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Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1349

Introduced by

Representatives Devlin, Karls

Senators Dwyer, Lee, Oban

A BILL for an Act to create and enact subsection 12 of section 44-04-19.1, a new section to chapter 44-04, and subsection 6 of section 50-24.8-12 of the North Dakota Century Code, relating to open record and meeting laws; to amend and reenact subsection 9 of section 44-04-17.1, sections 44-04-18.27 and 44-04-19, subsections 1 and 2 of section 44-04-20, and section 44-04-30 of the North Dakota Century Code, relating to open record and meeting laws; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 44-04-17.1 of the North Dakota Century Code is amended and reenacted as follows:

9. a. "Meeting" means a formal or informal gathering or a work session, whether in person or through any electronic means ~~such as telephone or videoconference~~, of:
   (1) A quorum of the members of the governing body of a public entity regarding public business; or
   (2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of ~~such~~the smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.

   b. "Meeting" does not include:
   (1) A chance or social gathering at which public business is not considered;
   (2) Emergency operations during a disaster or emergency declared under section 37-17.1-10 or an equivalent ordinance if a quorum of the members

of the governing body are present but are not discussing public business as the full governing body or as a task force or working group;

(3) The attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong; ~~and~~

(4) Training seminars ~~where~~at which no other public business is considered or discussed; and

(5) Administration of examinations by a regulatory board when no other public business is considered or discussed.

c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.

SECTION 2. AMENDMENT. Section 44-04-18.27 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.27. Applications for public employment - Hiring process - Confidential records and open records.

If a public entity or any person delegated authority by a public entity to review applications or make hiring decisions receives applications from three or more applicants who meet the minimum qualifications for a vacant position, the public entity or other person shall designate three or more of the qualified applicants as finalists for further consideration before the public entity or other person may issue an offer of employment to fill the position. However, if the public entity or other person does not wish to consider any of the applications further and decides not to make an offer of employment for the vacant position, the public entity need not designate any finalist. The applications and any records related to the applications which contain information that could reasonably be used to identify an applicant are ~~confidential, except records related to finalists are open to the public after~~exempt and may be withheld until the finalists are designated, at which time the records are open to the public. The public entity or other person reviewing applications on behalf of the public entity shall comply with all requirements for an executive session to discuss ~~confidential~~exempt applications. If, by the close of the application period for a vacant position, a public entity receives applications from

fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open to the public.

SECTION 3. AMENDMENT. Section 44-04-19 of the North Dakota Century Code is amended and reenacted as follows:

44-04-19. Access to public meetings.

Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public. That portion of a meeting of the governing body of a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1 which does not regard public business is not required to be open under this section.

1. This section is violated when any person is denied access to a meeting under this section, unless such refusal, implicitly or explicitly communicated, is due to a lack of physical space in the meeting room for the ~~person or~~ persons seeking access or lack of electronic capacity to allow public viewing of the meeting through electronic means.
2. For purposes of this section, if the meeting is held in person, the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting. If the meeting is held by electronic means, the electronic capacity must accommodate the number of persons reasonably expected to attend the meeting remotely.
3. The right of a person to attend a meeting under this section includes the right to photograph, to record on audiotape or videotape and to broadcast live on radio or television the portion of the meeting that is not held in executive session, provided ~~that~~ there is no active interference with the conduct of the meeting. The exercise of this right may not be dependent upon the prior approval of the governing body. However, the governing body may impose reasonable limitations on recording activity to minimize the possibility of disruption of the meeting.
4. For meetings subject to this section ~~when one or more of the members of the governing body is participating by telephone or video, a speakerphone or monitor must be provided at the location specified~~, if the meeting is held through any electronic means, the information necessary to join or view the meeting electronically must be included in the notice issued under section 44-04-20.

SECTION 4. Subsection 12 of section 44-04-19.1 of the North Dakota Century Code is created and enacted as follows:

12. Active litigation records are exempt from section 44-04-18. For purposes of this subsection, "active litigation records" means records obtained, compiled, or prepared by a public entity or the attorney representing a public entity for the purpose of litigation unless the records already have been filed publicly or the litigation is completed.

SECTION 5. AMENDMENT. Subsections 1 and 2 of section 44-04-20 of the North Dakota Century Code are amended and reenacted as follows:

1. Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity as defined in section 44-04-17.1, including executive sessions~~, conference call meetings, and videoconferences~~ and meetings held remotely. Unless otherwise specified by law, resolution, or ordinance, or as decided by the public entity, notices required by this section need not be published.
2. The notice required in this section must contain the date, time, and location of the meeting and, if practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken thereat. The notice also must ~~also~~ contain the general subject matter of any executive session expected to be held during the meeting. For meetings to be held by ~~telephone or videoconference, or other~~ electronic means, the location of the meeting ~~and the place the meeting is held~~ is the ~~location of a speakerphone or monitor~~electronic address and any other information necessary to allow the public to join or view the electronic meeting as required under section 44-04-19.

SECTION 6. AMENDMENT. Section 44-04-30 of the North Dakota Century Code is amended and reenacted as follows:

44-04-30. Records of the state fire marshal, fire departments, and rural fire protection districts confidential.

1. a. An investigation record of the state fire marshal, a fire department, or a rural fire protection district is confidential until the investigation:
   (1) Is closed and not referred for further criminal investigation or prosecution; or

(2) The criminal investigation is no longer active under section 44-04-18.7.

b. This subsection does not restrict the release of the name and identifiable biographical information of a child under section 12.1-35-03.

2. Standard operating procedures written for emergency response, prefire action plans, plans of a building, pipeline, electrical system, or any other infrastructure plan in the ~~hands~~possession of the state fire marshal, a fire department, or rural fire protection district are exempt from section 44-04-18.

3. Individually identifiable health information obtained by the state fire marshal, a fire department, or a rural fire protection district is confidential.

4. An image of a victim of a fire is an exempt record.

SECTION 7. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Medical records or medical information - Exempt.

Unless otherwise provided by law, a medical record or a record containing medical information in the possession of a public entity is an exempt record.

SECTION 8. Subsection 6 of section 50-24.8-12 of the North Dakota Century Code is created and enacted as follows:

6. An active investigation record of the Medicaid fraud control unit is an exempt record.