

Alaska Seafood Marketing Institute

Board Orientation - December 17, 2013



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It is the obligation of each board or commission member, as well as the staff, to ensure that the public's business is conducted in a manner that is consistent with the standards set out in applicable law. We hope this summary assists you in ensuring that your obligations are met.

I. Habits of an Effective Board Member

Introduction

Every new board and commission member will probably be nervous at his or her first meeting. Should he or she say anything? What are the right procedures? What are the rules that must be followed? This section provides general tips to help a new member better understand how boards and commissions work. Important advice for a board or commission member is to be prepared, listen, and contribute.

Healthy boards function when they have:

- Common Goal/Purpose
- Common Understanding
- Common Language
- Varied Perspective
- Varied Opinions
- Equal Weight

How do board members exhibit good governance at meetings?

- Attendance, preparation, and participation
- Access and availability
- Acknowledgement of confidentiality while operating transparently
- Awareness of ethics laws and conflicts of interest
- Understanding of the organization and governance model and maintaining boundaries

Participate in All Issues

When candidates are appointed to specific boards, they must become knowledgeable and participate or they are certain to become frustrated and ineffective. Board members must deal with different issues on a regular basis. Board members bring varying perspectives and experiences to the whole. If members do not listen to the points of others on the board, that person reduces their ability to deal with even the single issue important to him or her.

Focus on Policy, Not Politics

All members of boards and commissions are responsible for making decisions, as set out in state statutes. Policymaking is an ongoing activity; it is simply the act of making a deliberate choice or decision

from among different alternatives, based on the available facts. Public policy is created when the board makes these choices or decisions with the best interests of the whole State of Alaska in mind. A board or commission that is influenced by competing short-term or personal agendas will have difficulty finding agreement on important public policy issues. Doing Alaska's board business (in effect, the public's business) is a group activity that requires patience, vision, cooperation, and compromise.

Discussion and Debate Leads to Growth

No one expects board members to agree on everything. In fact, when disagreement exists, it means that different viewpoints are being considered before a decision is made. Looking at different perspectives of board members is an important part of the decision-making process and ensures that the interests of all concerned are given some thought.

Address Issues within the Board's Scope of Authority

Some issues may be important to the State and to board members but may not be within the board's power or authority to manage. An issue, for example, may be important to the industry or organization but not within a board's statutory management authority. Consequently, boards may adopt resolutions stating the board's opinion and send the resolution to State and Federal agencies. Board members should avoid being diverted from their mission by competing interests from special interests.

Additional Tips

The following recommendations are addressed to board and commission members to help them act effectively:

- 1) **Read your meeting packet:** Be informed before meetings. Board members are provided meeting materials in advance so members can arrive with a working knowledge of the topics on the agenda. Read the materials and be ready to discuss the issues at the meeting. Information provided in the packet can help you better understand the issues and participate in more detailed discussion during the meeting.
- 2) **Become familiar with the board's documents:** Take time to read any existing documents pertaining to the issues at hand.
- 3) **Know the laws regulating the board:** Know the statutes, regulations, and scope of authority pertaining to the board you have been appointed to, as well as those pertaining to any state board or commission.
- 4) **Learn all sides of an issue before forming an opinion:** A board member makes better-informed decisions or opinions when he or she learns all sides of an issue. If a member takes the position that he or she already knows everything about an issue, he or she may miss an opportunity to learn something important to the debate.
- 5) **Take part in debate:** As a rule, the quality of board decision-making process is improved when all members contribute to the discussion. Express your views and the views of the people you represent. Participation does not ensure that the outcome will be exactly what you want, but it will ensure that your opinions have been considered.

- 6) **Ask questions:** If you have a question about a subject, other members probably do as well. If you don't know something, the best way to learn about it is by asking questions.
- 7) **Seek solutions:** Be a problem-solver. Contribute to debate in a way that will lead to solutions and not merely add to the difficulty or complexity of a situation. When faced with a challenge, look for ways it can be done.
- 8) **Don't be shy:** Nobody else is going to speak up for you. Your idea may be the one that will lead to an answer or a solution, so speak up when you have something to say.
- 9) **Be inquisitive:** Dig into a matter and be assertive to get the information you need. The most productive environment for decision-making respects all opinions and everyone's right to express them. Relationships should be polite and professional. Board members are state leaders appointed by the Governor who can set an example for others to follow.
- 10) **Share information:** If you know something about a proposal before the board that other members may not be aware of, share it. The decision-making process will benefit when board and commission members share important information with the entire group. This encouragement does not extend to situations that may result in ex parte communication by the board.
- 11) **Put in extra effort:** Volunteer to serve on committees and perform special assignments. Your expertise and perspective are important to the success of the board.
- 12) **Take the time to make a difference:** The time you actually spend at meetings is only a small part of the time it takes to be an effective board or commission member. Be prepared to spend a fair amount of time preparing for meetings, staying informed, and being actively involved as a board member.

II. Board and Staff Relationships

Why Clarify Roles?

The roles of board members and staff are symbiotic--they work together to accomplish the board's mission. To do so effectively, they must mutually set and understand the healthy boundaries and responsibilities of each others' roles.

- Ensure accountability
- Facilitate a good working relationship
- Enhance the productivity and effectiveness of both board and staff
- Reduce redundancy and waste of time or resources
- To be effective, the governance structure must be supported by both the board and staff

Operating a well-oiled machine



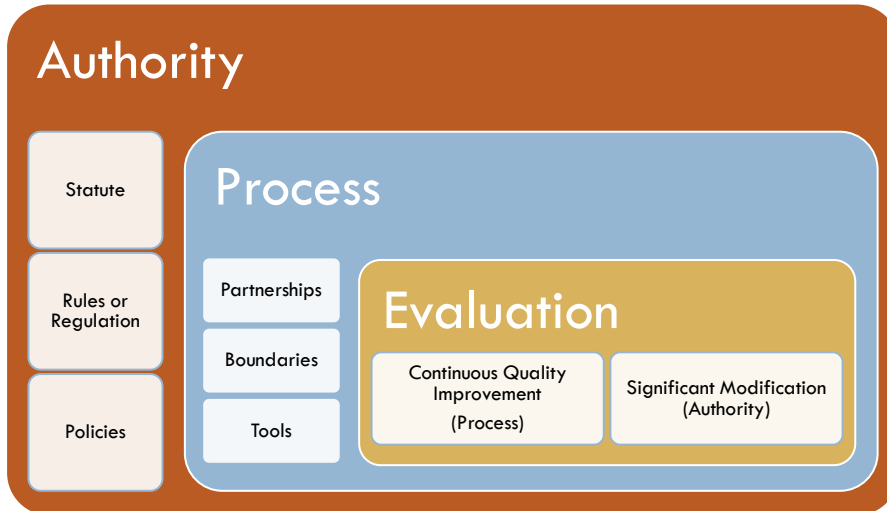
Relationship with the Chairperson

It is important that the board works together for the common good of the state. If the chair and the board or commission disagree unproductively or unprofessionally, the disputes project a negative image to the public, waste valuable time, promote conflict, slow down work and progress, and distance members from each other. Board members may not always agree with the chairperson, but they must work with the chairperson. As board members are appointed by the governor, they are responsible for more than their own viewpoints and should:

- Project a positive image.
- Make best use of the board or commission's time.
- Promote teamwork.
- Permit work to go forward and progress to be made.
- Involve the whole board or commission in solving problems.

An organized, well-informed board that works together with the agency and profession stakeholders helps strengthen the well-being of the state.

Roles & responsibilities



The Board's Governance Role

The word *governance* derives from the Greek verb κυβερνάω [*kubernáo*] which means *to steer*.

The board's role is to provide the oversight entrusted to them by the public by allocating resources and creating policies within the authority allowed by law.

Board members enable oversight through:

- Knowledge about the profession
- Awareness of political impacts and implications
- Collective wisdom
- Sensitivity to the balance between public protection and priorities of the profession
- Vision and Leadership
- Knowledge of and adherence to laws and regulations
- Courage and discipline to make the right decisions for the right reasons

AUTHORITY:

- Boards typically have substantial power, which enables them to impact individuals, members of public interest groups, private corporations, and their constituency as a whole.
- This may be broadly established in statute and further delineated by the board in bylaws, rules and regulations

PROCESS:

- Remain accountable to the stakeholders for the board's performance in meeting its fiduciary responsibility

- Ensure the availability of adequate financial resources and approve annual budgets (as appropriate)
- Where applicable, select, appoint, and support the performance of the chief executive

EVALUATION:

- Analyze authority for refinement as cultural, political, or public environments change
- Review periodically for successes, threats, opportunities, weaknesses as they pertain directly to the mission and ensure management is setting and meeting improvement targets
- Where applicable, review the performance of the chief executive and set performance objectives

The Staff's Management Role

The staff's role in regulation is to enact the mission of the board through strategic use of resources allocated by the board or provided for in regulation. It is the staff's job to provide the board or commission with the facts and information needed to make a decision. In fact, it is customary for the staff to make a recommendation for board or commission action. However, the board or commission should not make any staff person into an additional board or commission member by expecting that person to make decisions that the board or commission is appointed to make. Such expectation for decision-making can place a staff member in the awkward position of substituting his or her judgment for the collective judgment of the board or commission.

Staff members contribute in the following areas:

- Knowledge of the jurisdiction and its politics
- Proficiency in the laws and rules governing the board
- Ability to interpret and apply laws, rules and board decisions
- Effective management and administration of programs and services within its designated authority
- Maintenance of organizational records

AUTHORITY

- Direct authority through statute, regulation, board bylaws, or policy
- Authority as contracted, delegated or assigned by board
- Executive director serves as board liaison; roles and employment conditions of staff reporting to the executive may vary

PROCESS

- Develop operating procedures and manage delivery of programs and services
- Provide guidance regarding the interpretation of regulations, laws, and policies
- Ensure organizational compliance with policies and procedures, federal regulations, and state/provincial and local laws
- Participate in the development and subsequent implementation of the Board's policies and procedures
- Stay informed of current regulatory developments
- Assess organizational risk/exposure
- Provide research and consultation support to the board
- Track board decisions and maintain documentation

- Communicate pertinent information to the board and other stakeholders

EVALUATION

- Board chair and executive director evaluate balance between operations and policy.
- executive director measures, evaluates, and directs staff performance
- Staff assists board in evaluation of law as environments change
- Staff evaluates internal process elements
- Monitor organizational quality for continuous improvement

Communication

Board instructions to staff should go through the chairperson by way of a formal action by the board to the executive director. This provides clarity when resources are expended. It helps supervisors direct staff workloads and provides for more effective management of program funds. Additionally, individual board members should not give instructions to the staff without the knowledge or consent of the full board or commission, because one member's viewpoint or request may not represent the shared viewpoint or position of the full board or commission. It is never appropriate for board members to direct junior staff members; that is the role of the executive director.

It is helpful for boards to always provide general governance direction in a public meeting so the board retains awareness of and accountability for its activities.

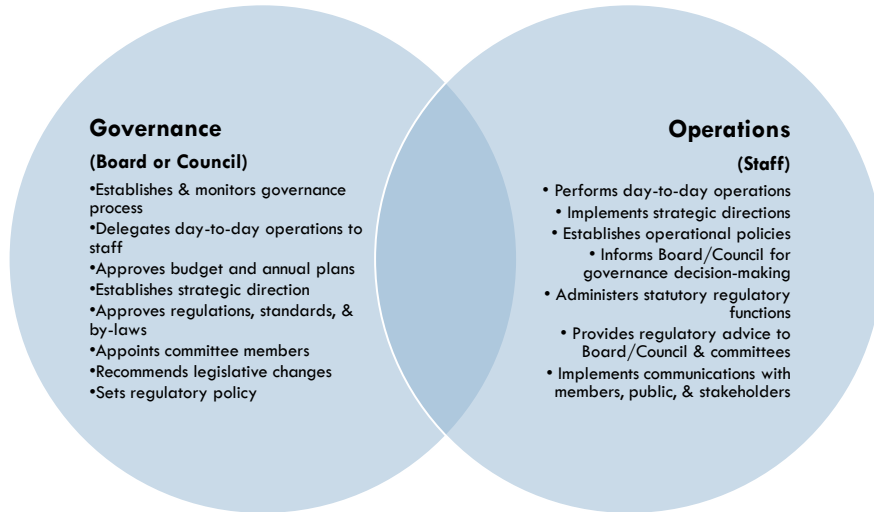
Boards must take care to separate themselves from day-to-day staff /management responsibilities.

When in doubt, ask:

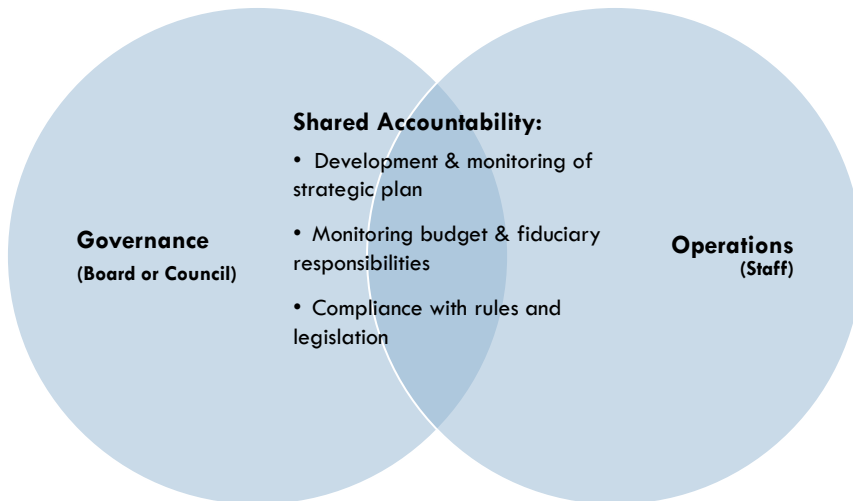
- Is it central to the mission?
- Is it a big-picture concern?
- Does it affect board finances or laws?
- Does it need policy-level scrutiny or support?
- Does it pertain to the "what" and "why" of the mission?

If "yes," then it's a board responsibility.

Sample governance model



Sample governance model



III. Key Legal Topics Every Board Member Should Know

Executive Branch Ethics


Service on a state board or commission is a public trust. The Ethics Act (AS 39.52) prohibits substantial and material conflicts of interest. Further, board or commission members cannot improperly benefit financially or personally from their actions as board or commission members. The Act does not, however, discourage independent pursuits, and it recognizes that minor and inconsequential conflicts of interest are unavoidable.


All board members and staff should be familiar with the Executive Branch Ethics Act procedures outlined below. The Act covers a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch of state government. Additional information is available at <http://www.law.state.ak.us/doclibrary/ethics.html>.

Misuse of Official Position (AS 39.52.120)

Members of boards or commissions may not use their positions for personal gain or to give an unwarranted benefit or treatment to any person. For example, board members may not:

- use their official positions to secure employment or contracts;
- accept compensation from anyone other than the State for performing official duties;
- use State time, equipment, property or facilities for their own personal or financial benefit or for partisan political purposes;
- take or withhold official action on a matter in which they have a personal or financial interest; or
- coerce subordinates for his/her personal or financial benefit.
- attempt to influence outcome of an administrative hearing by privately contacting the hearing officer.

 Terry knew that a proposal that was before the board would harm Terry's business competitor. Instead of publicly disclosing the matter and requesting recusal, Terry voted on the proposal.

 Board member Mick has board staff employee Bob type an article for him that Mick hopes to sell to an Alaskan magazine. Bob types the article on State time.

Improper Gifts (AS 39.52.130)

A board member may not solicit or accept gifts if it could reasonably be inferred that the gift is intended to influence the board member's action or judgment. "Gifts" include money, items of value, services, loans, travel, entertainment, hospitality, and employment. All gifts from registered lobbyists are presumed to be improper, unless the giver is an immediate family member of the person receiving the gift.

A gift worth more than \$150 to a board member or the board member's family must be reported within 30 days if:


- the board member can take official action that can affect the giver, or
- the gift is given to the board member because he or she is on a state board.


The receipt of a gift worth less than \$150 may be prohibited if it could reasonably be inferred that the gift is intended to influence the board member's action or judgment. Receipt of such a gift should be disclosed.

Any gift received from another government, regardless of value, must be reported; the board member will be advised as to the disposition of this gift.

A form for reporting gifts is available at www.law.alaska.gov/doclibrary/ethics or from the board or commission staff.


This restriction on gifts does not apply to lawful campaign contributions.


 The commission is reviewing Roy's proposal for an expansion of his business. Roy invites all the board members out to dinner at an expensive restaurant. He says it will be okay, since he isn't excluding any of the members.

 Sam buys a holiday gift every year for Jody. Jody was recently appointed to a board, but Sam has no business that is up before the board.

Improper Use or Disclosure of Information (AS 39.52.140)

No former or current member of a board may use or disclose any information acquired through the board if that use or disclosure could result in a financial or personal benefit to the board member (or a family member), unless that information has already been disseminated to the public.

 Sheila has been on the board for several years. She feels she has learned a great deal of general information about how to have a successful business venture. So she sets up her own business and does well.

 Delores has always advised and assisted the other doctors in her clinic on their continuing education requirements. After Delores is appointed to the medical board, she discloses this role to the board and continues to advise the doctors in her clinic.


Improper Influence in State Grants, Contracts, Leases or Loans (AS 39.52.150)


A board member who can affect the award or administration of a State grant, contract, lease, or loan may not apply for, or have an interest in that State grant, contract, lease, or loan. This prohibition also applies to the board member's immediate family.

A board member (or a family member) may apply for or be a party to a *competitively solicited* State grant, contract or lease, if the board member does not serve in the same administrative unit awarding or administering the grant, contract, or lease *and* so long as the board member does not take official action in the award or administration of the grant, contract, or lease.

A board member (or a family member) may apply for and receive a State loan that is generally available to the public and has fixed eligibility standards, so long as the board member does not take (or withhold) official action affecting the award or administration of the loan.

Board members must report to the board chair any personal or financial interest (or that of a family member) in a State grant, contract, lease or loan that is awarded or administered by the agency the board member serves. A form for this purpose is available at www.law.alaska.gov/doclibrary/ethics or from the board or commission staff.

 John sits on a board that awards state grants. John hasn't seen his daughter for nearly ten years so he figures that it doesn't matter when her grant application comes up before the board.

 The board wants to contract out for an analysis of the board's decisions over the last ten years. Kim would like the contract since she has been on the board for ten years and feels she could do a good job.

Improper Representation (AS 39.52.160)

A nonsalaried board or commission member may represent, advise, or assist in matters in which the member has an interest that is regulated by the member's own board or commission, if the member acts in accordance with AS 39.52.220 by disclosing the involvement in writing and on the public record, and refrains from all participation and voting on the matter. This section does not allow a board member to engage in any conduct that would violate a different section of the Ethics Act.


Restriction on Employment After Leaving State Service (AS 39.52.180)


For two years after leaving a board, a former board member may not work on any matter on which the former member had personally and substantially participated while on the board. This prohibition applies to cases, proceedings, applications, and contracts and similar matters.

Former members of the governing boards of public corporations and former members of boards and commissions that have regulation-adoption authority, except those covered by the centralized licensing provisions of AS 08.01, may not lobby for pay for one year.

This section does not prohibit a State agency from contracting directly with a former board member.

With the approval of the Attorney General, the board chair may waive this prohibition if a determination is made that the public interest is not jeopardized.

 The board has arranged for an extensive study of the effects of the Department's programs. Andy, a board member, did most of the liaison work with the contractor selected by the board, including some negotiations about the scope of the study. Andy quits the board and goes to work for the contractor, working on the study of the effects of the Department's programs.

 Andy takes the job, but specifies that he will have to work on another project.

Aiding a Violation Prohibited (AS 39.52.190)

Aiding another public officer to violate this chapter is prohibited.

Agency Policies (AS 39.52.920)

Subject to the Attorney General's review, a board may adopt additional written policies further limiting personal or financial interests of board members.

Disclosure Procedures (AS 39.52.220-250)

The Ethics Act requires members of boards and commissions to disclose:

- Any matter that is a potential conflict of interest with actions that the member may take when serving on the board or commission.
- Any circumstance that may result in a violation of the Ethics Act.
- Any personal or financial interest (or that of an immediate family member) in a state grant, contract, lease or loan that is awarded or administered by the member's board or commission.
- The receipt of certain gifts.

The executive director and staff, as state employees, must also disclose:

1. Compensated outside employment or services.
2. Volunteer service, if any compensation, including travel and meals, is paid or there is a potential conflict with state duties.
3. For more information regarding the types of matters that may result in violations of the Ethics Act, board or commission members should refer to the guide, *"Ethics Information for Members of Boards and Commissions."* The executive director and staff should refer to the guide, *"Ethics Information for Public Employees."* Both guides and disclosure forms may be found on the [Department of Law's ethics website](#).

To avoid violations of the Ethics Act, members of boards and commissions are advised to read and understand the Act, and to:

- Make timely disclosures.
- Follow required procedures.
- Provide all information necessary for a correct evaluation of the matter, including supplementing the disclosure form with other written explanation as necessary. Your signature on a disclosure certifies that, to the best of your knowledge, the statements made are true, correct and complete. False statements are punishable.
- When in doubt, disclose and seek advice.
- Follow the advice of your Designated Ethics Supervisor.

The procedural requirements for disclosures by members are set out in AS 39.52.220 and 9 AAC 52.120. One goal of these provisions is to help members avoid violations of the Ethics Act. The procedures provide the opportunity for members to seek review of matters in advance of taking action to ensure that actions taken will be consistent with the Act.

Complaints, Hearings, and Enforcement (AS39.52.310-370, AS 32.52.410-460)

Any person may file a complaint with the Attorney General about the conduct of a current or former board member. Complaints must be written and signed under oath. The Attorney General may also initiate complaints from information provided by a board. A copy of the complaint will be sent to the board member who is the subject of the complaint and to the Personnel Board.

All complaints are reviewed by the Attorney General. If the Attorney General determines that the complaint does not warrant investigation, the complainant and the board member will be notified of the dismissal.

The Attorney General may refer a complaint to the board member's chair for resolution.

After investigation, the Attorney General may dismiss a complaint for lack of probable cause to believe a violation occurred. The complainant and board member will be promptly notified of this decision.

Alternatively, if probable cause exists, the Attorney General may initiate a formal proceeding by serving the board or commission member with an accusation alleging a violation of the Ethics Act. An accusation may result in a hearing.

When the Personnel Board determines a board member has violated the Ethics Act, the member must refrain from voting, deliberating, or participating in the matter. The Personnel Board may order restitution and may recommend that the board member be removed from the board or commission. If a recommendation of removal is made, the appointing authority will immediately remove the member.

If the Personnel Board finds that a former board member violated the Ethics Act, the Personnel Board will issue a public statement about the case and will ask the Attorney General to pursue appropriate additional legal remedies.

Conflict of Interest

A conflict of interest occurs when a board or commission member has a direct personal interest, usually a financial interest, in a matter before the board or commission. Sometimes conflicts of interest will occur, but it must be reported at the beginning of the meeting, and the affected member must request to be excused from voting on the matter. The provisions of conflict-of-interest laws are these:

- 1) A member of the board or commission should declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter;
- 2) The presiding officer should rule on a request by a member of the board or commission to be excused from a vote; and
- 3) The decision by the presiding officer on a request by a member of the board or commission to be excused from a vote may be overridden by a majority vote of the board or commission.

It is not unusual for board and commission members to have conflicts of interest. Not all conflicts involve a substantial financial interest, however. Some conflicts may only appear to be improper or have the appearance of an unfair advantage. These conflicts should be declared, so the public does not think that board and commission members are self-serving and ignoring public interest. If a board or commission member thinks he or she has a conflict, the conflict should be declared and the presiding officer should be notified to decide whether the board or commission member should vote. A conflict should only be declared when a conflict is really believed to exist, and the determination of the declaration should be read into the public record of the meeting. A conflict should never be declared to avoid having to vote on a difficult issue.

Open Meetings Act, Public Notice, and Executive Session

The Open Meetings Act (**AS 44.62.310**) requires that all meetings of public bodies are open to the public and that the public body must provide reasonable notice of its meetings. In essence, the Open Meetings Act protects the public's right to know. To accomplish this, the act requires that:

- All deliberations and action taken by a public entity must be done in public view, with limited exceptions;
- The public must be provided prior knowledge of all steps occurring in the decision making process, with limited exceptions; and
- Individual actions of an official are made known.

In order for these requirements to have full effect, meetings must occur as provided in the notice; and, with few exceptions, the public must be allowed to involve itself in the meeting; the public must also have access to materials being considered during the meeting.

Among other things, the act:

- defines public meetings and public entities;
- lays out specific requirements for public notice;
- requires that all meetings of a governmental body of a public entity are open to the public;
- lays out provisions for attendance at meetings and voting methods;
- lays out provisions for distribution of meeting materials; and
- lists the few exceptions to the act as well as matters that may be discussed in executive session.

Adequate Public Notice

In order to assure that the public information/participation provisions of the act are met, the act requires that the public entity must provide "reasonable" notice that meets the requirements of the act. To meet these notice requirements the notice must:

- be provided within a reasonable amount of time prior to the meeting;
- include the date, time, and place of the meeting;
- be posted at the principal office of the public entity and Alaska Online Public Notice System; and
- be done in the same way each time (consistent).

Where there are no regulations pertaining to a specific board or commission, the Division has adopted guidelines for publication of notices of meetings and regulations, found in the Division Policy and Procedure Manual. This manual is continually monitored for effectiveness, accuracy, and relevance and is being updated at the time of publication of the 2012 edition of this board manual.

Division policy states the following minimums pertaining to public notice of meetings in the Alaska Online Public Notice System and in the Anchorage Daily News:

- 10 days notice for in-person board meetings
- 5 days notice for teleconferences
- 5 days notice before the first subcommittee or working group meeting, with statement of regularly scheduled subsequent meetings. Subsequent meetings must provide 3 days notice on the Online Public Notice System only.
- 10 days notice for examinations

All meetings and exams will be posted on the Online Public Notice System and included in the Division's monthly newspaper announcement, which runs on the 15th of each month in the Anchorage Daily News. Special notices will run separately at the expense of the program affected. Additional information is provided in the Division Policy and Procedure Manual.

What Constitutes a Meeting

AS 44.62.310(h) provides detailed definitions of "governmental body," "meeting," and "public entity" that, when combined, define what constitutes a public meeting. A meeting of a decision or policy-making body occurs when more than three members or a majority of the members, whichever is less, engage collectively in discussion of a subject that the body is authorized to act and set policy on and is therefore subject to the Open Meetings Act. Under this definition, it doesn't matter where the meeting occurs, if it was prearranged, or who arranged it and could include unplanned casual or social contact.

A meeting of an advisory only body is a prearranged gathering to consider a matter on which the entity is authorized to advise and assist the decision making body and is subject to the provisions of the act. The act doesn't specify a number for advisory bodies, so if the gathering is prearranged for the purpose of conducting any business of the entity, the presence of three members of the body could constitute a meeting.

Following are the most common types of meetings that would be subject to the Open Meetings Act:

Regular Meetings: State law requires that the board or commission conduct its business at scheduled meetings that are open to the public. Regular meetings must be held according to the frequency set forth in statute for that board or commission. The board's web page should provide the date, time, and place of regular meetings so that everyone knows when regular meetings will take place. The public should be able to make plans to attend the meeting with reasonable advance notice. If at times it is necessary to reschedule the regular meeting, notice must be posted informing the public that the regular meeting has been rescheduled and when it will be held.

Special Meetings: Special meetings have the same requirements as regular meetings, except that they are called for a different time than that fixed for regular meetings. For example, the board may have adopted a regular meeting date but determine that it needs to meet during the interim. If the board must meet earlier, it can call a special meeting for a different date. Special

meetings should be held rarely and only to address time sensitive issues. Special meetings are not considered when determining the division's travel resources for the year.

Committee Meetings: Permanent ("standing") committees and temporary ("ad hoc") committees of the board may be formed to study particular issues in more detail. Standing committees address ongoing activities of the board. Ad hoc committees are formed to address a specific situation and are disbanded once the situation has been dealt with. Committees may be composed of all members of the board (referred to as a committee of the whole), or of fewer members, usually three. A committee cannot take action on behalf of the full board or commission but instead makes a recommendation to the board or commission for the board's action. The committee of the whole meets to discuss items that are not ready for action but need further discussion in an informal setting. For example, a regulations project may require a work session before it is formally adopted. Committee meetings must be publicly noticed.

Boards and commissions should take care not to conduct business over email, lest the public be removed from the process. Boards may participate in mail voting via email or through the division's online mail balloting system because these processes do not involve board members emailing each other and the votes are reproducible for the public. Board members should not email each other about board business; if a special meeting is needed, a member can alert staff and a meeting can be arranged.

Executive Session

AS 44.62.310(b) authorizes a public body to meet in executive session to discuss only those items listed in the law. This is not an exception to the Open Meetings Act, but rather an authorization to conduct a step in the decision making process in a certain way. The decision to go into executive session must weigh the potential harm of open discussion against the public interest and benefit of open public discussion and the public's right to know.

An executive session is not a secret meeting - it is a part of the public meeting from which the public may be excluded. The board or commission may, at its discretion, invite others into the executive session. All executive sessions must first be convened as a legal public meeting and a motion must pass that clearly describes the subject to be discussed before the board or commission can go into executive session. Only certain topics, which are listed in AS 44.62.310(c), can be considered in executive session. These topics are:

- matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;
- subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion (Note: the subject individual must be provided personal notice and be informed of the option to request public discussion);
- matters which by law are required to be confidential;

- matters involving consideration of government records that by law are not subject to public disclosure.

In addition to the subjects that may be discussed in executive session, there are certain meetings of a government body of a public entity that are excluded from the public notice requirements of the act (AS 44.62.310(d)). The types of meetings most frequently encountered by boards that would be exempt are:

- meetings to perform a quasi judicial function (though excluded from the Open Meetings Act, constitutional due process requires individual notice if an individual's rights are involved);
- meetings to act on professional qualifications, privileges, or discipline;
- staff or employee group meetings; and
- member meetings of national, state, or regional organizations at which no business of the government body is conducted.

The best rule of thumb to follow is if in doubt, provide notice.

In addition to requiring that deliberations of a board or commission be open to the public, the act also requires that the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote, including meetings conducted by teleconference.

Alaska courts have ruled strongly in favor of the Open Meetings Act. Actions taken at unnoticed or improperly noticed meetings can be voided. It can also cost the State of Alaska a great deal of money to defend officials against charges of Open Meetings Act violations.

Casual Conversation Counts

When outside of a publicly-noticed meeting, officials should exercise caution when engaged in discussing issues among themselves. This kind of discussion has been, and can be, construed as a violation of the Open Meetings Act.

As a practical matter, board and commission members will often speak to one another. When members pass each other on the street or sit together in a café for coffee, it is natural that the conversation could drift to include public business. Before the full board or commission hears an issue, members must be careful not to engage in discussions that lead to a decision on the issue and not to commit to vote a certain way or to seek to influence another member's vote. Board and commission members must also take care not to discuss investigations with the affected licensees before a vote takes place. This type of discussion is called "ex parte" communication and should result in the recusal of the member from the vote on that issue.

A lot of ideas can result from casual encounters outside the pressure and formality of the board or commission chambers. Exchanging information, ideas, and viewpoints can be valuable. However, board and commission members, like all public officials, must be mindful of the provisions of the Open Meetings Act. This manual is provided as general guidance regarding the requirements of law but is not a substitution for reading and understanding the law itself. Should interpretation be required that CBPL

staff cannot provide, the board may wish to seek clarification from the office of the Attorney General through staff.

Ex-Parte Contact

It is sometimes tempting for a member of the public to attempt to circumvent the board's usual decision-making procedures, to seek information on pending issues, or to seek to influence an individual's decision by directly contacting one of the board members. Such communications are called "ex parte" communications.

Ex parte communications are improper. The result of such a communication is that the board member so contacted will be unable to discuss, participate in, or vote on the relevant action.

The foundation of due process is that each side in a dispute has the opportunity to be heard. If one side has the opportunity to make an argument, the other side must have the opportunity to respond. Regulatory licensing boards and commissions are composed of individuals who, when acting as individuals, have no authority. Collectively, the board may act on applications, make decisions, receive information, or direct staff to take action. Further, the board's authority and power to act exists only during lawfully convened board meetings and while performing adjudicatory functions in contested cases.

The risk to the applicant or licensee who attempts such communication is that a board member who might have been favorably disposed to their case will not be able to participate in the decision or vote. Should any individual attempt to contact you to discuss a license application or disciplinary case, please refer them to a staff member (licensing examiner, investigator, or executive administrator) for response. Should you experience an ex parte communication, please so indicate when that issue is addressed by the board in session. Alert the chair about the contact so he or she can determine whether it is appropriate that you be recused from the discussion, deliberation, and vote. It is sometimes best to simply state the reason for your recusal and leave the room until the issue is settled.

If you are unsure about the nature and extent of the contact, please contact the board's staff for guidance.

IV. Meetings and Motions

Rules of Procedure

Rules of procedure are not statutes or regulations but guidelines the board has agreed to follow. Contained in these rules might be a list identifying the board's standing committees, the parliamentary procedure for running meetings, or perhaps a requirement to end meetings at a certain time. Boards may also specify guidelines for attendance and participation.

The Agenda

The board must approve an agenda format to be used at all regular meetings. A sample agenda may include the following:

- I. Call to Order
- II. Roll Call
- III. Statement of Conflicts of Interest
- IV. Approval of Minutes of Previous Meeting
- V. Public Comment on Non-Agenda Items
- VI. Consent Agenda (if using)
- VII. Executive Director Report
- VIII. Committee Reports
- IX. Regulations for Introduction
- X. Public Hearing on Regulations
- XI. New Business
- XII. Old Business
- XIII. Board Comments and Questions
- XIV. Adjournment

The order of the agenda may be changed at the meeting. For example, an item toward the end of the agenda may be moved up and dealt with earlier in the meeting; this can be done by a motion to amend the agenda. The agenda should be amended only when there is a good reason. Try to maintain the posted public comment periods since constituents may have taken great care to arrive at that time with the expectation that they will be able to participate.

Taking Part in Debate

Debate and discussion are not the same. Discussion is general and does not necessarily lead to closure of an issue. It is the method used for less formal meetings and work sessions. Debate occurs after a motion has been made, and formal board or commission actions are required. Board discussion is not a formal request for action, so members should take care to make a motion in order to propose an actionable item--particularly one that involves a fiscal matter, policy change, or staff response.

Debate at board meetings goes through the chairperson. If a board member wants to speak, he or she must raise a hand and be recognized by the chairperson (or presiding officer, if the chairperson is absent or doesn't run the meeting). If there is a motion on the floor, then the member may only speak to that motion. Members should never interrupt one another and, depending on the formality of the board, should address the chairperson and not each other in debate. Comments should be brief and to the point.

Members may mingle with the public in other settings, but meetings are the events at which the public's business is conducted and decisions are made, so meetings should be conducted in a calm, orderly environment free from disruptions. After all, good decisions are more likely in a quiet, controlled,

uninterrupted setting. Those not enumerated by statute or bylaws, including members of the public, are not members of the board, so they should refrain from engaging in board business. The public may speak during the common public comment period, or they may formally petition to address the board by requesting to be on the agenda well ahead of time or by signing in to address the board per the board's adopted procedures. When the public informally interacts with the board during a meeting, the business can be disrupted and the outcome of the motion could become unclear.

Parliamentary Procedure

One of the greatest procedural tools a board can adopt is one of parliamentary procedure, which sets the protocol for meeting management. Parliamentary procedure is not as complex as many fear. Most boards use Robert's Rules of Order, and there are many guides available online or in hard copy to demystify the process. A guide to the parliamentary motions used most frequently is included in this guide.

The use of rules, or parliamentary procedure, for meetings fulfills several important purposes. It provides structure for deliberation of issues. It ensures that only one item at a time is before the board for debate. It provides a forum for debate that is fair to everyone and partial to no one. Finally, it permits the will of the majority to prevail while protecting the rights of the minority and permitting all sides of an issue to be heard. Boards can use their own rules for parliamentary procedure, but most use Robert's Rules of Order because this set of guidelines is familiar and well-established.

Types of Motions

A motion is how board members express themselves during a board meeting. The backbones of parliamentary procedure are in motions and how they are made and disposed of, the various categories of motions, and the relationship between motions.

A motion is a proposal that the entire membership take action or a stand on an issue. Individual members can:

1. Call to order.
2. Second motions.
3. Debate motions.
4. Vote on motions.

There are four basic types of motions:

1. **Main Motions:** The purpose of a main motion is to introduce items to the membership for their consideration. They cannot be made when any other motion is on the floor, and yield to privileged, subsidiary, and incidental motions.
2. **Subsidiary Motions:** Their purpose is to change or affect how a main motion is handled, and is voted on before a main motion.
3. **Privileged Motions:** Their purpose is to bring up items that are urgent about special or important matters unrelated to pending business.

4. Incidental Motions: Their purpose is to provide a means of questioning procedure concerning other motions and must be considered before the other motion.

How are motions presented?

1. Obtaining the floor
 - a. Wait until the last speaker has finished.
 - b. Raise your hand and address the Chairman by saying, "Mr. Chairman
 - c. Wait until the Chairman recognizes you.
2. Make your motion
 - a. Speak in a clear and concise manner.
 - b. Always state a motion affirmatively. Say, "I move that we ..." rather than, "I move that we do not ...".
 - c. Avoid personalities and stay on your subject.
3. Wait for someone to second your motion
4. Another member will second your motion or the Chairman will call for a second.
5. If there is no second to your motion it is lost.
6. The Chairman states your motion
 - a. The Chairman will say, "It has been moved and seconded that we ...," thus placing your motion before the membership for consideration and action.
 - b. The membership then either debates your motion, or may move directly to a vote.
 - c. Once your motion is presented to the board members by the chairman it becomes "assembly property" and cannot be changed by you without the consent of the members.
7. Expanding on your motion
 - a. The time for you to speak in favor of your motion is at this point in time, rather than at the time you present it.
 - b. The mover is always allowed to speak first.
 - c. All comments and debate must be directed to the chairman.
 - d. Keep to the time limit for speaking that has been established.
 - e. The mover may speak again only after other speakers are finished, unless called upon by the Chairman.
8. During debate on a motion, a member may move to amend the motion
 - a. The motion to amend may take one of three forms:
 1. Inserting or adding words or paragraphs.
 2. Striking out words or paragraphs.
 3. Striking out words and inserting or adding others, or substituting an entire paragraph or complete resolution for another.
 - b. If the motion to amend is seconded, then the Chairman will ask whether there is any discussion on the amendment.
 - c. The Chairman may ask if the members are ready to vote, or a member may move to close debate (sometimes known as "calling the question").
 - d. The members first vote on whether to accept the amendment to the original motion.
 - e. After that vote, the chairman may allow further discussion on the original motion or move to a vote.
9. Putting the original question to the members of the board
 - a. The Chairman asks, "Are you ready to vote on the question?"
 - b. If there is no more discussion, a vote is taken.

Voting on a motion should be by roll call since the public has a right to know how each member voted. A board may also vote by general consent when a motion is not likely to be opposed. In this case, the Chairman says, "if there is no objection ..." The membership shows agreement by their silence, however if one member says, "I object," the item must be put to a vote.

Parliamentary Procedure is the best way to get things done at your meetings. But, it will only work if you use it properly.

1. Allow motions that are in order.
2. Have members obtain the floor properly.
3. Speak clearly and concisely.
4. Obey the rules of debate.
5. Most importantly, *BE COURTEOUS*

Robert's Rules of Order Motions Chart

Part 1: Main Motions. These motions are listed in order of precedence. A motion can be introduced if it is higher on the chart than the pending motion. § indicates the section from Robert's Rules.							
§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§21	Close meeting	I move to adjourn	No	Yes	No	No	Majority
§20	Take break	I move to recess for ...	No	Yes	No	Yes	Majority
§19	Register complaint	I rise to a question of privilege	Yes	No	No	No	None
§18	Make follow agenda	I call for the orders of the day	Yes	No	No	No	None
§17	Lay aside temporarily	I move to lay the question on the table	No	Yes	No	No	Majority
§16	Close debate	I move the previous question	No	Yes	No	No	2/3
§15	Limit or extend debate	I move that debate be limited to ...	No	Yes	No	Yes	2/3
§14	Postpone to a certain	I move to postpone the	No	Yes	Yes	Yes	Majority

	time	motion to ...					
§13	Refer to committee	I move to refer the motion to ...	No	Yes	Yes	Yes	Majority
§12	Modify wording of motion	I move to amend the motion by ...	No	Yes	Yes	Yes	Majority
§11	Kill main motion	I move that the motion be postponed indefinitely	No	Yes	Yes	No	Majority
§10	Bring business before assembly (a main motion)	I move that [or "to"] ...	No	Yes	Yes	Yes	Majority

Part 2: Incidental Motions. No order of precedence. These motions arise incidentally and are decided immediately.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§23	Enforce rules	Point of order	Yes	No	No	No	None
§24	Submit matter to assembly	I appeal from the decision of the chair	Yes	Yes	Varies	No	Majority
§25	Suspend rules	I move to suspend the rules	No	Yes	No	No	2/3
§26	Avoid main motion altogether	I object to the consideration of the question	Yes	No	No	No	2/3
§27	Divide motion	I move to divide the question	No	Yes	No	Yes	Majority
§29	Demand a rising vote	I move for a rising vote	Yes	No	No	No	None
§33	Parliamentary law question	Parliamentary inquiry	Yes	No	No	No	None
§33	Request for information	Point of information	Yes	No	No	No	None

Part 3: Motions That Bring a Question Again Before the Board
 No order of precedence. Introduce only when nothing else is pending.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§34	Take matter from table	I move to take from the table ...	No	Yes	No	No	Majority
§35	Cancel previous action	I move to rescind ...	No	Yes	Yes	Yes	2/3 or Majority with notice
§37	Reconsider motion	I move to reconsider ...	No	Yes	Varies	No	Majority

Voting

Boards perform their work through decisionmaking in a public setting. A board cannot take action without voting. Members are appointed with the expectation that they will participate by letting their voice be heard through their vote. It is highly advisable that each board member vote on every issue. A member should only abstain if the chairperson has ruled that he or she has a conflict of interest on the particular matter being voted on. A board member must explain his or her conflict and receive a ruling on whether a conflict exists. The chairperson’s ruling, whichever way it goes, may be overridden by a majority of the board.

Unless otherwise articulated in statute or bylaws, ex officio members of a board may participate as board members during meetings but may not vote.

It is a misconception that the chair can only vote in the case of a tie. From www.robertsrules.com:

If the chair is a member of the voting body, he or she has exactly the same rights and privileges as all other members have, including the right to make motions, to speak in debate, and to vote on all questions. So, in meetings of a small board (where there are not more than about a dozen board members present), and in meetings of a committee, the presiding officer may exercise these rights and privileges as fully as any other member.

When will the chair's vote affect the result? On a vote that is not by ballot, if a majority vote is required and there is a tie, he or she may vote in the affirmative to cause the motion to prevail. If there is one more in the affirmative than in the negative, the chair can create a tie by voting in the negative to cause the motion to fail. Similarly, if a two-thirds vote is required, he or she may vote either to cause, or to block, attainment of the necessary two thirds.

The Governor’s Office of Boards and Commissions requests that boards with members who regularly abstain ensure that the practice is codified in that body’s policy and that the policy is--as with other board policies--available to the public via the board’s web page.

Unanimous Consent

Unanimous consent occurs when all members vote in favor of a motion. Sometimes unanimous consent simply occurs after a vote, when all members vote the same way. Other times, unanimous consent may be requested as part of a motion. Typically, this request happens when the person making the motion knows the item is not controversial. The person making the motion might say, “Mr. [or Madam] Chair, I move to approve the minutes from the November 2012 meeting and ask unanimous consent.” The chair then asks if there is any objection. If there is none, the item is adopted by unanimous consent. Discussion may also be permitted but usually only for clarification. If there is objection, then debate occurs and the matter goes to a vote.

Quorum

A quorum is the minimum number of board or commission members required to conduct business. AS 29.20.160(c) states that a majority of the total membership of the board constitutes a quorum.

A member who is disqualified from voting is considered present for purposes of a quorum. If a quorum is not present, any number of the members present may recess or adjourn the meeting to a later date. Formal actions of the board must be adopted by a majority of the full membership, never by a majority of the quorum. Thus, if only four members (a quorum) are present at a meeting, any one member can vote down items before the board or commission because three votes is not a majority of the full membership. For this reason, sensitive, complex, or difficult matters should come before the board or commission only when all members are present.

This underscores the need for all members to be present at every meeting. If absences must occur, then proper notice must be given in order to determine whether to reschedule the meeting. Board members who find they need to resign may do so in writing to the Office of Boards and Commissions with a copy to the Division.

Role of the Chair in Board Meetings

Board members and the public look to the chairperson to provide leadership during the meeting. The chair should understand the issues before the board or commission, know and understand the philosophies of the fellow members of the board or commission, and be able to bring the board or commission to decisions on difficult or complicated issues. The chairperson should be able to do all of the following effectively.

- **Run a Meeting:** The chair is responsible for running an orderly meeting and conducting public business in a fair and timely manner. Everyone looks to the chairperson for leadership.
- **Maintain Order:** The chairperson should not allow cheering, hissing, booing, or other demonstrations from the audience. Nor should he or she permit board or commission members to become rude, confrontational, or argumentative with one another or the audience.

- **Keep Business Moving:** It is the chairperson’s job to keep business moving by bringing matters to a vote.
- **Manage Public Testimony:** By using a sign-up list, the chairperson will know who wants to speak on items before the board or commission. If a large number of people wish to speak, the chairperson should set a time limit per speaker (usually three minutes). Rambling, irrelevant testimony should be discouraged, as should commentary from the public during board deliberation of an issue.
- **Maintain Relevance:** Discussion between board or commission members and members of the public who are testifying should be limited to fact gathering that helps the board or commission make informed decisions.
- **Use Parliamentary Procedure:** The chairperson needs to know enough parliamentary procedure to run the meeting. Someone else may be the parliamentarian, but the chairperson must have a working knowledge of parliamentary procedure.
- **Tie Things Together:** The chairperson should have the ability to take into account public testimony, board or commission deliberations, and an understanding of the issues at hand when guiding the board or commission toward a decision.
- **Implement Approved Actions:** The chairperson should have the ability to create an action plan and follow through with staff or other entities on the actions decided at the meeting.

Additional notes

The Division of Corporations, Business and Professional Licensing strives to be an efficient and effective partner in meeting the boards’ obligation to ensure that competent, professional, and regulated commercial services are available to Alaska consumers.

From time to time, this manual may be updated as regulations or policies change or as new tools become available to assist boards and commissions in fulfilling their important role in this partnership.

Should you have question about the contents of this manual or suggestions for future training materials, please contact the Professional Licensing Operations Manager at 907-465-2144.

Additional credit for certain contents:

- Alaska Department of Law
- Alaska Department of Commerce, Community, and Economic Development; Division of Community and Regional Affairs
- Alaska Department of Administration; Division of Finance
- The Council on Licensure, Enforcement, and Regulation (www.clearhq.org)
- www.robertsrules.org
- The staff of the Division of Corporations, Business and Professional Licensing

Comments and Suggestions

Please complete this form and return to the Professional Licensing Operations Manager
 FAX: (907) 465-2974 MAIL: P.O. Box 110806, Juneau, AK 99811-0806

1) This manual helped clarify issues pertaining to:

	Agree	Somewhat Agree	Somewhat Disagree	Disagree
a) Purpose and Role of a Board/Commission Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Executive Branch Ethics	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Conflicts of Interest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Open Meetings Act	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Public Notice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Executive Session	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Ex Parte Contact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Meeting Procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Making Motions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) Voting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Board/Staff Relationships	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Other:				

2) I would like future manual revisions to include more information about:

3) Other comments/suggestions:

Appendix

Alaska Statute 16.51. ALASKA SEAFOOD MARKETING INSTITUTE

Sec. 16.51.090. Powers of board.

In carrying out the powers of the institute, the board may

- (1) adopt, alter, and use a corporate seal;
- (2) prescribe, adopt, amend, and repeal bylaws;
- (3) sue and be sued in the name of the institute;
- (4) enter into any agreements necessary to the exercise of its powers and functions;
- (5) cooperate with a public or private board, organization, or agency engaged in work or activities similar to the work or activities of the institute, including entering into contracts for joint programs of consumer education, sales promotion, quality control, advertising, and research in the production, processing, or distribution of seafood;
- (6) conduct, or contract for, scientific research to develop and discover health, dietetic, or other uses of seafood harvested and processed in the state;
- (7) receive contributions of money from persons;
- (8) establish offices in the state and otherwise incur expenses incidental to the performance of its duties;
- (9) appear on behalf of the institute before boards, commissions, departments, or other agencies of municipal, state, or federal government;
- (10) acquire, hold, lease, sell, or otherwise dispose of property, but such property is limited to that which is necessary to the administrative functioning of the office of the institute;
- (11) establish and maintain one or more bank accounts for the transaction of the institute's business;
- (12) prepare market research and product development plans for the promotion of any species of seafood and their by-products that may be harvested in the state and processed for sale;
- (13) establish committees related to the marketing of salmon and salmon products; the board shall, to the extent practicable, appoint equal numbers of seafood processors and persons engaged in commercial fishing to the committees.

Sec. 16.51.100. Duties of board.

The board shall

- (1) conduct programs of education, research, advertising, or sales promotion designed to accomplish the purposes of this chapter;
- (2) promote all species of seafood and their by-products that are harvested in the state and processed for sale;
- (3) develop market-oriented quality specifications for Alaska seafood to be used in developing a high quality image for Alaska seafood in domestic and world markets, and adopt and distribute recommendations regarding the handling of seafood from the moment of capture to final distribution;
- (4) prepare market research and product development plans for the promotion of all species of seafood and their by-products that are harvested in the state and processed for sale;
- (5) submit an annual report to the governor describing the activities of the institute and notify the legislature that the report is available;
- (6) develop marketing programs based on the "inspection" and "premium quality" seals designed under [AS 17.20.066](#) and use the seals in advertising and promotion efforts of the institute.