

**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
WEDNESDAY, AUGUST 13, 2025, 10:15 A.M., CT**

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**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
WEDNESDAY, AUGUST 13, 2025, 10:15 A.M., CT**

**Board  
Members:**

**Jeff Erickson**

**Matt Judson**

**Sharon  
Casey**

**Mike Luken**

**Don  
Kettering**

**Tom Jones**

**Reed Kessler**

**Joy Nelson**

**Kevin  
Tetzlaff**

**David Emery**

**Craig  
Christianson**

**Brad Moore**

**Non-Voting**

**Senator Tim  
Reed**

**Representative  
Erik Muckey**

**Motion Sheet**

(STAFF RECOMMENDATIONS)

**Rules 68:02**

Motion to accept the changes proposed to 68:02 Board of Economic Development as presented

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Agenda**

Motion to approve the agenda as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Minutes**

Motion to approve the minutes of the meeting held July 10, 2025 and August 4, 2025, as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Conflicts of Interest Disclosures**

**Public Comments**

**Commissioners Comments**

**Open Meeting Laws**

No action.

**Executive Session**

Motion to enter into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. SDCL 1-16G-11, 1-25-2(3) and 19-19-502

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Chairman: The Chairman declared the board out of executive session at [        a.m.].**

**Chairman: The BED entered into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action was taken.**

**Motion to approve the vice-chairman's report from executive session.**

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

Please note times:

Call To Order: \_\_\_\_\_

Executive  
Session \_\_\_\_\_

Regular Session \_\_\_\_\_

Adjournment \_\_\_\_\_

**Loan Review Summary**

**Blankenship Properties, LLC and Burnight Glass, LLC**

Motion to approve the loan reviews and recommendation as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Old Business**

**Barbeque Twist, LLC**

Motion to approve the recommendation as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**City of Lake Preston**

Motion to approve a two-year extension to the LIIP grant agreement until May 15, 2027

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Kayla Lux**

Motion to approve the recommendation as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Manitou Equipment America, LLC**

Motion to approve extending the RPP permit to July 18, 2026.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Marion Industrial**

Motion to approve reopening the RPP Permit and extending the permit to September 16, 2026.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Whirlwind Investments, LLC**

Motion to approve the recommendation as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Riverview Manufacturing, LLC**

Motion to approve the collateral release as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**New Business**

**COAXIS LNG Processing, LLC**

Motion to approve a SD Works loan request from COAXIS LNG Processing, LLC in the amount up to \$1,200,000. Secured by a 2<sup>nd</sup> UCC with landlord acknowledgement, a collateral assignment of contracts, personal guaranties from all principals with 10% or more ownership and corporate guaranties.

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Reinvestment Payment Program**

**Spartan Fire, LLC**

Motion to approve the Reinvestment Payment Program grant application to Spartan Fire, LLC as recommended by staff.

Based on the representations and project description contained in the application for reinvestment payment, including but not limited to the representations concerning jobs created or retained and wages and benefits to be paid, a new or expanded facility reinvestment payment of \$636,300 but not to exceed 100% of the amount of the actual State Sales/Use Tax paid on eligible project costs not to exceed \$20,000,000, is approved for Spartan Fire LLC. The project as completed must be substantially similar to the project described in the application and must comply with the deadlines set out SDCL Ch. 1-16G and ARSD Ch. 68:02:07. The board has considered the factors set out in SDCL 1-16G-59 and ARSD 68:02:07:04 and the likelihood the project would not be located in South Dakota absent the reinvestment payment. Staff is authorized to issue a permit consistent with the application, this approval and the applicable provisions of SDCL Ch. 1-16G and ARSD Ch. 68:02:07.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Adjourn**

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

A

**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
WEDNESDAY, AUGUST 13, 2025, 10:15 A.M., CT**

***The public may participate by the following:***

Call In Number: (669) 900-9128      Meeting ID: 96677988449      Participant Id: #      Passcode: 421401  
[www.zoom.com](https://www.zoom.us/j/96677988449)      Meeting ID: 96677988449      Passcode: 421401

**REGULAR SESSION AGENDA**

10:15 A.M.                      Call to Order, Chairman Jeff Erickson

10:20 A.M.                      **Rules 68:02**  
RECOMMENDED ACTION: Motion to accept the changes proposed to  
68:02 Board of Economic Development as presented

**Agenda**

RECOMMENDED ACTION: Motion to approve the agenda as  
provided or amended.

**Minutes**

RECOMMENDED ACTION: Motion to approve the minutes of July  
10, 2025 and August 4, 2025, as presented.

**Conflicts of Interest Disclosures**

**Public Comments**

**Commissioner's Comments**

**Open Meeting Laws**

RECOMMENDED ACTION: No action required.

10:25 A.M.                      **Executive Session**  
RECOMMENDED ACTION: Motion to enter into executive session to  
discuss contractual matters, and to discuss commercial and financial  
information relating to loan and other assistance applicants. SDCL 1-  
16G-11, 1-25-2(3) and 19-19-502

-  
10:55 A.M.                      **Report from Executive Session**  
RECOMMENDED ACTION: Approve the Chairman's report from  
Executive Session.

**Other Motions**

Loan Review Summary  
Barbeque Twist, LLC  
City of Lake Preston  
Kayla Lux  
Manitou Equipment America, LLC  
Marion Industrial  
Whirlwind Investments, LLC  
COAXIS LNG Processing, LLC

Reinvestment Payment Program  
Spartan Fire, LLC

**Adjournment**

Notice is further given to persons with disabilities that this meeting is being held in a physically accessible place. Please notify the above mentioned office within 48 hours of the public hearing if you have special needs for which this agency will make the necessary arrangements.

B



**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
THURSDAY, JULY 10, 2025, 10:00 A.M., CT**

Members Present

Chairman Jeff Erickson, Don Kettering, Matt Judson, Sharon Casey, Mike Luken, Tom Jones, Joy Nelson, David Emery and Brad Moore

Staff Present

Commissioner Bill Even, Deputy Commissioner Joe Fiala, Jack Valentine, Ashley Moore, Stephanie Deyo, Nadine Agneau, Nick Rabern, Brandin Seibel, Curtis Egan, Adam Molseed, Jake Salmen and Ann Gesick-Johnson

Other Staff Present

Shawn Hofer and Mike Bietz – BankWest, Inc.

Other's Present

Bob Mercer - Keloland

Call to Order

Chairman Erickson called the meeting to order at 10:00 a.m.

Agenda

A motion was made by Don Kettering and seconded by Sharon Casey to approve the agenda as presented.

Motion passed by a voice vote.

Minutes

A motion was made by Joy Nelson and seconded by Brad Moore to approve the minutes of the meetings held June 11, 2025 and June 30, 2025, as presented.

Motion passed by a voice vote.

Conflicts Disclosure

Chairman Erickson opened the floor for board members to identify potential conflicts under SDCL Chapter 3-23. There were none from board members and no objection to proceeding with the agenda.

Public Comments – none

Executive Session

A motion was made by Mike Luken and seconded by Don Kettering to enter into Executive Session at 10:04 a.m. to discuss contractual matters, and to discuss commercial and financial information relating to loan and other assistance applicants. SDCL 1-16G-11

Motion passed by a voice vote.

Executive Session Report

The Chairman declared the board out of Executive Session at 10:40 a.m. The Chairman reported that the Board of Economic Development entered into Executive Session to discuss contract matters, commercial and financial information relating to loan and other assistance to applicants. No action was taken.

A motion was made by Matt Judson and seconded by Sharon Casey to approve the Chairman's report from Executive Session.

Motion passed by a voice vote.

### Old Business

#### COVID – Disaster Relief Loan Program

A motion was made by Mike Luken and seconded by Matt Judson to acknowledge staff's report on the COVID - Disaster Relief Loan program and recommends the Board approve the addition of the two loans to the watchlist with the recommendations as presented.

Motion passed by a voice vote.

#### JH Investments, LLC

A motion was made by Brad Moore and seconded by Don Kettering to approve a commitment extension to July 10, 2026.

Motion passed by a voice vote.

#### Kingsbury County Wind Fuel, LLC

A motion was made by Joy Nelson and seconded by Tom Jones to approve amending the construction start date to November 10, 2023.

Motion passed by a voice vote.

#### Marion Industrial

A motion was made by Joy Nelson and seconded by Tom Jones to approve amending the construction start date to November 10, 2023.

Motion passed by a voice vote.

#### MinKota Fisheries

A motion was made by Don Kettering and seconded by Sharon Casey to approve writing off the remaining VASF balance as presented.

Motion passed by a voice vote.

#### Riverview Manufacturing, LLC

A motion was made by Joy Nelson and seconded by Matt Judson to approve the collateral release as presented.

Motion passed by a voice vote.

### New Business

#### Elevate Rapid City

A motion was made by Matt Judson and seconded by Brad Moore to approve a SD Works legacy loan from Elevate Rapid City in the amount of \$500,000 for the creation of a Perpetual Seed Funding program.

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

Motion passed by a voice vote.

### Adjourn

A motion was made by Matt Judson and seconded by Mike Luken to adjourn the meeting at 10:56 a.m.

Motion passed by a voice vote.

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Matt Judson, Treasurer

**CREDIT COMMITTEE**  
**GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD**  
**MONDAY, AUGUST 4, 2025, 1:00 P.M. CT**

Members Present

Chairman Jeff Erickson, Don Kettering, Matt Judson and Craig Christianson

Staff Present

Jack Valentine, Ashley Moore, Nadine Agneau, Nick Rabern, Brittany Eddy, Adam Molseed, Laure Swanson Alex Kahnke, Sheldon Jensen and Bill Wendling

Others Present

Shawn Hofer and Mike Bietz – BankWest, Inc.  
Bob Mercer – Keloland News

Call to Order

Chairman Erickson called the meeting to order at 1:00 p.m.

Agenda

A motion was made by Matt Judson and seconded by Craig Christianson to approve the agenda as presented.

Motion passed by a voice vote.

Conflicts Disclosure

Conflicts Disclosure – Chairman Erickson opened the floor for board members to identify potential conflicts under SDCL Chapter 3-23. Jeff Erickson declared a potential conflict with COAXIS LNG Processing, LLC due to banking relations and he would not partake in the discussion or vote on the project. The Chairman opened up the floor for questions and discussion concerning the potential conflicts; there were none from the board members and no objection to proceeding with the agenda.

Public Comments

None

Executive Session

A motion was made by Craig Christianson and seconded by Matt Judson to enter into Executive Session at 1:03 p.m. to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. SDCL 1-16G-11.

Motion passed by a voice vote.

Executive Session Report

The Chairman declared the Credit Committee out of Executive Session at 1:27 p.m. The Chairman reported that the Board of Economic Development Credit Committee entered into Executive Session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action was taken.

A motion was made by Matt Judson and seconded by Craig Christianson to approve the Chairman's report from executive session.

Motion passed by a voice vote.

### Loan Reviews

#### Blankenship Properties, LLC and Burnight Glass, LLC

Credit Committee recommends to the board approving the loan reviews and recommendations as presented.

A motion was made by Craig Christianson and seconded by Matt Judson.

Motion passed by a voice vote.

### Old Business

#### Barbeque Twist, LLC

Credit Committee recommends to the board approving the recommendation as presented.

A motion was made by Matt Judson and seconded by Craig Christianson.

Motion passed by a voice vote.

### Kayla Lux

Credit Committee recommends to the board approving the recommendation as presented.

A motion was made by Craig Christianson and seconded by Matt Judson.

Motion passed by a voice vote.

### Whirlwind Investments, LLC

Credit Committee recommends to the board approving the recommendation as presented.

A motion was made by Matt Judson and seconded by Craig Christianson.

Motion passed by a voice vote.

### New Business

#### COAXIS LNG Processing, LLC

Credit Committee recommends to the board approving the SD Works application as presented.

A motion was made by Craig Christianson and seconded by Matt Judson.

Motion passed by a voice vote with Jeff Erickson abstaining.

### Adjourn

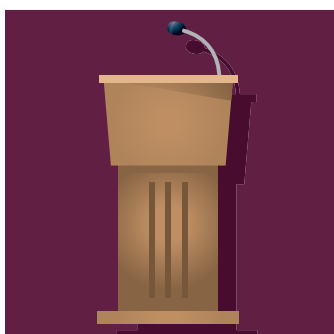
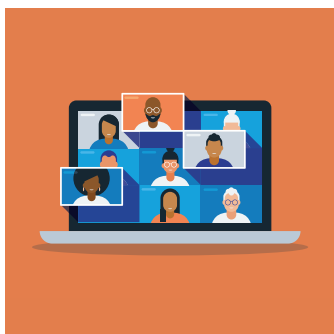
A motion was made by Matt Judson and seconded by Craig Christianson to adjourn the meeting at 1:32 p.m.

Motion passed by a voice vote.

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Matt Judson, Treasurer

C



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# Conducting the Public's Business in Public

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A guide to South Dakota's  
Open Meetings Laws  
*(Revised 2025)*

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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

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## **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: 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 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>.

**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:** 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 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 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.

**1-25-1.5. 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.

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

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

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

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

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

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

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

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

(b) Emergency management or response;

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

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

(e) Guard schedules;

(f) Lock combinations;

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

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

However, any official action concerning the matters pursuant to this section shall be made at an open official meeting. An executive or closed meeting must be held only upon a majority vote of the members of the public body present and voting, and discussion during the closed meeting

is restricted to the purpose specified in the closure motion. Nothing in § 1-25-1 or this section prevents an executive or closed meeting if the federal or state Constitution or the federal or state statutes require or permit it. A violation of this section is a class 2 misdemeanor.

**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.