

## CHAPTER 1-25

### MEETINGS OF PUBLIC AGENCIES

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1-25-1. Official meetings open to the public--Exceptions--Teleconferences--Violation as misdemeanor. The official meetings of the state, its political subdivisions, and any public body of the state or its political subdivisions are open to the public unless a specific law is cited by the state, the political subdivision, or the public body to close the official meeting to the public. For the purposes of this section, a political subdivision or a public body of a political subdivision means any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, or other agency of the state that is created or appointed by statute, ordinance, or resolution and is vested with the authority to exercise any sovereign power derived from state law. For the purposes of this section, an official meeting is any meeting of a quorum of a public body at which official business of that public body is discussed or decided, or public policy is formulated, whether in person or by means of teleconference.

It is not an official meeting of one political subdivision or public body if its members provide information or attend the official meeting of another political subdivision or public body for which the notice requirements of § 1-25-1.1 have been met.

Any official meeting may be conducted by teleconference as defined in § 1-25-1.2. 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 shall be taken by roll call.

If the state, a political subdivision, or a public body conducts an official meeting by teleconference, the state, the political subdivision, or public body shall provide one or more places at which the public may listen to and participate in the teleconference meeting. For any official meeting held by teleconference, which 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 an executive or closed meeting.

The chair of the public body shall reserve at every official meeting by the public body a period for public comment, limited at the chair's discretion, but not so limited as to provide for no public comment.

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

A violation of this section is a Class 2 misdemeanor.

**Source:** SL 1965, ch 269; SL 1980, ch 24, § 9; SL 1989, ch 15, § 1A; SL 1990, ch 18, § 1; SL 1990, ch 30, § 1; SL 1993, ch 17; SL 2005, ch 16, § 1; SL 2008, ch 13, § 1; SL 2010, ch 9, § 2; SL 2012, ch 5, § 1; SL 2013, ch 8, § 1; SL 2016, ch 9, § 1; SL 2018, ch 14, § 1.

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1-25-1.1. Notice of meetings of public bodies other than the state and its boards, commissions, and departments--Violation as misdemeanor. All public bodies, except the state and each state board, commission, or department as provided in § 1-25-1.3, 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 meeting, by posting a copy of the notice, visible to the public, at the principal office of the public body holding the meeting. The proposed agenda shall include the date, time, and location of the meeting. The notice shall also be posted on the public body's website upon dissemination of the notice, if such 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 public body 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.

**Source:** SL 1987, ch 22, § 2; § 1-25-1.2; SL 1990, ch 19; SL 1990, ch 30, § 2; SL 2012, ch 6, § 1; SL 2013, ch 9, § 1; SL 2015, ch 11, § 1; SL 2016, ch 10, § 1.

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1-25-1.2. Teleconference defined. For the purposes of this chapter, a teleconference is information exchanged by any audio, video, or electronic medium, including the internet.

**Source:** SL 1990, ch 18, § 2; SL 2016, ch 9, § 2.

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1-25-1.3. Notice of meetings of the state and its boards, commissions, and departments--Violation as misdemeanor. The state and each state board, commission, or department 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, 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 the day the agenda is posted nor 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, each state board, commission, or department 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.

**Source:** SL 2016, ch 10, § 2; SL 2017, ch 7, § 1; SL 2017, ch 8, § 1.

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1-25-1.4. Information to be posted on state website. Any state board, commission, or department that is required to provide public notice of its meetings pursuant to § 1-25-1.3 shall make available on a state website designated by the commissioner of the Bureau of Finance and Management, if the information exists:

- (1) Financial statements;
- (2) Audit reports;
- (3) A list of the members of the board or commission;
- (4) A schedule of future meetings;
- (5) Public meeting materials that are available before a public meeting;
- (6) Meeting minutes; and
- (7) Annual reports.

**Source:** SL 2017, ch 8, § 2.

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1-25-2. Executive or closed meetings--Purposes--Authorization--Violation as misdemeanor. 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.

However, any official action concerning such matters shall be made at an open official meeting. An executive or closed meeting shall be held only upon a majority vote of the members of such 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 may be construed to prevent 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.

**Source:** SL 1965, ch 269; SL 1980, ch 24, § 10; SL 1987, ch 22, § 1; SL 2014, ch 90, § 2.

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1-25-3. Boards and commissions to keep minutes of proceedings--Availability to public--Violation as misdemeanor. Any board or commission of the various departments of the State of South Dakota shall keep detailed minutes of the proceedings of all regular or special meetings. The minutes required in this section shall report how each individual member voted on any motion on which a roll call vote is taken. The minutes shall be available for inspection by the public at all times at the principal place of business of the board or commission. A violation of this section is a Class 2 misdemeanor.

**Source:** SL 1953, ch 307; SDC Supp 1960, § 55.2917; SL 1966, ch 165, § 16; SL 1980, ch 24, § 11; SL 1996, ch 9, § 1; SL 2015, ch 12, § 1.

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1-25-4. Repealed by SL 1996, ch 9, § 2.

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1-25-5. Repealed by SL 1980, ch 24, § 12.

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1-25-6. Duty of state's attorney on receipt of complaint alleging chapter violation. If a complaint alleging a violation of this chapter 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.

**Source:** SL 2004, ch 19, § 1.

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1-25-6.1. Duty of state's attorney on receipt of complaint alleging violation by board of county commissioners. 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.

**Source:** SL 2010, ch 6, § 1.

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1-25-7. Consideration by commission of complaint or written submissions alleging chapter violation--Findings--Public censure. 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.

**Source:** SL 2004, ch 19, § 2; SL 2010, ch 6, § 2.

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

**Source:** SL 2004, ch 19, § 3.

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1-25-9. Limitations on participation by commission members. No member of the commission may participate as part of the commission or vote on any action regarding a violation of this chapter if that member reported or was involved in the initial investigation, is an attorney for anyone who reported or was involved in the initial investigation, or represents or serves as a member of the governmental entity about whom the referral is made. The provisions of this section do not preclude a commission member from otherwise serving on the commission for other matters referred to the commission.

**Source:** SL 2004, ch 19, § 4.

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1-25-10. State Investment Council may discuss certain matters in executive session. The State Investment Council, in executive session, may discuss and consider any document or information exempt from public disclosure requirements under the provisions of subdivision 1-27-1.6(5).

**Source:** SL 2010, ch 7, § 1.

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1-25-11. Recording of open public meeting to be permitted. No state, political subdivision, or public body may prevent a person from recording, through audio or video technology, a public meeting that is open to the public as long as the recording is reasonable, obvious, and not disruptive.

**Source:** SL 2016, ch 11, § 1.

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