

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

941I0591

HOUSE BILL NO. 1137

Introduced by: Representatives Peterson (Bill), Cutler, Gillespie, Madsen, McCaulley, Nesselhuf, Olson (Mel), and Peterson (Jim) and Senators Moore, de Hueck, Kloucek, Nachtigal, Olson (Ed), and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to provide for a civil action and civil penalty for certain
2 open meeting law violations and to repeal certain criminal penalties regarding open meeting
3 law violations.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Any person may commence a civil action in circuit court in the county in which a public body
8 ordinarily meets, for the purpose of enforcing a civil action regarding the open meeting
9 provisions of this chapter against members of the public body. The action may only attempt to:

- 10 (1) Require compliance with or prevent violations of the open meeting provisions of this
11 chapter;
- 12 (2) Obtain a civil penalty; and
- 13 (3) Determine the applicability of this chapter to actions of public officials.

14 An action under this section shall be commenced within sixty days of the public meeting or
15 activity in question. The provisions of this section constitute the exclusive remedy for an alleged



1 violation of this chapter.

2 Section 2. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Any public official who violates the open meeting provisions of this chapter is subject to
5 personal liability by the imposition of a civil penalty in an amount not to exceed:

- 6 (1) Fifty dollars for a first occurrence;
- 7 (2) One hundred dollars for a second occurrence; or
- 8 (3) Removal from office for a third or subsequent occurrence.

9 The court shall order any public official found to have violated such provisions to personally
10 pay any fine imposed under this section. A public body shall provide for legal defense against any
11 action alleged to have been taken in violation of open meeting provisions. However, if a public
12 official is found to have violated the provisions of this chapter intentionally, the public official
13 shall reimburse the public body for all expenses and reasonable attorney fees in such action for
14 such defense.

15 Section 3. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 If an action is brought pursuant to section 1 of this Act, the judge to whom the action is
18 assigned shall immediately review the pleadings to determine if an undertaking, with or without
19 a surety, is necessary. The court may hold a hearing on the matter. If the court deems it
20 necessary, the court shall require such written undertaking by the plaintiff, with or without
21 surety, as the court deems proper. Any surety shall be in an amount sufficient to pay potential
22 expenses and attorney's fees of the public body if the court eventually determines that the plaintiff
23 acted maliciously or frivolously in bringing the action. The amount of the surety may be adjusted
24 from time to time as the court deems justified. If appropriate, the court may enter any such order

1 for collection of such expenses and attorney's fees as it deems necessary.

2 Section 4. That § 1-25-1 be amended to read as follows:

3 1-25-1. Except as otherwise provided by law, the official meetings of the state and the
4 political subdivisions thereof, including all related boards, commissions, and other agencies, and
5 the official meetings of boards, commissions, and agencies created by statute or which are
6 nontaxpaying and derive a source of revenue directly from public funds, shall be open to the
7 public, except as provided in this chapter. Meetings, including executive or closed meetings may
8 be conducted by teleconference. Members shall be deemed present if they answer present to the
9 roll call taken by teleconference. Any vote at a meeting held by teleconference shall be taken by
10 roll call. Except for executive or closed meetings held by teleconference, there shall be provided
11 one or more places at which the public may listen to and participate in the proceeding. Except
12 for executive or closed meetings held by teleconference of related boards and commissions of
13 the state, there shall be provided two or more places at which the public may listen to and
14 participate in the proceeding. Except for the Rural Development Telecommunications Network,
15 no teleconference may be used in conducting hearings or taking final disposition pursuant to
16 § 1-26-4. Teleconference meetings are subject to the notice provisions of chapter 1-25.

17 ~~A violation of this section is a Class 2 misdemeanor.~~

18 Section 5. That § 1-25-1.1 be amended to read as follows:

19 1-25-1.1. All public bodies shall provide public notice, with proposed agenda, at least
20 twenty-four hours prior to any meeting, by posting a copy of the notice, visible to the public, at
21 the principal office of the public body holding the meeting, and, for special or rescheduled
22 meetings, delivering, in person, by mail or by telephone, the information in the notice to members
23 of the local news media who have requested notice. For special or rescheduled meetings, all
24 public bodies shall also comply with the public notice provisions of this section for regular

1 meetings to the extent that circumstances permit. ~~A violation of this section is a Class 2~~
2 ~~misdemeanor.~~

3 Section 6. That § 1-25-2 be amended to read as follows:

4 1-25-2. Executive or closed meetings may be held for the sole purposes of:

- 5 (1) Discussing the qualifications, competence, performance, character, or fitness of any
6 public officer or employee or prospective public officer or employee. The term
7 "employee" does not include any independent contractor;
- 8 (2) Discussing the expulsion, suspension, discipline, assignment of, or the educational
9 program of a student;
- 10 (3) Consulting with legal counsel or reviewing communications from legal counsel about
11 proposed or pending litigation or contractual matters;
- 12 (4) Preparing for contract negotiations or negotiating with employees or employee
13 representatives;
- 14 (5) Discussing marketing or pricing strategies by a board or commission of a business
15 owned by the state or any of its political subdivisions, when public discussion may be
16 harmful to the competitive position of the business.

17 However, any official action concerning such matters shall be made at an open official
18 meeting. An executive or closed meeting shall be held only upon a majority vote of the members
19 of such body present and voting, and discussion during the closed meeting is restricted to the
20 purpose specified in the closure motion. Nothing in § 1-25-1 or this section may be construed
21 to prevent an executive or closed meeting if the federal or state Constitution or the federal or
22 state statutes require or permit it. ~~A violation of this section is a Class 2 misdemeanor.~~