent to the board prior to the meeting.

Jay Douthit with Powertech was present and Doyle Fritz and Jack Fritz with WWC were available on-line to answer questions.

The original socioeconomic study was updated in 2012-2013 by Doyl Fritz, WWC. In 2024, WWC prepared a combined Technical Report and Environmental Report, including socioeconomic analysis, for a Nuclear Regulatory Commission license renewal application for this project. The Nuclear Regulatory Commission approved the renewal and issued a 20-year license on June 30, 2026,

Motion by Johns, seconded by Ewing, to approve WWC Engineering as the socioeconomic contractor for Powertech (USA), Inc.'s large-scale mine permit application. A roll call vote was taken, and the motion carried unanimously.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: The following offered public comments:

Kim Wittenburg, Marilyn Allen, Elizabeth Lone Eagle, Sareen Harding, Louise Dunlap, Jane O'Leary, Reverend Patrick Bell, Jean Rope, Jodie Beth McCain, Kerry Saner-Harvey, Amanda Pittman, Jim Lithti, Caryn Lerman, Allison Hoyer, John Stace, Kimimila Locke, Helen Red Feather, William Wagner, Denise Giago, Ben Sharp, Bruce Ellison.

EXECUTIVE SESSION IN ACCORDANCE WITH SDCL 1-25-2(3) TO DISCUSS CLEAN NUCLEAR ENERGY CORPORATION URANIUM EXPLORATION PERMIT APPLICATION, EXNI 453 WITH BOARD COUNSEL: Motion by Karpen, seconded by Outka, to enter Executive Session in accordance with SDCL 1-25-2(3) to consult with legal counsel or reviewing communications from legal counsel about proposed or pending litigation. The motion carried unanimously.

The board entered Executive Session at 11:45 p.m.

MOTIONS BY THE BOARD: After exiting Executive Session at 12:45 p.m. a motion was made by Outka, seconded by Johns, that the board pursue a declaratory ruling in Circuit Court regarding the interpretation of SDCL 1-26-18.4. A roll call vote was taken, and the motion

carried with Ewing, Gruenwald, Johns, Karpen, Miller, Outka, Schultz, and Blumhardt voting aye. Morris abstained.

ELECTION OF OFFICERS: Karpen nominated Tim Johns as Chair, seconded by Miller.

Motion by Schultz, seconded by Outka, that nominations cease and a unanimous ballot be cast for Tim Johns as Board Chair. The motion carried unanimously.

Gruenwald nominated Rhett Miller as Vice Chair, seconded by Karpen.

Motion by Ewing, seconded by Outka, that nominations cease and a unanimous ballot be cast for Rhett Miller as Vice Chair. The motion caried unanimously.

Karpen nominated Laurie Schultz as Secretary, seconded by Gruenwald.

Motion by Miller, seconded by Ewing, that nominations cease and a unanimous ballot be cast for Laurie Schultz as Secretary. The motion carried unanimously.

UPCOMING BOARD MEETINGS: The next meeting is scheduled for October 15, 2026.

ADJOURN: Motion by Karpen, seconded by Morris, to adjourn the meeting. The motion carried unanimously.

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Secretary, Board of Minerals and Environment Date

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Consent Calendar
South Dakota Board of Minerals and Environment

August 20, 2026

License Holder	License No.	Site No.	Surety Amount	Surety Company or Bank	DANR Recommendation
Transfer of Liability & Surety Release:					
Rodney G. Nelsen Vermillion, SD	05-813		$1,500	Bank of the West – Vermillion, SD	Transfer Liability & Release $1,500
		813001	SW1/4 Section 13; T94N-R54W, Yankton County		
Transfer to:					
John Landeen Irene, SD	26-1162		$3,850	First Premier Bank – Wakonda, SD	
Lonny Potts Gettysburg, SD	16-1015		$500	Great Western Bank – Gettysburg, SD	Transfer Liability & Release $500
		1015001	SE1/4 Section 29; T117N-R74W, Potter County		
Transfer to:					
Potter County Highway Dept. Gettysburg, SD	83-147		Exempt	NA	
Release of Liability & Surety Release:					
Steve Atteberry Colome, SD	12-931		$1,000	First Fidelity Bank – Colome, SD	Release Liability & $1,000
		931001	SW1/4 Section 34; T97N-R75W, Tripp County		

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Consent Calendar
South Dakota Board of Minerals & Environment

August 20, 2026

License Holder	License No.	Site No.	Surety Amount	Surety Company or Bank	DANR Recommendation
Release of Liability & Surety Release:					
Boyden Construction Limited Partnership Platte, SD	85-313		$8,000	First Fidelity Bank – Platte, SD	Release Liability & $8,000
		313011	NW1/4 Section 12; T100N-R67W, Charles Mix County		
Wayne Feistner Woonsocket, SD	14-979		$3,500	First National Bank - Woonsocket	Release Liability & $3,500
		979001	SE1/4 Section 26; T107N-R63W, Jerauld County		
		979002	NE1/4 Section 35; T107N-R63W, Jerauld County		
Bruce Haines Mitchell, SD	95-554		$500	CorTrust Bank – Mitchell, SD	Release Liability & $500
		554001	SE1/4 Section 8; T103N-R66W, Aurora County		
Wayne Malsam Ipswich, SD	97-606		$2,000	First National Bank – Pierre, SD Plains Commerce Bank – Aberdeen, SD	Release Liability & $2,000
		606003	NE1/4 Section 9; T122N-R73W, Edmunds County		
Sweetman Partners LLP Sioux Falls, SD	16-998		$20,000	First National Bank – Sioux Falls, SD	Release Liability & $20,000
		998001	S1/2 and NW1/4 Section 2 & SE1/4 Section 3 & NE1/4 Section 11; T101N-R49W, Minnehaha County		

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Consent Calendar
South Dakota Board of Minerals & Environment

August 20, 2026

License Holder	License No.	Site No.	Surety Amount	Surety Company or Bank	DANR Recommendation
Release of Liability:					
Feistner Gravel & Excavation Woonsocket, SD	03-759		$69,363.38	NA	Release Liability
		759001	SE1/4 Section 18; T108N-R64W, Jerauld County		
Mid-Plains Backhoeing Pierre, SD	94-513		$1,000	First National Bank – Pierre, SD	Release Liability
		513002	Section 25; T110N-R77W, Hughes County		
Morris Inc. Ft. Pierre, SD	83-2		$100,000	United Fire & Casualty Company Cedar Rapids, IA	Release Liability
		2055	NE1/4 Section 8; T109N-R67W, Hand County		
Oban Construction LLC Ipswich, SD	83-35		$20,000	Sun Surety Insurance Company Rapid City	Release Liability
		35008	SE1/4 Section 34; T121N-R73W, Edmunds County		
Stippich Inc. Hettinger, ND	83-214		$5,000	Dacotah Bank – Hettinger, ND	Release Liability
		214003	E1/2 NE1/4 and E1/2 SE1/4 Section 6; T22N-R12E, Perkins County		

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ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

Matthew Training Center - Pierre

Date: 8/20/26

NAME (PLEASE PRINT)	MAILING ADDRESS	REPRESENTING
Eric Holm	Pierre	DANR
Jay Doutrin	310 2nd Ave Edgemont SD. 57735	PowerTech.
Rebecca Terk	Rapid City	Dakota Rural Action
Bob Mercer	Pierre	KELOLAND NEWS
Thomas Cline JR	523 E Capitol Ave	SD DANR - M+M program
[illegible]	[illegible]	[illegible]
Sareen Harding	Hot Springs	self
Helen Red Leather	Wounded Knee	Self.
Darlene Hawk Wing	WKm	Self
Beverly Larson	WK.	self
[illegible]	WKme	self
Diane TheBulls	Red Shirt SD	BHCWA
Rudell Bear Shirt	WKSD	Intervenors
Nina Taylor	WKSD	
John Cyr	WKSD	
Jolene Tenfingers	WKSD	
Linda White Face	Pahla Sinte	
Jean Roach	3711 Ivy Ave	Intervenor
David McVey	Pierre	Board Counsel, ATG
Denise Giago		
Taylor Gunhammer		
Elizabeth Lone Eagle		
Ben Sharp		

Consent Calendar
South Dakota Board of Minerals & Environment

October 15, 2026

License Holder	License No.	Site No.	Surety Amount	Surety Company or Bank	DANR Recommendation
Transfer of Liability:					
Dakota Constructors Inc. Harrisburg, SD	21-1090		$20,000	Granite Re, Inc. – Oklahoma City, OK	Transfer Liability
		1090001	SW1/4 Section 6; T103N-R53W, McCook County		
Transfer to:					
Jacob Tysdal Montrose, SD	26-1166		$23,100	Capitol Indemnity Corp. – Madison, WI	
Cody Schad Rapid City, SD	19-1047		$20,000	Pioneer Bank & Trust – Rapid City, SD	Transfer Liability
		1047001	SW1/4 Section 19; T5N-R1E, Lawrence County		
Transfer to:					
Lion Rock Resources (SD) Inc. Sturgis, SD	26-1167		$38,500	First Interstate Bank – Billings, MT	
Release of Liability & Surety Release:					
C.W. Archibald & Sons Grand River Township, SD	03-761		$1,000	Dakota Community Bank Bowman, ND	Release Liability & $1,000
		761001	SE1/4 Section 10; T22N-R12E, Perkins County		
Darlene Kelly Faith, SD	21-1095		$1,000	First National Bank – Faith, SD	Release Liability & $1,000
		1095001	SW1/4 Section 35; T17N-R15E, Perkins County		

Consent Calendar
South Dakota Board of Minerals & Environment

October 15, 2026

License Holder	License No.	Site No.	Surety Amount	Surety Company or Bank	DANR Recommendation
Release of Liability & Surety Release:					
Harold Orr Bristol, SD	95-562		$1,000	First National Bank – Pierre, SD	Release Liability & $1,000
		562001	SE1/4 Section 15; T120N-R59W, Day County		
Release of Liability & Surety Release:					
Keith Vanderwerff Miller, SD	02-740		$2,000	First State Bank – Miller, SD Quoin Financial Bank – Miller, SD	Release Liability & $2,000
		74001	NE1/4 Section 18; T109N-68W, Hand County		
Release of Liability:					
Faulk County Highway Dept. Faulkton, SD	83-103		Exempt	NA	
		103005	E1/2 NW1/4 Section 6; T116N-R69W, Hand County		Release Liability
		103007	SW1/4 Section 8; T119N-R66W, Faulk County		
Grand River Township Grand River Township, SD	98-667		Exempt	NA	
		667001	SE1/4 Section 10; T22N-R12E, Perkins County		Release Liability

Consent Calendar
South Dakota Board of Minerals & Environment

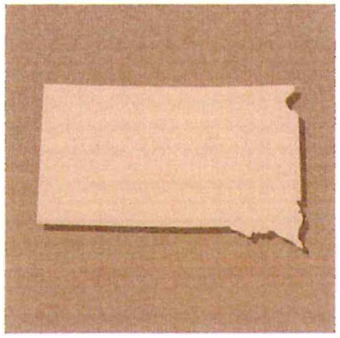
October 15, 2026

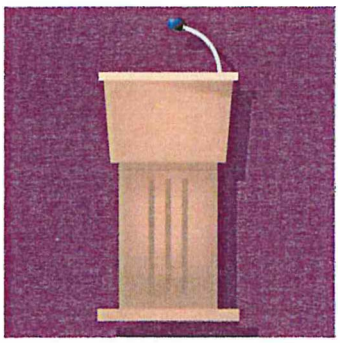
License Holder	License No.	Site No.	Surety Amount	Surety Company or Bank	DANR Recommendation
Release of Liability:					
Gene Green Murdo, SD	01-730		$2,000	Wells Fargo Bank – White River, SD	
		730001	SW1/4 Section 23; T43N-R30W, Mellette County		Release Liability
Mellette County Highway Dept. White River, SD	83-193	Exempt	NA		Release Liability
		193042	SE1/4 Section 30; T43N-R29W, Mellette County		
Morris Inc. Ft. Pierre, SD	83-2		$100,000	United Fire & Casualty Co. Cedar Rapids, IA	Release Liability
		2011	NE1/4 Section 15 & SE1/4 Section 10; T110N-R77W Hughes County		
		2030	SE1/4 Section 30; T43N-R29W, Mellette County		

South Dakota Board of Minerals & Environment

October 15, 2026

Permit Holder	Permit No.	Surety Amount	Surety Company or Bank	DANR Recommendation
Transfer of Small Scale Mine Permit 479:				
Robert W. Pace New Underwood, SD	479	$2,500	First Interstate Bank, New Underwood, SD	Transfer Permit 479 and liability from Robert W. Pace to Bret Aye. Accept CD 1030226644, Stockman Bank of Montana, Miles City, MT in the amount of $10,700. Release CD 6701000601, First Interstate Bank, New Underwood, SD in the amount of $2,500
Transfer to:		E1/2 SE1/4 NW1/4 Section 28; T2N-R4E, Pennington County		
Bret Aye Miles City, MT		$10,700	Stockman Bank of Montana, Miles City, MT	
Release of Liability and Surety – James Dean:				
James Dean Hill City, SD	EXNI-402	$5,000	First Interstate Bank, Hill City, SD	Release reclamation liability and CD 80489 in the amount of $5,000.
		Section 24; T1N-R3E, Pennington County		





Conducting the Public's Business in Public

An explanation of South Dakota's Open Meetings Laws

(Effective July 1, 2026)

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, 1-25-12(3). 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(2). 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: WHAT MUST BE INCLUDED ON THE PROPOSED AGENDA?

A: A proposed agenda, as required by § 1-25-1.1 or 1-25-1.3, must list all items to be considered by a public body during any official meeting. The proposed agenda items must be described in sufficient detail to reasonably inform the public of any official business or public policy intended to be considered at the meeting.

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. SDCL 1-25-1.5, 1-25-12(5). 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). SDCL 1-25-1.6. 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 1-25-1.1 requires that all political subdivisions (except the 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 1-25-1.1 and requires the State and its agencies, boards, commissions, or departments to post a proposed agenda both on http://boardsandcommissions.

sd.gov and at their principal place of business at least 72 continuous hours before a meeting is scheduled to start (this does not include any weekend or legal holiday).

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. SDCL 1-25-1. 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. Public comment is not required at meetings held solely for an executive session, inauguration, presentation of an annual report, or swearing in of elected officials.

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: A motion to enter executive session must be made and seconded, followed by a vote. If the motion does not receive a majority vote, a roll call vote is required. Both the motion and the resulting vote must be recorded in the minutes of the proceedings.

Q: WHAT MUST BE STATED IN A MOTION FOR EXECUTIVE SESSION?

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.

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.

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 or Deputy 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(1) specifically includes meetings conducted by "electronic means, including electronic mail, instant messaging, social media, text message, or virtual meeting platform[.]" A quorum of a public body that discusses official business of that body via electronic means is conducting an official meeting for purposes of the open meetings laws. Electronic communications made solely for scheduling purposes do not fall within the definition of an official 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 1-27-1.16 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 1-27-1.17 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 any audio and visual recording must be 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 1-27-1.16 and 1-27-1.17 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 1-27-1.18.

Q: ARE PUBLIC BODIES REQUIRED TO REVIEW THE OPEN MEETINGS LAWS?

A: Public bodies must annually review an explanation of the open meetings laws provided by the Attorney General, along with any other material pertaining to the open meetings laws made available by the Attorney General. SDCL 1-25-13. Each public body must report in its minutes that the annual review of the open meetings laws was completed.

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

1-25-1. OPEN MEETINGS.

An official meeting of a public body is open to the public unless a specific law is cited by the public body 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 public body may post a public notice of a quorum, in lieu of an agenda. The notice of a quorum must meet the posting requirements of § 1-25-1.1 or 1-25-1.3 and must 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 an official meeting held solely for the purpose of meeting in executive session, an inauguration, presentation of an annual report to the public body, or swearing in of a newly elected official, regardless of whether the activity takes place at the time and place usually reserved for an official meeting.

If a quorum of township supervisors, road district trustees, or trustees for a municipality of the third class meets 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.

1-25-1.1. 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.

1-25-1.3. PUBLIC NOTICE OF STATE. The state shall provide public notice of a meeting, at least seventy-two hours before the meeting is schedule to start, not including Saturday, Sunday, or any legal holiday, by posting a copy of the proposed agenda:

(1) At the principal office of the board, commission, or department holding the meeting;

(2) That includes the date, time, and location of the meeting;

(3) That is visible, readable, and accessible to the public; and

(4) 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 must be delivered in person, or by mail, email, or telephone, to members of the local news media who have requested notice. The state shall also comply with all other requirements of this section, for a special or rescheduled meeting, as circumstances permit. A violation of this section is a Class 2 misdemeanor.

1-25-1.5. 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.

1-25-1.6. 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. 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.

1-25-1.7. AGENDA DETAILS ARE REQUIRED. A proposed agenda, as required by § 1-25-1.1 or 1-25-1.3, must list all items to be considered by a public body during any official meeting. The proposed agenda items must be described in sufficient detail to reasonably inform the public of any official

business or public policy intended to be considered at the meeting. A violation of this section is a Class 2 misdemeanor.

1-25-2. EXECUTIVE SESSION. An executive session or closed meetings may be held only for the purposes of:

(1) Discussing the character, competence, fitness, performance, or qualifications of any current or prospective public officer or employee, not including an independent contractor;

(2) Discussing a student's:

(a) Discipline, expulsion, or suspension;

(b) Assignment or educational program; or

(c) Eligibility 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 that is owned by the state or any of its political subdivisions, if public discussion may be harmful to the competitive position of the business; or

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

(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) Communications network schema, computer systems, cyber security plans, passwords, or user identification names;

(e) Guard schedules;

(f) Lock combinations; and

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

(7) Discussing any emergency or disaster response plans or protocols, safety or security audits or reviews, or lists of emergency or disaster response personnel or material; and

(8) Discussing the location of or listing any:

(a) Ammunition or weapons;

(b) Biological, chemical, or nuclear agents; or

(c) Other military or law enforcement equipment or personnel.

An executive session or closed meeting may be held only upon a majority vote of the members of the public body present and voting at an otherwise open official meeting.

In the absence of a unanimous vote, any vote to enter executive session must be taken by roll call. A motion to enter executive session must state the applicable subdivision in this section, or any other applicable law, pursuant to which the executive session is to be held. The motion and vote to enter executive session must be reported in the minutes of the proceedings. Discussion during executive session is restricted to the purpose specified in the motion to enter executive session.

Any official action concerning the matters considered pursuant to this section must be taken at an open official meeting.

Nothing in § 1-25-1 or this section prevents an executive session or closed meeting if the federal or state Constitution or any federal or state statute permits or requires the session or meeting. A violation of this section is a Class 2 misdemeanor.

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 STATE'S 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.

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 is comprised of five state's attorneys or deputy state's attorneys appointed by the attorney general. Each commissioner serves at the pleasure of the attorney general. The members of the commission shall choose a chair of the commission annually by majority vote.

1-25-12. DEFINITIONS. Terms used in the open meetings laws mean:

(1) "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 or electronic means, including electronic mail, instant messaging, social media, text message, or virtual meeting platform, provided the term does not include communications solely to schedule a meeting or confirm attendance availability for a future meeting;

(2) "Political subdivision," any association, authority, board, municipality, commission, committee, council, county, school district, task force, town, township, or other local governmental entity, which is created by statute, ordinance, or resolution, and is vested with the authority to exercise any sovereign power derived from state law;

(3) "Public body," any political subdivision or the state;

(4) "State," each agency, board, commission, or department of the State of South Dakota, not including the Legislature; and

(5) "Teleconference," an exchange of information by any audio, video, or electronic medium, including the internet.

1-25-13. ANNUAL REVIEW OF OPEN MEETING LAWS. Any agency, as defined in § 1-26-1, or political subdivision of this state, that is required to provide public notice of its meetings pursuant to § 1-25-1.1 or 1-25-1.3 must annually review the following, during an official meeting of the agency or subdivision:

(1) The explanation of the open meeting laws of this state published by the attorney general, pursuant to § 1-11-1; and

(2) Any other material pertaining to the open meeting laws of this state provided by the attorney general.

The agency or subdivision must include in the minutes of the official meeting an acknowledgement that the review was completed.

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.