

Professional Licensing Meetings 101

Guidance for members of professional licensing boards and commissions from the
Division of Corporations, Business and Professional Licensing
October 2019

Governmental bodies—especially those with quasi-judicial capacity like professional licensing boards—adhere to different rules than other types of “boards of directors.” Serving on a licensing board is unlike most other state, non-profit, or corporate boards. This document, along with other [guidance](#) issued by the division, will aid in your understanding of the statutes, regulations, and administrative policies that pertain to your work.

Regarding meetings, we have to make sure to read the guidance fully and in context:
First, let’s look at the definitions in AS 44.62.310. To whom does the Open Meetings Act apply?

AS 44.62.310(h)(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members

The establishment of a meeting has three “ingredients”: **Who** is present, **how many** are present, and **what** they are doing:

AS 44.62.310(h)(2) "meeting" means a gathering of members of a governmental body when

- (A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or
- (B) the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

So, these types of meetings must be publicly noticed:

BOARD MEETING: If a group is gathering that IS a quorum of the board OR three or more members of a board AND is considering a matter on which they have the power to act.

SUBCOMMITTEE MEETING: If a group is gathering that is NOT a quorum of a board OR three or more members of a board AND is recognized by the board/division AND has authority to advise the board/division, AND is considering a matter for recommendation to a board.

Meeting administration

Meetings are administered by division staff according to state laws and policies. Questions about meeting logistics should be directed to staff.

Staff work with the board chair to create the agenda for each meeting. This collaboration depends on the program, the level of experience of staff, and the personality of the board chair. Ideally, this is an engaged conversation driven by:

1. Pending business from the last meeting
2. Mandatory business, such as disciplinary considerations and license application review
3. Items for consideration from board members
4. Items for consideration from the public
5. Alignment with the statutory authority, strategic plan, and goals of the board
6. Available time to address these issues.

It is the chair's responsibility to set the agenda. Where there is an executive administrator for a board, that person may assume a primary responsibility for populating the agenda, with the chair's consent. At the very least, the board chair should review and approve the agenda for distribution. Items requiring document review, in-depth discussion, or advance notice to the public should not be added at the time of the meeting. Committee meetings should also be managed through staff but may have less formal agendas than regular board meetings.

All meetings should generally follow *Robert's Rules of Order*. Action is only determined by a vote of the body. Public input during a board meeting is appropriate during the public comment section of the meeting and when invited by the chair or on the agenda. A public comment period is encouraged, but not required, at committee meetings.

Additional detailed information about meeting management can be found in the [CBPL Guide to Excellence in Regulation](#).

TIMEFRAMES AND METHOD OF PUBLIC NOTICE

Boards are not authorized to gather as a body to conduct business unless the meeting has been public noticed; this includes exam workshops, committee meetings, email discussions, and conference calls.

AS 44.62 and AS 08.01 require that all board meetings, examinations, and other board proceedings be noticed. AS 44.62.310(e) establishes the criteria for adequate public notice of meetings. Generally, this means publication in a state newspaper of major circulation and in the Alaska Online Public Notice System (OPN):

1. Regularly scheduled in-person board meeting in one newspaper of general circulation no later than ten days in advance of the meeting.
2. Teleconference board meeting in one newspaper of general circulation no later than five days in advance of the meeting.
3. Subcommittee/advisory committee/working group/etc. meetings
 - a. The first meeting of a committee must be published in one newspaper of general circulation at least five days in advance of the meeting.
 - i. The initial notice shall contain a statement that subsequent meeting date(s) and location(s) for the committee may be obtained from the Alaska Online Public Notice System or the division office, and that notice of future meetings will be published with at least three days of advance notice on the Online Public Notice System only.
 - ii. The committee meeting notice(s) shall include the name, address and phone number of the staff member who will be responsible for providing the special notice to those interested parties.

- iii. Interested parties may contact the program's dedicated staff member to be placed on a special notification (email/phone) list for the notice of the committee meetings.
- b. Since only three days of advance notice is required for subsequent meetings, staff will publish the meeting in the OPN and make every attempt to notify all interested parties on the special notification list.

Public noticing in the newspaper is a mandatory expense, so the division combines all notices into one shared monthly publication on or about the 15th of each month. Aim to communicate meeting details to the director's assistant well ahead of this deadline so your meeting is included. Special meeting notices will be charged fully to the requesting program.

Publishing the announcement through private lists, newsletters, and other means can supplement the original announcement; however, these are not official channels of communication. Licensees should always be directed to staff, the official state listserv for that program, and web site for meeting information.

EXCEPTION TO PUBLIC NOTICE OF A MEETING

In accordance with 44.62.310(d), public notice of meetings called for the sole purpose of making a decision on an adjudicatory proceeding is not required. (Meeting minutes, however, are still required to record the official action taken.)

Adjudicatory proceedings include board consideration of hearing officer decisions, petitions for reconsideration filed in accordance with AS 44.62, stipulations, memoranda of agreement, license surrenders, and summary suspensions.

How Do Committees Operate?

A subcommittee, advisory committee, working group, or similar group by another name that consists of two or more individuals which is recognized by the public entity and has authority to advise or make recommendation to the public entity is considered a "government body" under AS 44.62.310(h)(I). Committee meetings are prearranged, are open to the public, and must be publicly noticed.

The membership of a subcommittee, advisory committee, working group, or similar group by another name may not include a quorum of a board. Any meeting that includes a quorum of a board is considered a board meeting and must be noticed accordingly.

FORMATION OF A COMMITTEE

Since committees are authorized by the board or commission, their operation falls under state laws and procedures guiding board activities. The following steps will assist in getting a committee up and running:

During a board meeting, vote on establishing the committee, its mission, and what it looks like:

Formally create the committee. Once the motion is on the floor, the rationale for the committee can be presented and discussed, and ultimately decided by a vote of the board. The board should provide a clear mission for the committee and, if necessary, establish an ending date for the project or report. Standing committees should be well-defined and may live without a sunset date.

Formally appoint a committee chairperson, ideally a board member. This person will organize the committee meeting with staff, set committee agendas and meeting content, and serve as the liaison to the board on committee activity. Additional board members may serve on the committee, but any meeting where a quorum of the board is present should be noticed as a board meeting.

Formally agree on committee membership standards. Establishing parameters for participation helps ensure a fair, transparent process and minimizes disenfranchisement or “playing favorites.” The goal of a committee is to advise the board or commission and, ultimately, make a recommendation for action. The board should safeguard this process to ensure it receives impartial, quality advice from the committee it has sanctioned.

The board may decide that anyone can participate on the committee, which means the invitation should be issued widely—through licensee email lists, the program listserv, and on the web site. If membership has criteria—for example, if the board wants people with certain experience or credentials on the committee, that should be stated plainly in the motion. Will there be an application process? Should people contact staff to nominate themselves? Does the board want the chair to appoint someone and then have that ratified by the board...or not? Just be certain to place the process on the record and use the official channels managed by staff to solicit participation.

Ensure the public can participate. Follow all laws and policies on public notices. Hold the meeting in a publicly accessible location (such as a state conference room or other public location). Ensure that a teleconference line is available on site and that the number is published to interested parties through staff or the web site.

Present recommendations to the board. The committee should work with staff to ensure there is adequate time on the agenda for updates and discussion of findings/recommendations. A committee member should take basic notes during the meeting and provide a typed copy to staff, who will provide them to the board well in advance of the meeting. If there is more data or documentation to present, it should also be forwarded to staff at least three weeks before the board meeting so it can be included in the board meeting material.

Staff will work with the board chair on the final meeting agenda and documents. The chair could consider adding a standing section of each meeting agenda for all committee reports.

Committees should remember that their work is important, though always advisory. The authorizing board retains jurisdiction over the committee, and the committee may not act on its own. Boards should place value on the time and effort of the committee and show appreciation for the work of its members. However, a board or commission should not feel beholden or pressured to adopt a committee’s recommendation. If the board rejects a committee recommendation, it is advisable to explain its concerns or ask for additional information.

Is it really a meeting?

When determining whether a gathering is a meeting, ask the following questions. These combine all the considerations included in **AS 44.62.310(h)(2)**:

1. **Will a quorum of a board be present?** If YES, it’s a board meeting if they are considering board business.
2. **Will three or more members of a board be present?** If YES, it’s a board meeting if they are considering board business.
3. **Is the entity recognized by the board/division?** If YES, it’s a subcommittee meeting.

4. **Does the entity have authority to advise/make recommendation to the board/division?** If YES, it's a subcommittee meeting.

Below are some theoretical examples. As with the rest of this document, it is intended to provide general guidance but cannot cover every situation. Please contact staff with concerns about specific situations.

- A. **The board votes to approve a working group on a potential regulation and bring it back to the next meeting.** YES to #3 and #4: Subcommittee meeting.
- B. **The board publicly notices a subcommittee meeting, and three board members show up.** YES to #2, #3, and #4 (and maybe #1, depending on the size of the board). It's now a board meeting, must be adjourned and re-noticed for a later date if the members wish to participate.
- C. **Two board members have coffee and talk about board business.** NO to all four. Not a meeting.
- D. **Three board members have coffee and talk about board business.** YES to #2 and maybe #1. They don't have to go home, but they shouldn't finish that coffee together.
- E. **Three board members have coffee and talk about the weather.** NO to all four because they are not talking about board business. So, technically it's not a violation. However, a licensee walks into the coffee shop and sees them and posts on Facebook that there was a secret board meeting at Starbucks, files an inquiry under the Alaska Public Records Act, and ignites legal dispute over a current topic. This costs the board thousands of dollars, a lot of extra time, and their reputation. Probably best that the three avoid having coffee together because of the public's reasonable perception that it is a board meeting.
- F. **Twenty disgruntled licensees get together to plan a protest of the next board meeting.** NO to all four, assuming none are board members.
- G. **Two board members email each other with general questions about upcoming item on the meeting agenda.** NO to all four. Not a meeting.
- H. **The two members in Example G decide they need more information and email the board chair.** YES to #2 and maybe #1. The chair should not respond but should ask staff to assist with providing needed information to the entire board.
- I. **One of the two board members in Example G is the Reviewing Board Member of a case that is to be decided at the meeting.** NO to all four, but since they have veered into ex parte communication, they need to cease the conversation for reasons outside the Open Meetings Act. Depending on what s/he heard, the non-reviewing board member may wish to declare a potential conflict of interest at the meeting and ask the chair for a ruling on whether the member should be allowed into the discussion and vote on the case.
- J. **A board member attends an industry association meeting and speaks on the board's behalf without prior authorization on topics the board has not voted on.** NO to all four, but the member should be counseled by the chair that this is improper and that the information provided could be inaccurate or misleading. Depending on the situation, the chair may want to write a letter to the association to clear up the matter. This type of representation is inappropriate in any kind of medium, including a newsletter, email list, or legislative testimony.

- K. **The entire board attends an industry association meeting. They take great care not to sit together or huddle together in a darkened corner of the hallway.** NO to all four, and good job making sure they did not give the appearance of conducting board business.
- L. **The entire board attends an industry association meeting. They get upset about an issue raised by one of the speakers and meet later that day in a small, empty conference room to discuss the board's position on the issue.** YES to #1 and #2. Not good judgment on their part.

There's also the question about what "prearranged" means. This brief guidance suggests that board and subcommittee members should avoid "spontaneous" discussions about their official business when these thresholds are met. A chance meeting at a social event that turns into an hour-long conversation about official business is avoidable and, by sustaining the conversation over a period of time, may not be considered by a court to be a spontaneous conversation.

Questions about meetings? Want to see something added to this guidance?

Contact your board staff or email license@alaska.gov.