



# Technical Working Group to the Alaska Statewide Broadband Advisory Board

## June 7, 2024 – 11:00am

### Regular Meeting

Alaska Broadband Office - Alaska Department of Commerce, Community & Economic Development

**This meeting will be virtual only.**

**Online Meeting Details:**

**[Join the meeting now](#)**

Meeting ID: 285 473 024 42 Passcode: tidWWg

**Call In: 907-202-7104;** Phone conference ID: 927 457 822#

#### **AGENDA**

- I. Call to Order and Roll Call
- II. Approval of Agenda
- III. Declarations of Conflict of Interest
- IV. Approval of Minutes from Prior Meetings (None)
- V. Staff Reports (None)
- VI. Unfinished Business (None)
- VII. New Business
  - a. Ethics Training (No Action)
  - b. Approval of Rules of Order
  - c. Approval of Prioritization of Non-Fiber Transmission Technologies
- VIII. Public Comment
- IX. Working Group Member Business from the Floor
- X. Next Meeting Date
  - a. Next Regularly Scheduled Meeting – TBD
- XI. Adjournment



## SBAB Technical Working Group Agenda Statement

Meeting Date:	June 7, 2024
Item Number:	VII.a
Item Title:	Ethics Training
Submitted By:	Alaska Broadband Office Staff
Recommendation:	None. No action required.
Attachments:	1) Executive Branch Ethics Act Summary

### Summary Statement:

All boards and committees subject to the Executive Branch Ethics Act are required to have ethics training. Sara Chambers, the Boards and Regulations Advisor for the Department of Commerce, Community, & Economic Development will be providing the training during the meeting. A summary of the Executive Branch Ethics Act is attached for review.

## Executive Branch Ethics, Conflict of Interest, and Open Meetings Act

Service on a state board or commission is a public trust and members are expected to conduct the public's business in a way that preserves the integrity of the governmental process and avoids conflicts of interest. The Ethics Act (AS 39.52) doesn't forbid public officers from having opinions, interests, or professional pursuits outside of their service on boards or commissions, but it does require that members disclose certain matters, so that a determination can be made about whether they constitute a conflict of interest.

### General Guidance

All board and commission members and staff should be familiar with the 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 from the Alaska Department of Law at <http://law.alaska.gov/doclibrary/ethics.html>. Much of the information in this section of the manual is taken directly from this site.

#### 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, 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 or an immediate family member have a personal or financial interest;
- coerce subordinates for his/her personal or financial benefit, or
- attempt to influence the 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 partner. Instead of publicly disclosing the matter and requesting recusal, Terry engaged in discussions about the proposal, and voted on the proposal.



Jack serves on a board that regulates parts of the building construction industry. Wearing a nametag that identifies him as a member of the industry board, Jack goes to a contractors' trade show and sets up a booth for his consulting business, called "Building a Future in Alaska."

#### Improper Gifts (AS 39.52.130)

A board or commission member may not solicit or accept a gift if it could reasonably be inferred that the gift is intended to influence the 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 or commission member or the 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 or commission.

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 or commission member will be advised as to the disposition of this gift.

A form for reporting gifts is available at [law.alaska.gov/doclibrary/ethics.html](http://law.alaska.gov/doclibrary/ethics.html) 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 or commission may use or disclose any information acquired through official duties 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 State Medical Board, she discloses this role to the board and continues to advise the doctors in her clinic in her capacity as a private individual, not a board member.


#### **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 [law.alaska.gov/doclibrary/ethics.html](http://law.alaska.gov/doclibrary/ethics.html) 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 but he figures that it doesn't matter when her grant application comes up before the board; he votes on the grant to his daughter, without disclosing the relationship to the board. (While voting for the grant looks worse than voting against the grant, the Ethics Act prohibits deliberating or voting on the issue regardless of what position the board member takes.)

 The board wants to contract out for an analysis of the board's decisions over the last ten years. Kim bids on 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 non-salaried 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. So, the member must disclose the fact of the member's involvement in the regulated matter, and abide by the board or commission's finding as to the existence of a conflict of interest.


### **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, 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)**

All board and commission members and staff should be familiar with the Executive Branch Ethics Act procedures outlined below.

### **Who Is My Designated Ethics Supervisor (DES)?**

Every board or commission subject to the Ethics Act has several potential ethics supervisors

designated by statute. 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.

- The chair serves as DES for board or commission members.
- In some cases, the chair serves as DES for the executive director.
- The Department of Commerce, Community, and Economic Development has assigned a DES for staff.
- The governor is the DES for a chair. The governor has delegated the DES responsibility to the Director of Administrative Services in the Office of Governor.

### **What Do I Have To Disclose?**

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 staff of a board or commission, as state employees, must also disclose:

- Compensated outside employment or services.
- Volunteer service, if any compensation, including travel and meals, is paid or there is a potential conflict with state duties.

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."* 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: <http://law.alaska.gov/doclibrary/ethics.html>.

### **How Do I Avoid Violations of the Ethics Act?**

- Make timely disclosures
- Follow required procedures
- Provide all information necessary to a correct evaluation of the matter! You may supplement 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 DES

### **What Are The Disclosure Procedures for Board and Commission Members?**

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.

### **Procedure for declaring actual or potential conflicts**

Members must declare potential conflicts and other matters that may violate the Ethics Act on the public record and in writing to the chair. Public disclosure only takes the place of a written disclosure if the meeting is recorded, a tape or transcript of the meeting is preserved, and there is a method for identifying the declaration in the record. Boards and commissions that meet these requirements may note the exception below.

*Disclosure on the public record.* Members must identify actual and potential conflicts orally at the board or commission's public meeting in advance of participating in deliberations or taking any official action on the matter.

- A member must always declare a conflict and may choose to refrain from voting, deliberations or other participation regarding a matter. In most, but not all, situations, refraining from participation ensures that a violation of the Ethics Act does not occur. Abstention does not cure a conflict with respect to a significant direct personal or financial interest in a state grant, contract, lease, or loan because the Ethics Act prohibition applies whether or not the public officer actually takes official action.
- If a member is uncertain whether participation would result in a violation of the Act, the member should disclose the circumstances and seek a determination from the chair.

*Disclosure in writing at a public meeting.* In addition to an oral disclosure at a board or commission meeting, members' disclosures must be made in writing.

- If the meeting is recorded, a tape or transcript of the meeting is preserved and there is a method for identifying the declaration in the record, an oral disclosure may serve as the written disclosure.
- Alternatively, the member must note the disclosure on the Notice of Potential Violation disclosure form and the chair must record the determination.

*Confidential disclosure in advance of public meeting.* Potential conflicts may be partially addressed in advance of a board or commission's public meeting based on the published meeting agenda or other board or commission activity.

- A member identifying a conflict or potential conflict may submit a Notice of Potential Violation to the chair, as DES, in advance of the public meeting.
- This written disclosure is considered confidential.
- The chair may seek advice from the Attorney General.
- The chair makes a written determination, also confidential, whether the disclosed matter represents a conflict that will result in a violation of the Ethics Act if the member participates in official action addressing the matter. The chair must give a copy of the written determination to the disclosing member. There is a determination form available on the Department of Law's ethics web page. The ethics supervisor may also write a separate memorandum.
- If the chair determines that the member would violate the Ethics Act by taking official action, the chair directs the member to refrain from participating in the matter that is the subject of the disclosure.
- An oral report of the notice of potential violation and the determination that the member must refrain from participating is put on the record at a public meeting. In this manner, a member's detailed personal and financial information may be protected from public disclosure.

*Determinations at the public meeting.* When a potential conflict is declared by a member for the public record, the following procedure must be followed:

- The chair states his or her determination regarding whether the member may participate.
- Any member may then object to the chair's determination.
- If an objection is made, the members present, excluding the member who made the disclosure, vote on the matter.
- Exception: A chair's determination that is made consistent with advice provided by the Attorney General may not be overruled.
- If the chair, or the members by majority vote, determines that a violation will exist if the disclosing member continues to participate, the member must refrain from voting, deliberating or participating in the matter. When a matter of particular sensitivity is raised and

the ramifications of continuing without an advisory opinion from the Attorney General may affect the validity of the board or commission's action, the members should consider tabling the matter so that an opinion may be obtained.

*If the chair identifies a potential conflict that he or she has, the same procedures are followed. If possible, the chair should forward a confidential written notice of potential violation to the Office of the Governor or to the Department of Law for a determination in advance of the board or commission meeting. If the declaration is first made at the public meeting during which the matter will be addressed, the members present, except for the chair, vote on the matter. If a majority determines that a violation of the Ethics Act will occur if the chair continues to participate, the chair shall refrain from voting, deliberating or participating in the matter. A written disclosure or copy of the public record regarding the oral disclosure should be forwarded to the Office of the Governor for review by the chair's DES.*

### **Procedures for Other Member Disclosures**

A member's interest in a state grant, contract, lease or loan and receipt of gifts are disclosed by filling out the appropriate disclosure form and submitting the form to the chair for approval. The disclosure forms are found on the Department of Law's ethics website:

[law.alaska.gov/doclibrary/ethics.html](http://law.alaska.gov/doclibrary/ethics.html).

*Other Disclosures.* The DES also reviews other ethics disclosures and either approves them or determines what action must be taken to avoid a violation of the Act. In addition to the disclosures of certain gifts and interests in the listed state matters, state employees must disclose all outside employment or services for compensation.

- The DES must provide a copy of an approved disclosure or other determination to the employee.

### **How Are Third Party Reports of Potential Violations or Complaints Handled?**

Any person may report a potential violation of the Ethics Act by a board or commission member or its staff to the appropriate DES or file a complaint alleging actual violations with the Attorney General.

- Notices of potential violations and complaints must be submitted in writing and under oath.
- Notices of potential violations are investigated by the appropriate DES who makes a written determination whether a violation may exist. The DES provides a copy of the notice to the employee or board/commission member who is the subject of the notice and may seek input from the employee or board/commission member, his or her supervisor and others. The DES may seek advice from the Attorney General. A copy of the DES' written determination is provided to the subject employee or board/commission member and the complaining party. The DES submits a copy of both the notice and the determination to the Attorney General for review as part of the DES' quarterly report. If feasible, the DES shall reassign duties to cure a potential violation or direct divestiture or removal by the employee or board/commission member of the personal or financial interests giving rise to the potential violation.
- Complaints are addressed by the Attorney General under separate procedures outlined in the Ethics Act.
- These matters are confidential, unless the subject waives confidentiality or the matter results in a public accusation.

### **What Are The Procedures for Quarterly Reports?**

Designated ethics supervisors must submit copies of notices of potential violations received and the corresponding determinations to the Attorney General for review by the state ethics attorney as part of the quarterly report required by the Ethics Act.

- Reports are due in April, July, October and January for the preceding quarter.



- A sample report may be found on the Department of Law's ethics website.
- An executive director may file a quarterly report on behalf of the chair and combine it with his or her own report.
- If a board or commission does not meet during a quarter and there is no other reportable activity, the DES advises the Department of Law's Ethics Attorney and no other report is required.

If the state ethics attorney disagrees with a reported determination, the attorney will advise the DES of that finding. If the ethics attorney finds that there was a violation, the member who committed the violation is not liable if he or she fully disclosed all relevant facts reasonably necessary to the ethics supervisor's or commission's determination and acted consistent with the determination.

#### **How Does A DES or Board or Commission Get Ethics Advice?**

A DES or board or commission may make a written request to the Attorney General for an opinion regarding the application of the Ethics Act. In practice, the Attorney General, through the state ethics attorney, also provides advice by phone or e-mail to designated ethics supervisors, especially when time constraints prevent the preparation of timely written opinions.

- A request for advice and the advisory opinion are confidential.
- The ethics attorney endeavors to provide prompt assistance, although that may not always be possible.
- The DES must make his or her determination addressing the potential violation based on the opinion provided.

#### **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 and Ex Parte Communication**

A conflict of interest occurs when a board or commission member has a direct and substantial personal interest, usually a financial interest, in a matter before the board or commission. 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.

Conflicts may arise due to improper communication with a stakeholder. "Improper communication" can be any communication with an interested party where the communication is about something on which the board has authority to act, and which comes outside of a publicly-noticed meeting. A familiar example is the contact that a member of a jury could have with people or even news stories that could bias their opinion unfairly. Sometimes it is impossible for juries in high-profile cases to avoid hearing information that is inadmissible in court, so they are sequestered in hotel rooms with no television or public contact. Board and commission members are not likely to be treated to such extremes, but they must take care not to discuss investigations with the affected licensees before a vote takes place. This type of discussion should result in the recusal of the member from the vote on that issue.

## **Ex-Parte Contact**

It is sometimes tempting for an applicant, licensee, or attorney to attempt to circumvent the usual application decision-making procedures, to seek information on a pending application, to discuss a disciplinary action, 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 may be unable to discuss, participate in, or vote on the application or disciplinary 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 license application or disciplinary 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 in writing before the meeting and on the record at the beginning of the meeting so he or she can determine whether it is appropriate that you be

recused from the discussion, deliberation, and vote. As the DES for the board, the chair (not the member) is required to make this determination on the record.

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

## **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 what their government is doing. 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. This is why the division publishes the non-confidential elements of board meeting materials on the web site in advance of 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).

All meetings and exams will be posted on the Online Public Notice System and on the board's web site.

### **What Constitutes a Meeting**

More than three members, or a majority, whichever is less, talking about a subject on which the board is empowered to act constitutes a meeting. This means that anytime that number of members convenes and discuss "board business" they are having a meeting that ought to be on the public record. Any decisions made in discussions with three or more or a majority of board members outside of a publicly noticed meeting are not enforceable.

Following are the most common types of meetings that are 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 and may increase licensing costs.

**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. 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. The Department of Law has opined that 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.

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. This requires a vote by roll call or unanimous consent and publication of the results in the permanent record.

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. Members of boards who willfully conduct business outside an open meeting may lose protection by the state and may be found personally liable for damages.

### **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.

Members should also take care to avoid texting or emailing during meetings for a variety of reasons:

- Texts from the public to a board member on an issue before the board can be construed as ex parte communication and may require recusal from the discussion and vote.
- Texts from the public are not acceptable methods of receiving comments on pending regulations and cannot be considered.
- Texting with another board member during a meeting (and, under certain conditions, outside the meeting) is a violation of the Open Meetings Act.
- Texting during a meeting shows the members of the board and the public that the member is disengaged and not paying attention. It shows disrespect to the person speaking as well as to the tissue.
- Board member cell phones and computers are subject to the Alaska Public Records Act and can be the subject of a subpoena and confiscated. Deleting texts and emails will not make them undiscoverable. Don't tempt fate by doing board business (or giving the appearance of doing so) on your computer or phone during a meeting.

Great value can be gained from casual encounters outside the pressure and formality of the board or commission chambers. Exchanging information, ideas, and viewpoints can be useful. 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, board staff may seek clarification from the office of the Attorney General on behalf of the board.

### **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. The Division Policy and Procedure Manual explains these steps more thoroughly. 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.



## SBAB Technical Working Group Agenda Statement

Meeting Date:	June 7, 2024
Item Number:	VII.b
Item Title:	Approval of Rules of Order
Submitted By:	Alaska Broadband Office Staff
Recommendation:	Approve Rules of Order
Attachments:	1) Rules of Order

### Summary Statement:

Best practice for boards and committees includes adoption of Rules of Order by which to function. A set of Rules of Order have been provided for review and approval by the Technical Working Group.

# Technical Working Group Rules of Order

Adopted \_\_\_\_\_

## **Article I: Name**

The Technical Working Group of the Statewide Broadband Advisory Board is established under AS 44.62.920.

## **Article II: Purpose**

The technical working group provides technical recommendations to the advisory board. The purpose of the advisory board is to provide technology-neutral input, recommendations, and advice regarding

- (1) state broadband policy, goals, and objectives;
- (2) project proposal processes and criteria for project selection;
- (3) mapping and data collection and sharing efforts; and
- (4) progress made on the recommendations of the Governor's Task Force on Broadband established under Administrative Order No. 322.

Neither the board nor the working group have regulation-making authority, but they may recommend regulatory changes to the director of the State Broadband Office.

## **Article III: Membership**

(d) The advisory board shall establish a broadband technical working group to provide technical recommendations to the advisory board. The advisory board shall appoint individuals to the broadband technical working group who collectively have expertise in the different technologies that provide broadband service in the state and who manage and deliver projects in the state. The broadband technical working group is composed of eight members appointed by the advisory board to three-year terms as follows:

- (1) one member who is a mechanical engineer;
- (2) one member who is a civil engineer;
- (3) one member who is an aerospace engineer;
- (4) one member who has expertise in telecommunications;
- (5) one member who has expertise in fiber optics;
- (6) one member who has expertise in satellite technology;
- (7) one member who has expertise in microwave technology; and
- (8) the advisory board broadband industry representative.

**Terms.** All Technical Working Group members are appointed by the Statewide Broadband Advisory Board and serve at the pleasure of the Statewide Broadband Advisory Board. Each member of the board shall serve for a term of 3 years.

**Vacancies.** If a vacancy occurs on the board, a new member shall be appointed by the Statewide Broadband Advisory Board and serve for the remainder of the term for which the predecessor of that member was appointed.

**Quorum.** A quorum shall consist of five members. The working group may choose to conduct their



business through teleconferencing, videoconferencing, or meeting as a group. All meetings shall be held in accordance with AS 44.62.310-44.62.312 (Open Meetings Act).

**Compensation.** Per statute, members of the broadband technical working group are not entitled to compensation, per diem, or reimbursement of travel expenses.

**Absences.** Technical Working Group members are expected to attend all working group meetings. If a working group member is unable to attend a meeting; it is the responsibility of the member to notify the lead staff to the working group immediately. If a working group member is absent more than two meetings, the director will notify the Statewide Broadband Advisory Board. The chair of the board will exercise his/her judgment in excusing the absence.

**Rules of Order of the Technical Working Group.** The working group shall conduct its business in accordance with Robert's Rules of Order unless the working group provides by resolution to suspend the use of Robert's Rules of Order and use other procedures to facilitate the purpose of and duties of the group.

#### **Article IV: Officers**

The advisory board broadband industry representative appointed under AS 44.62.920(8) shall serve as the chair of the working group. For the purpose of efficiency, in the event the chair is unavailable, staff will run the meeting operations.

#### **Article V: Conflict of Interest**

Technical Working Group members are subject to AS 39.52 (Alaska Executive Branch Ethics Act).

Members may not provide anyone outside the working group information that has not been released to the public by the working group or that is not already on the public record.

Technical Working Group members may not, under any circumstances, offer advice or assist an organization in the preparation of a grant application, except to take part in a working group-approved program of technical assistance that is equally available to all potential applicants.

At each meeting of the working group, the chair will prompt each member to state on the record whether they have any potential or perceived ethical or financial conflict with any matter before the working group. A working group member whose interests or activities could result in a violation of the Ethics Act if the member participates in working group action must disclose the matter on the public record and in writing to the working group chair who determines whether a violation exists. As the working group's ethics supervisor, the chair will declare whether a conflict exists.

If another working group member objects to the chair's ruling or if the chair discloses a potential conflict, the working group members at the meeting (excluding the involved member) will vote on the matter. If the chair or the working group determines a violation will occur, the member must refrain from deliberating, voting, or participating in the matter. This includes not participating in an executive session on the matter, if one is called.

A member who is present but recused from voting due to a potential or determined conflict still counts toward quorum.

***Article VI: Lead Agency and Staffing***

The working group will be housed in the Alaska Broadband Office within the Department of Commerce, Community, and Economic Development. This is the designated lead agency and will supply administrative support to the working group.

***Article VII: Amending Rules of Order***

The chair may propose changes to the Rules of Order for review and recommendation. Proposed changes must be provided to members in writing five days prior to the scheduled meeting. To the extent these rules may be amended, the working group may do so by a majority vote at a regularly scheduled public meeting.



## SBAB Technical Working Group Agenda Statement

Meeting Date:	June 7, 2024
Item Number:	VII.c
Item Title:	Approval of Prioritization of Non-Fiber Technologies
Submitted By:	Statewide Broadband Advisory Board
Recommendation:	Approve Prioritization of Non-Fiber Technologies
Attachments:	None.

### Summary Statement:

The Statewide Broadband Advisory Board (SBAB) is requesting the Technical Working Group (TWG) provide prioritization of non-fiber transmission technologies that:

- 1) deliver 100Mbps/20Mbps capacity to a minimum of 100 Broadband Serviceable Locations (BSLs), and
- 2) that meet the requirement that at least 80 percent of network speed measurements be at 80 percent of required speeds and 95 percent of latency measurements be at or below 100 milliseconds round-trip time during the Busy Hour.

The transmission technologies include, but are not limited to geosynchronous satellite (GEO), middle earth orbit satellites (MEO), low earth orbit satellites (LEO), licensed microwave spectrum in the 2.5GHz, 3.65GHz (WiMax), 4.9GHz (public safety), 6GHz, 11GHz, 18GHz, 23GHz, and 80GHz (E-Band millimeter wave) as designated by the FCC, unlicensed microwave in the 2.4GHz, 5.3GHz, 5.4GHz, 5.8GHz frequencies and the 60 GHz millimeter wave, or any other relevant transmission technology.

For each technology evaluate:

#### 1.1. Performance

- 1.1.1. Download Bandwidth
- 1.1.2. Upload Bandwidth
- 1.1.3. Latency

#### 1.2. Costs

##### 1.2.1. Capital Costs (Initial Costs)

- 1.2.1.1. Engineering
- 1.2.1.2. Material
- 1.2.1.3. Installation
- 1.2.1.4. Mobilization/Demobilization
- 1.2.1.5. Testing
- 1.2.1.6. Other

##### 1.2.2. Annual Operating and Maintenance Cost (Ongoing Costs)

- 1.2.2.1. Spares
- 1.2.2.2. Power/Fuel
- 1.2.2.3. Labor
- 1.2.2.4. Other