

**BOARDS AND
COMMISSIONS**
{ STATE OF SOUTH DAKOTA }

State of South Dakota Boards and Commissions Meeting Guidelines



It is the expectation of the State of South Dakota that public information and meeting materials for board and commission meetings be transparent, timely and accurate.

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State of South Dakota

What is South Dakota Open Meetings Law?

South Dakota Open Meetings Law embodies the principle that the public is entitled to the greatest possible information about public affairs and is intended to encourage public participation in government. [SDCL 1-25](#) requires that official meetings of public bodies must be public and noticed in advance of the meetings.

An "official meeting" is defined as "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."

No Board may prevent a person from recording, through audio or video technology, an official meeting as long as the recording is reasonable, obvious, and not disruptive. The Board may designate a place in the meeting room for audio or video recording equipment.

Who Does the Open Meetings Law Apply To?

South Dakota Open Meetings Law applies to all public bodies "of the state or its political subdivisions" that exercise "sovereign power derived from state law." 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 actually exercise sovereign power.

Open Meetings

In-person Meetings

In addition to statutory requirements, the State of South Dakota is fully committed to transparency and would like to provide some additional information regarding public accessibility of official board meetings. Boards and commissions in-person meetings are required to be accessible both in person and via telephone (as a minimum method) or via the internet or web-meeting.

Boards and Commissions can facilitate these meetings using a variety of methods including:

- 1) Utilizing tools like Skype or Livestream which may still require a phone line; OR
- 2) Establishing a dial in number or conference line for people to participate by phone.

Meeting notices and agendas should clearly indicate how interested persons can arrange for meeting access via telephone. How to dial in to the meeting, or who to call for the RSVP process, should be clearly stated in the same place in the notice or agenda as meeting location information.

Teleconferences

Teleconference meetings are allowed. These meetings can be an information exchange conducted by audio or video if a place is provided for the public to participate by phone. If less than a quorum is present at the location open to the public, arrangements must be made for the public to listen by telephone or internet. The public must be notified of teleconference meetings under the same notice requirements as any other meeting. Members are deemed in attendance if the member answers present to the roll call for the purpose of determining a quorum. All votes shall be taken by roll call.

The term “teleconference” is defined as “information exchanged by any audio, video, or electronic medium, including the internet.” This definition includes the use of email and text message. If a quorum of a board discusses official business as part of an e-mail or text message group, it is legally considered an official meeting and all Open Meetings laws will apply. Members of boards need to ensure they do not unintentionally violate Open Meetings requirements by discussing official business among themselves if a quorum or more of the board is part of the email or text message group.

Notice of Quorum

In accordance with [SDCL 1-25-1](#), for any event hosted by a nongovernmental entity to which a quorum of the Board is invited, and public policy may be discussed, but the Board does not control the agenda, the Board may post a public notice of a quorum, in lieu of an agenda. The notice of a quorum shall meet the posting requirements of [§ 1-25-1.1](#) or [1-25-1.3](#) and shall contain, at a minimum, the date, time, and location of the event. For example, if a majority of Board members will be in attendance at a conference hosted by an association, the Board may post a “Notice of Quorum” to include the date, time and location of the event, which states a quorum may be present at the conference, but no board action will take place.

Meetings Closed to the Public

Executive Sessions

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. Executive or closed meetings may be held for the sole purposes of:

- 1) Discussing 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 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) Discussing information about the protection of property and persons within the property as described in [SDCL 1-27-1.5\(8\) and \(17\)](#), such as emergency response plans, public safety information, or network security.

Executive session may also be appropriate to comport with other federal or state laws that require confidentiality or permit executive or closed meetings.

Recording can be prohibited at meetings closed to the public pursuant to law.

Procedure for Executive Sessions

Motions for executive sessions must refer to the specific state law allowing for the executive session (e.g. “pursuant to [SDCL 1-25-2\(3\)](#)) and pass by a majority vote of the voting members present. To avoid public confusion a best practice would be for a board to explain the reason for going into executive session. An example would be: “Motion to go into executive session pursuant to [SDCL 1-25-2\(1\)](#) for the purpose of discussing a personnel matter,” or “Motion to go into executive session pursuant to [SDCL 1-25-2\(3\)](#) for the purpose of consulting with legal counsel.” Executive session discussion must be strictly limited to the announced subject. No official action or vote 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.

Meeting Notices

[SDCL 1-25-1.3](#) Notice of meetings of the State which includes its boards, commissions, and departments 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; it must be visible, readable, and accessible to the public. The State of South Dakota values public input. In accordance with [SDCL 1-25-1](#), the board shall reserve a period for public comment during each regularly scheduled official meeting. The public comment period must be sufficient to reasonably accommodate all members of the public wishing to testify. For example, if the agenda has five minutes set aside for public comment and two people wish to testify, the time allowed is likely sufficient. However, if ten people wish to testify, the Board must extend the public comment time period.

The agenda shall be posted at least three business days (72 hours) before the meeting is scheduled to start according to the agenda. Three business days does not include Saturdays, Sundays, or legal holidays. Three business days may include the day the agenda is posted. A violation of [SDCL 1-25-1.3](#) is a Class 2 misdemeanor.

Boards and Commissions will post all meeting notices to the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/>.

The public must be notified of teleconference meetings under the same notice requirements as any other meeting. All votes shall be taken by roll call.

Sample Meeting Timeline

Scheduled meeting date	Monday, May 20, 2019
Date to post the agenda / notice	Tuesday, May 14, 2019
Date to post meeting documents if available	Tuesday, May 14, 2019
Date to post approved agenda & *draft minutes	Tuesday, June 4, 2019

*Approved minutes are posted the day following the meeting they were accepted as final.

Posting Meeting Documents

[SDCL 1-25-1.4](#) State boards, commissions, or departments required to provide public notice shall make the notice available on a state website designated by the commissioner of the Bureau of Finance and Management, if the information exists, to include the following:

1. Financial statements;
2. Audit reports;
3. A list of 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

Boards and Commissions will post all required information to the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/>. Required documents must be submitted electronically to the Boards and Commissions department contact for timely posting.

Sample Meeting Agenda

Meeting Agenda
Name of Board, Commission or Advisory Council
Building/Location, City, SD Zip Code
Month Day, Year
Time AM/PM to Time AM/PM (Time Zone)

Call In Number: (605-XXX-XXXX)
Access Code: (XXXXXXXX)

Purpose: Summary statement of the Board, Commission or Advisory Council (shall be to guide or advise the ...)

	When	Agenda Item	Who
1.	<Time>	Call to Order/Welcome and Introductions	<Name>
2.	<Time>	Roll Call	<Name>
3.	<Time>	Approval of Agenda	<Name>
4.	<Time>	Approval of Minutes	<Name>
5.	<Time>	Action Item	<Name>
6.	<Time>	Action Item	<Name>
7.	<Time>	Executive Session	<Name>
8.	<Time>	Other Business	<Name>
9.	<Time>	Public Testimony/Public Comment Period	<Name>
10.	<Time>	Set Next Meeting Date	<Name>
11.	<Time>	Adjourn	<Name>

Individuals requiring assistive technology or other services in order to participate in the meeting should submit a request to <Contact Person> by phone or email at least **1 day prior to the meeting** in order to make accommodations available.

Taking Meeting Minutes

State of South Dakota [Bureau of Human Resources](#) offers a 2.5 hour class on the art of taking meeting minutes for a nominal fee. The course covers subjects such as preparing to take minutes, the scope and focus of minutes, how to take minutes at a board meeting, recording action items, transcribing minutes, administrative duties and accountability.

Draft Minutes

[SDCL 1-27-1.17](#) Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to [§ 1-25-1](#) that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. While [§1-27-1.17](#) does not require draft minutes to be posted if there is an audio or video recording of the meeting, it is the expectation that all boards under the Executive Branch will post draft minutes in addition to any audio or video recording. 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](#).

Boards and Commissions will post all meeting minutes to the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov>. To meet meeting minute requirements, draft minutes must be submitted electronically within 9 days after the meeting to the department's Boards and Commission contact.

Meeting Minutes Example

Meeting Minutes
Name of Board, Commission or Advisory Council
Building/Location, City, SD Zip Code
Month Day, Year
Time AM/PM to Time AM/PM (CST) / (MST)

Call Information:
Call In Number: (605-XXX-XXXX)
Access Code: (XXXXXXX)

Members Present:

Members Absent:

Department Staff Present:

Others in Attendance:

Purpose: Summary statement of the Board, Commission or Advisory Council (The purpose of the board shall be to guide or advise the ...)

- I. **Call to Order/Welcome and Introductions** <Name>
<Member Name> called the meeting to order at <Time> <AM/PM> and welcomed members to the meeting.
- II. **Roll Call** <Name>
<Member Name> called the roll. A quorum was present.
- III. **Approval of Agenda** <Name>
<Member Name> made a motion to approve the meeting agenda. <Member Name> seconded the motion. **MOTION PASSED.**
- IV. **Approval of Minutes** <Name>
<Member Name> made a motion to approve the <Date> meeting minutes. <Member Name> seconded the motion. **MOTION PASSED.**
- V. **Action Item** <Name>
- VI. **Action Item** <Name>
- VII. **Executive Session** <Name>
<Member Name> made a motion to go into executive session pursuant to SDCL 1-25-2(1) for the purpose of discussing a personnel matter. **OR** <Member Name> made a motion to go into executive session pursuant to SDCL 1-25-2(3) for the purpose of consulting with legal counsel. **MOTION PASSED.**
- VIII. **Public Testimony/Public Comment Period** <Name>
- IX. **Set Next Meeting Date** <Name>
- X. **Adjourn** <Name>

<Member Name> made a motion to adjourn the meeting at <Time> <AM/PM>.
<Member Name> seconded the motion. **MOTION PASSED.**

Meeting Adjourned at (Time of day AM/PM).

Code of Conduct and Conflict of Interest Policy for Use By State Authority, Board, Commission, and Committee Members

Purpose

The purpose of this code of conduct and conflict of interest policy (“Code”) is to establish a set of minimum ethical principles and guidelines for members of state authorities, boards, commissions, or committees when acting within their official public service capacity. This Code applies to all appointed and elected members of state authorities, boards, commissions, and committees (hereinafter “Boards” and “Board member(s)”). A Board may add provisions to, or modify the provisions of, the Code. However, any change that constitutes a substantive omission from the Code must be approved by the State Board of Internal Control.

Conflict of Interest for Board Members

Board members may be subject to statutory restrictions specific to their Boards found in state and federal laws, rules and regulations. Those restrictions are beyond the scope of this Code. Board members should contact their appointing authority or the attorney for the Board for information regarding restrictions specific to their Board.

General Restrictions on Participation in Board Actions

A conflict of interest exists when a Board member has an interest in a matter that is different from the interest of members of the general public. Examples of circumstances which may create a conflict of interest include a personal or pecuniary interest in the matter or an existing or potential employment relationship with a party involved in the proceeding.

Whether or not a conflict of interest requires a Board member to abstain from participation in an official action of the Board depends upon the type of action involved. A Board’s official actions are administrative, quasi-judicial or quasi-legislative.

A quasi-judicial official action is particular and immediate in effect, such as a review of an application for a license or permit. In order to participate in a quasi-judicial official action of the Board, a Board member must be disinterested and free from actual bias or an unacceptable risk of actual bias. A Board member must abstain from participation in the discussion and vote on a quasi-judicial official action of the Board if a reasonably-minded person could conclude that there is an unacceptable risk that the Board member has prejudged the matter or that the Board member’s interest or relationship creates a potential to influence the member’s impartiality.

A quasi-legislative official action, also referred to as a regulatory action, is general and future in effect. An example is rule-making. If the official action involved is quasi-legislative in nature, the Board member is not required to abstain from participation in the discussion and vote on the action unless it is clear that the member has an unalterably closed mind on matters critical to the disposition of the action.

Administrative actions involve the day-to-day activities of the Board and include personnel, financing, contracting and other management actions. Most of the administrative official actions of a Board are done through the Board’s administrative staff. To the extent Board members are involved, the conflict of interest concern most frequently arises in the area of state contracting which is addressed in more detail below. If issues arise that are not directly addressed by this Code, the Board member should consult with the attorney for the Board.

“Official action” means a decision, recommendation, approval, disapproval or other action which involves discretionary authority. A Board member who violates any of these restrictions may be subject to removal from the Board to which the member is appointed.

Contract Restrictions

There are federal and state laws, rules and regulations that address conflict of interest for elected and appointed Board members in the area of contracts. As an initial matter, a Board member may not solicit or accept any gift, favor, reward, or promise of reward, including any promise of future employment, in exchange for recommending, influencing or attempting to influence the award of or the terms of a state contract. This prohibition is absolute and cannot be waived.

Members of certain Boards are required to comply with additional conflict of interest provisions found in [SDCL Chapter 3-23](#) and are required to make an annual disclosure of any contract in which they have or may have an interest or from which they derive a direct benefit. The restrictions apply for one year following the end of the Board member's term. The Boards impacted by these laws are enumerated within [SDCL 3-23-10](#). For more information on these provisions, see the State Authorities/Boards/Commissions page in the Legal Resources section of the Attorney General's website at: <https://atg.sd.gov/Legal/OpenGovernment/authorityboardcommission.aspx>.

Absent a waiver, certain Board members are further prohibited from deriving a direct benefit from a contract with an outside entity if the Board member had substantial involvement in recommending, awarding, or administering the contract or if the Board member supervised another state officer or employee who approved, awarded or administered the contract. With the exception of employment contracts, the foregoing prohibition applies for one year following the end of the Board member's term. However, the foregoing prohibition does not apply to Board members who serve without compensation or who are only paid a per diem. See [SDCL 5-18A-17 to 5-18A-17.6](#). For more information on these restrictions see the Conflict of Interest Waiver Instructions and Form on the South Dakota Bureau of Human Resources website at <https://bhr.sd.gov/files/ConflictofInterestInstructions.pdf>.

Other federal and state laws, rules and regulations may apply to specific Boards. For general questions regarding the applicability of [SDCL Chapter 3-23](#) or other laws, a Board member may contact the attorney for the Board. However, because the attorney for the Board does not represent the Board member in his or her individual capacity, a Board member should contact a private attorney if the member has questions as to how the conflict of interest laws apply to the Board member's own interests and contracts.

Consequences of Violations of Conflict of Interest Laws

A contract entered into in violation of conflict of interest laws is voidable and any benefit received by the Board member is subject to disgorgement. In addition, a Board member who violates conflict of interest laws may be removed from the Board and may be subject to criminal prosecution. For example, a Board member may be prosecuted for theft if the member knowingly uses funds or property entrusted to the member in violation of public trust and the use resulted in a direct financial benefit to the member. See [SDCL 3-16-7](#), [5-18A-17.4](#), and [22-30A-46](#).

Retaliation for Reporting

A Board cannot dismiss, suspend, demote, decrease the compensation of, or take any other retaliatory action against an employee because the employee reports, in good faith, a violation or suspected violation of a law or rule, an abuse of funds or abuse of authority, a substantial and specific danger to public health or safety, or a direct criminal conflict of interest, unless the report is specifically prohibited by law. [SDCL 3-16-9](#) & [3-16-10](#).

Board members will not engage in retaliatory treatment of an individual because the individual reports harassment, opposes discrimination, participates in the complaint process, or provides information related to a complaint. See [SDCL 20-13-26](#).

Anti-Harassment/Discrimination Policy

While acting within their official capacity, Board members will not engage in harassment or discriminatory or offensive behavior based on race, color, creed, religion, national origin, sex,

pregnancy, age, ancestry, genetic information, disability or any other legally protected status or characteristic.

Harassment includes conduct that creates a hostile work environment for an employee or another Board member. This prohibition against harassment and discrimination also encompasses sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexually harassing nature, when: (1) submission to or rejection of the harassment is made either explicitly or implicitly the basis of or a condition of employment, appointment, or a favorable or unfavorable action by the Board member; or (2) the harassment has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Harassment or discriminatory or offensive behavior may take different forms and may be verbal, nonverbal, or physical in nature. To aid Board members in identifying inappropriate conduct, the following examples of harassment or discriminatory or offensive behavior are provided:

- ◆ Unwelcome physical contact such as kissing, fondling, hugging, or touching;
- ◆ Demands for sexual favors; sexual innuendoes, suggestive comments, jokes of a sexual nature, sexist put-downs, or sexual remarks about a person's body; sexual propositions, or persistent unwanted courting;
- ◆ Swearing, offensive gestures, or graphic language made because of a person's race, color, religion, national origin, sex, age or disability;
- ◆ Slurs, jokes, or derogatory remarks, email, or other communications relating to race, color, religion, national origin, sex, age, or disability; or
- ◆ Calendars, posters, pictures, drawings, displays, cartoons, images, lists, e-mails, or computer activity that reflects disparagingly upon race, color, religion, national origin, sex, age or disability.

The above cited examples are not intended to be all-inclusive.

A Board member who is in violation of this policy may be subject to removal from the Board.

Confidential Information

Except as otherwise required by law, Board members shall not disclose confidential information acquired during the course of their official duties. In addition, members are prohibited from the use of confidential information for personal gain.

Reporting of Violations

Any violation of this Code should be reported to the appointing authority for the Board member who is alleged to have violated the Code.

This Code of Conduct and Conflict of Interest Policy was adopted by the State Board of Internal Control pursuant to [SDCL § 1-56-6](#).

The Origin of the PEPL Fund in South Dakota

The mid-1980's witnessed an increasingly expensive commercial insurance market for public entities seeking tort liability coverage.

In response, the South Dakota State Legislature passes what is known as the "PEPL Law," SDCL Chapter 3-22, in 1986. That law allows certain public entities to pool contributions to provide tort liability coverage.

Subsequently, the Public Entity Pool for Liability (PEPL Fund) was activated on July 1, 1988, to provide tort liability coverage for employees of the state of South Dakota. The State Risk Manager is appointed the PEPL Fund Executive Director.

Explanation of Coverage

Sovereign Immunity

Sovereign immunity according to Barron's Law Dictionary is "a doctrine precluding the institution of a suit against the sovereign [government] without the sovereign's consent." Public entities in the United States enjoyed this immunity from lawsuit, until judicial decisions in the last 40 years began limiting its application.

State Employee Liability Exposure

South Dakota law provides that sovereign immunity is waived to the extent that coverage is provided either through the purchase of insurance or an arrangement such as the State has with the PEPL Fund. Therefore, the "Agreement" and "Memorandum of Coverage" between the State and PEPL carve out the instances where the State waives sovereign immunity and agrees to cover damages for which an employee becomes liable.

Initially, the PEPL Fund excluded coverage to state employees sued for economic damages resulting from their errors or omissions. However, on August 16, 1995, the South Dakota Supreme Court ruled state employees have no immunity for damages resulting from ministerial acts. Ministerial acts are defined by the South Dakota State Supreme Court as "that which involves obedience to instructions, but demands no special discretion, judgment or skill," such as driving a vehicle. In response to this further erosion of the state's sovereign immunity, the PEPL Fund coverage document was amended to cover non-economic damages resulting from ministerial acts.

Coverage and Limit of Liability

PEPL provides State employees with a \$1,000,000 per occurrence coverage limit for general liability, public officials errors and omissions liability, automobile liability, law enforcement liability, and some medical malpractice liability. Details of the coverage are provided in a formal "Agreement" and "Memorandum of Coverage" between the State and PEPL. (See pages 2-6 through 2-18 of this Manual.)

A state employee is defined as all current and former employees and elected officers of the state whether classified, unclassified, licensed or certified, permanent or temporary, whether compensated or not. The term includes employees of all branches of government including the judicial and legislative branches and employees of constitutional, statutory and executive order boards, commissions and officers. The term does not include independent contractors.

Automobile Coverage

Under the PEPL program, coverage is provided for a state employee's liability (up to \$1,000,000 per occurrence) to other persons due to the state employee's negligence in operating a state-owned vehicle on state business.

It should be noted that if a state employee is operating their personally-owned vehicle on official state business, their personal automobile liability coverage is primary and PEPL is secondary.

There is no PEPL Fund coverage for:

- ◆ Property damage to the state owned vehicle;
- ◆ Injuries covered by other insurance;
- ◆ Losses which agencies, employees and agents did not cause or were not legally responsible to prevent;
- ◆ Actions wrongfully meant to harm someone or actions not related to state employment;
- ◆ Personal belongings in vehicles; and
- ◆ Reckless disregard for the safety of others.

*State-owned vehicles are exempt from “proof of insurance” laws (SDCL 32-35-124). Therefore, even though liability coverage exists, state-owned vehicles carry no “proof of insurance” cards.

Premiums

Each agency contributes to the PEPL fund annually. Upon receipt of an annual actuarial report, the PEPL Fund Director determines the amount required from the state to maintain a sound fund balance. The amount required for general liability coverage is divided equally between the number of FTE covered by the fund. The amount required for vehicle coverage is divided equally among the number of vehicles in the state fleet.

The Responsibilities of the PEPL Fund to the State of South Dakota

- ◆ Provide tort liability coverage to the employees of the state of South Dakota.
- ◆ Manage liability claims to keep losses and costs down: ensuring an adequate reporting procedure, ensuring claims are properly investigated and handled, negotiating settlements advantageous to the state, identifying loss trends and keeping agencies abreast of their losses.
- ◆ Manage lawsuits including the selection of the most competent attorneys to represent state employees, the monitoring of lawsuits to ensure efficient and cost-effective litigation, and negotiating settlements advantageous to the state.
- ◆ Provide detailed financial statements and budgets for each coverage period.
- ◆ Conduct independent audits of claims administration services.
- ◆ Conduct independent actuarial studies of loss and contingency reserves.

The Responsibilities of the State of South Dakota to the PEPL Fund

- ◆ Prompt payment of coverage contributions to the PEPL Fund.
- ◆ Prompt and proper reporting of accidents, incidents, and unsafe conditions.
- ◆ Prompt and proper reporting of claims and lawsuits filed against the state and its employees.
- ◆ Cooperation with the PEPL Fund in the settlement and defense of claims and lawsuits.

Participation Agreement between the Public Entity Pool for Liability and the State of South Dakota

View the Participation Agreement and the Memorandum of Coverage online at <https://boa.sd.gov/risk-management/docs/participationagreement.pdf>.

Disclaimer

The information contained in this document is current as of this printing. It is provided as a quick reference guide intended to help State of South Dakota boards and commissions comply with open public meeting requirements, code of conduct and conflict of interest policies, and risk management and liabilities policies; it is exemplary in nature and is not intended to be comprehensive.