

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0381

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 62** - 01/21/2004

Introduced by: The Committee on State Affairs at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to provide a procedure for handling certain complaints
2 regarding open meeting requirements and to create an open meetings commission.

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

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

6 If a complaint alleging a violation of chapter 1-25 is made pursuant to § 23A-2-1, the state's
7 attorney shall take one of the following actions:

8 (1) Prosecute the case pursuant to Title 23A;

9 (2) Determine that there is no merit to prosecuting the case. Upon doing so, the state's
10 attorney shall send a copy of the complaint and any investigation file to the attorney
11 general. The attorney general shall use the information for statistical purposes and
12 may publish abstracts of such information, including the name of the government
13 body involved for purposes of public education; or

14 (3) Send the complaint and any investigation file to the South Dakota Open Meetings
15 Commission for further action.



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

3 Upon receiving a referral from a state's attorney, the South Dakota Open Meetings
4 Commission shall examine the complaint and investigatory file submitted by the state's attorney
5 and shall also consider signed written submissions by the persons or entities that are directly
6 involved. Based on the investigatory file submitted by the state's attorney and any written
7 responses, the commission shall issue a written determination on whether the conduct violates
8 this chapter, including a statement of the reasons therefor and findings of fact on each issue and
9 conclusions of law necessary for the proposed decision. The final decision shall be made by a
10 majority of the commission members, with each member's vote set forth in the written decision.
11 The final decision shall be filed with the attorney general and shall be provided to the public
12 entity and or public officer involved, the state's attorney, and any person that has made a written
13 request for such determinations. If the commission finds a violation of this chapter, the
14 commission shall issue a public reprimand to the offending official or governmental entity.
15 However, no violation found by the commission may be subsequently prosecuted by the state's
16 attorney or the attorney general. All findings and public censures of the commission shall be
17 public records pursuant to § 1-27-1. This Act is not subject to the provisions of chapter 1-26.

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

20 The South Dakota Open Meeting Commission shall be comprised of five state's attorneys
21 appointed by the attorney general. Each commissioner shall serve at the pleasure of the attorney
22 general. A chair of the commission shall be chosen annually from the membership of the
23 commission by a majority of its members.

24 Section 4. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as

1 follows:

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