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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4136

02/22/2024

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The bill was read for the first time and referred to the Committee on State and Local Government Finance and Policy

1.1 A bill for an act

1.2 relating to open meeting law; strengthening sanctions for noncompliance with the

1.3 open meeting law; providing a civil action; providing civil penalties; amending

1.4 Minnesota Statutes 2022, sections 13D.05, subdivisions 1, 3; 13D.06, subdivisions

1.5 1, 3, 4.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2022, section 13D.05, subdivision 1, is amended to read:

1.8 Subdivision 1. **General principles.** (a) Except as provided in this chapter, meetings may

1.9 not be closed to discuss data that are not public data.

1.10 (b) Data that are not public data may be discussed at a meeting subject to this chapter

1.11 without liability or penalty, if the disclosure relates to a matter within the scope of the public

1.12 body's authority and is reasonably necessary to conduct the business or agenda item before

1.13 the public body.

1.14 (c) Data discussed at an open meeting retain the data's original classification; however,

1.15 a record of the meeting, regardless of form, shall be public.

1.16 (d) All closed meetings, ~~except those closed as permitted by the attorney-client privilege,~~

1.17 must be electronically recorded at the expense of the public body. Unless otherwise provided

1.18 by law, the recordings must be preserved for at least three years after the date of the meeting.

1.19 Sec. 2. Minnesota Statutes 2022, section 13D.05, subdivision 3, is amended to read:

1.20 Subd. 3. **What meetings may be closed.** (a) A public body may close a meeting to

1.21 evaluate the performance of an individual who is subject to its authority. The public body

1.22 shall identify the individual to be evaluated prior to closing a meeting. At its next open

2.1 meeting, the public body shall summarize its conclusions regarding the evaluation. A meeting
 2.2 must be open at the request of the individual who is the subject of the meeting.

2.3 (b) Meetings may be closed if the closure is expressly authorized by statute ~~or permitted~~
 2.4 ~~by the attorney-client privilege.~~

2.5 (c) A meeting may be closed if permitted by the attorney-client privilege. The proceedings
 2.6 of a meeting closed under this paragraph must be recorded at the expense of the public body.
 2.7 A public body must identify on the record the legal issue or case to be discussed prior to
 2.8 closing a meeting under this paragraph. Any person may bring an action claiming that a
 2.9 public body closed a meeting in violation of this paragraph or discussed public business not
 2.10 permitted by attorney-client privilege. The court may review the recording of the meeting
 2.11 in camera.

2.12 ~~(e)~~ (d) A public body may close a meeting:

2.13 (1) to determine the asking price for real or personal property to be sold by the
 2.14 government entity;

2.15 (2) to review confidential or protected nonpublic appraisal data under section 13.44,
 2.16 subdivision 3; and

2.17 (3) to develop or consider offers or counteroffers for the purchase or sale of real or
 2.18 personal property.

2.19 Before holding a closed meeting under this paragraph, the public body must identify on
 2.20 the record the particular real or personal property that is the subject of the closed meeting.
 2.21 The proceedings of a meeting closed under this paragraph must be tape recorded at the
 2.22 expense of the public body. The recording must be preserved for eight years after the date
 2.23 of the meeting and made available to the public after all real or personal property discussed
 2.24 at the meeting has been purchased or sold or the governing body has abandoned the purchase
 2.25 or sale. The real or personal property that is the subject of the closed meeting must be
 2.26 specifically identified on the tape. A list of members and all other persons present at the
 2.27 closed meeting must be made available to the public after the closed meeting. If an action
 2.28 is brought claiming that public business other than discussions allowed under this paragraph
 2.29 was transacted at a closed meeting held under this paragraph during the time when the tape
 2.30 is not available to the public, section 13D.03, subdivision 3, applies.

2.31 An agreement reached that is based on an offer considered at a closed meeting is contingent
 2.32 on approval of the public body at an open meeting. The actual purchase or sale must be

3.1 approved at an open meeting after the notice period required by statute or the governing
 3.2 body's internal procedures, and the purchase price or sale price is public data.

3.3 ~~(d)~~ (e) Meetings may be closed to receive security briefings and reports, to discuss issues
 3.4 related to security systems, to discuss emergency response procedures and to discuss security
 3.5 deficiencies in or recommendations regarding public services, infrastructure and facilities,
 3.6 if disclosure of the information discussed would pose a danger to public safety or compromise
 3.7 security procedures or responses. Financial issues related to security matters must be
 3.8 discussed and all related financial decisions must be made at an open meeting. Before closing
 3.9 a meeting under this paragraph, the public body, in describing the subject to be discussed,
 3.10 must refer to the facilities, systems, procedures, services, or infrastructures to be considered
 3.11 during the closed meeting. A closed meeting must be tape recorded at the expense of the
 3.12 governing body, and the recording must be preserved for at least four years.

3.13 Sec. 3. Minnesota Statutes 2022, section 13D.06, subdivision 1, is amended to read:

3.14 Subdivision 1. **Personal liability for ~~\$300~~ fine.** Any person who intentionally violates
 3.15 this chapter ~~shall be~~ is subject to personal liability in the form of a civil penalty in an amount
 3.16 not to exceed ~~\$300~~ \$1,000 for a single occurrence, ~~which~~ the first violation and \$1,200 for
 3.17 any subsequent violation. The fine may not be paid by the public body.

3.18 Sec. 4. Minnesota Statutes 2022, section 13D.06, subdivision 3, is amended to read:

3.19 Subd. 3. **Forfeit office if three violations.** (a) If a person has been found to have
 3.20 ~~intentionally violated this chapter in~~ committed three or more actions brought under separate,
 3.21 intentional violations of this chapter involving the same governing body, such person shall
 3.22 forfeit any further right to serve on such governing body or in any other capacity with such
 3.23 public body for a period of time equal to the term of office such person was then serving.

3.24 (b) The court determining the merits of any action in connection with any alleged third
 3.25 violation shall receive competent, relevant evidence in connection therewith and, upon
 3.26 finding as to the occurrence of a separate third violation, ~~unrelated to the previous violations,~~
 3.27 issue its order declaring the position vacant and notify the appointing authority or clerk of
 3.28 the governing body.

3.29 (c) As soon as practicable thereafter the appointing authority or the governing body shall
 3.30 fill the position as in the case of any other vacancy.

4.1 Sec. 5. Minnesota Statutes 2022, section 13D.06, subdivision 4, is amended to read:

4.2 Subd. 4. **Costs; attorney fees; requirements; limits.** (a) In addition to other remedies,
4.3 the court may award reasonable costs, disbursements, and reasonable attorney fees ~~of up to~~
4.4 ~~\$13,000 to any party~~ the prevailing plaintiff in an action under this chapter.

4.5 (b) The court may award costs and attorney fees up to \$10,000 to a defendant only if
4.6 the court finds that the action under this chapter was frivolous and without merit.

4.7 (c) A public body may pay any costs, disbursements, or attorney fees incurred by or
4.8 awarded against any of its members in an action under this chapter.

4.9 (d) No monetary penalties or attorney fees may be awarded against a member of a public
4.10 body unless the court finds that there was an intent to violate this chapter.

4.11 (e) The court shall award reasonable attorney fees to a prevailing plaintiff who has
4.12 brought an action under this section if the public body that is the defendant in the action
4.13 was also the subject of a prior written opinion issued under section 13.072, and the court
4.14 finds that the opinion is directly related to the cause of action being litigated and that the
4.15 public body did not act in conformity with the opinion. The court shall give deference to
4.16 the opinion in a proceeding brought under this section.