

July 7, 2023

M E M O R A N D U M

TO: Directors
Colorado Water Conservation Board

FROM: Jennifer Mele
First Assistant Attorney General
Water Conservation Unit
Natural Resources & Environment Section

RE: Agenda Item 7
Best Practices for Boards and Commissions
HB18-1198

HB18-1198 requires that each board and commission in state government implement written policies or bylaws and obtain annual training on a list of topics. During this agenda item we will cover the training and discuss the draft bylaws.

Attachments: HB18-1198
Draft CWCB Bylaws

An Act

HOUSE BILL 18-1198

BY REPRESENTATIVE(S) Saine and Kraft-Tharp, Leonard, Winter, Covarrubias, Gray, Humphrey, McKean, McLachlan, Michaelson Jenet, Pettersen, Rankin, Van Winkle, Williams D., Wilson, Young, Arndt; also SENATOR(S) Donovan and Smallwood, Neville T., Todd, Court, Martinez Humenik, Moreno, Tate.

CONCERNING THE ESTABLISHMENT OF BEST PRACTICES FOR STATE BOARDS AND COMMISSIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 24-3.7-102 as follows:

24-3.7-102. Best practices for state boards and commissions.

(1) NOTWITHSTANDING ANY LAW TO THE CONTRARY, COMMENCING JANUARY 1, 2019, EACH STATUTORILY CREATED BOARD OR COMMISSION IN STATE GOVERNMENT, NOT INCLUDING A SPECIAL PURPOSE AUTHORITY AS DEFINED IN SECTION 24-77-102 (15), SHALL IMPLEMENT WRITTEN POLICIES OR BYLAWS AND OBTAIN ANNUAL TRAINING ON:

(a) UNDERSTANDING AND OPERATING WITHIN THE LIMITS OF STATUTORY DIRECTIVES, LEGISLATIVE INTENT, AND ANY SPECIFIC

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

DIRECTIONS OR LAWS RELATED TO THE BOARD OR COMMISSION'S ESTABLISHMENT AND ITS POWERS AND DUTIES;

(b) DEFINING THE BOARD OR COMMISSION'S MISSION OR ROLE IN THE OVERSIGHT OF PROJECTS OR ENTITIES APPROVED TO RECEIVE PUBLIC FUNDING, IF APPLICABLE;

(c) UNDERSTANDING THE GOALS OF THE PROGRAMS THE BOARD OR COMMISSION OVERSEES, AND ALIGNING THE BOARD OR COMMISSION'S PROCESSES WITH THOSE GOALS;

(d) IDENTIFYING AND MANAGING CONFLICTS OF INTEREST;

(e) UNDERSTANDING THE REQUIREMENTS OF THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF THIS TITLE 24, AND THE OPEN MEETINGS LAW, PART 4 OF ARTICLE 6 OF THIS TITLE 24;

(f) SETTING PARAMETERS REGARDING BOARD OR COMMISSION STAFF'S DUTIES RELATIVE TO THE BOARD OR COMMISSION'S MISSION OR ROLE;

(g) IDENTIFYING AND SECURING SUFFICIENT DATA IN ORDER FOR THE BOARD OR COMMISSION TO MAKE INFORMED DECISIONS;

(h) ENSURING THE APPROPRIATE INVOLVEMENT OF MEMBERS IN THE REVIEW OF KEY COMMUNICATIONS AND IN ANY POLICY-MAKING ACTIVITIES;

(i) ENSURING MEMBERS ACT IN ACCORDANCE WITH THEIR ROLES AS PUBLIC REPRESENTATIVES;

(j) COORDINATING WITH OTHER BOARDS OR COMMISSIONS, INDUSTRY, EDUCATIONAL INSTITUTIONS, AND STATE AGENCIES WHERE RESPONSIBILITIES AND INTERESTS OVERLAP; AND

(k) ANNUALLY REVIEWING MANAGEMENT PRACTICES TO ENSURE BEST PRACTICES ARE UTILIZED.

(2) EACH STATE AGENCY RESPONSIBLE FOR A STATUTORILY CREATED BOARD OR COMMISSION SHALL ENSURE THAT THE STATE BOARD OR COMMISSION OBTAINS THE ANNUAL TRAINING AND IMPLEMENTS THE

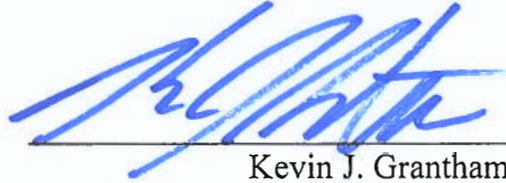
WRITTEN POLICIES SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.



Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Kevin J. Grantham
PRESIDENT OF
THE SENATE

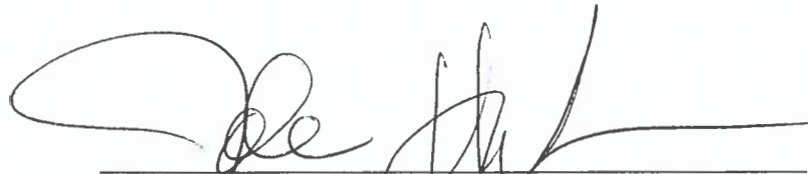


Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



Effie Ameen
SECRETARY OF
THE SENATE

APPROVED 3:43 PM 4/23/18



John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

Colorado Water Conservation Board

BY-LAWS OF THE COLORADO WATER CONSERVATION BOARD

By-Laws adopted _____

These By-Laws replace any existing by-laws adopted by the CWCB.

BY-LAWS OF THE COLORADO WATER CONSERVATION BOARD

PREAMBLE

For the purpose of providing for the orderly conduct and carrying on of the business, objects, and affairs of the Colorado Water Conservation Board, and for the purposes of compliance with § 24.3.7-102, the Colorado Water Conservation Board hereby makes, publishes, and declares these By-Laws.

ARTICLE I – THE COLORADO WATER CONSERVATION BOARD

The CWCB's mission is to conserve, develop, protect, and manage Colorado's water for present and future generations.

Pursuant to § 37-60-102, C.R.S., for the purpose of aiding in the protection and development of the waters of the state, for the benefit of the present and future inhabitants of the state the Colorado Water Conservation Board was created with the powers and duties set out in article 60 of Title 37, C.R.S. The CWCB is an agency of the state, and its functions it performs under article 60, Title 37 are governmental functions for the welfare and benefit of the state and its inhabitants.

The CWCB's role and its priorities and focus are set forth in the CWCB's Strategic Framework.

A. Personnel. The board consists of 15 members.

1. Voting members: Voting members consist of the executive director of the department of natural resources and nine appointed members chosen geographically as follows:
 - a. Four members from the western slope
 - i. Yampa-White drainage basin
 - ii. Main Colorado drainage basin
 - iii. Gunnison-Uncompahgre drainage basin
 - iv. San Miguel-Dolores-San Juan drainage basins
 - b. Five members from the eastern slope
 - i. Rio Grande drainage basin
 - ii. North Platte drainage basin
 - iii. Arkansas drainage basin
 - iv. South Platte drainage basin outside of the City and County of Denver
 - v. City and County of Denver
 - c. Members of the board may not vote by proxy.

2. Non-voting ex officio members: Non-voting members consist of the attorney general, the state engineer, the director of the division of parks and wildlife, the commissioner of agriculture or the commissioner's designee, and the director of the board.
- B. Officers. The board elects from the appointed members a chairperson and a vice-chairperson to serve at the pleasure of the board. The director of the board serves as the secretary.
1. The offices of chairperson and vice-chairperson are held for a term of three years unless the elected officer does not remain on the board for the duration of the term.
 2. The chairperson will preside over the meetings of the board. The chairperson will be responsible for the orderly conduct of the meeting.
 3. If the chairperson is absent or recused, the vice-chairperson will assume the responsibilities of the chairperson.
 4. Election of officers
 - a. The nine appointed members vote on officers. At least six of the nine appointed members must be present to hold an election of officers. The chairperson and vice-chairperson vote in the election.
 - b. Any of the nine appointed members may nominate a candidate for office. A person may nominate herself or himself. No second is needed for a nomination. The chairperson declares nominations closed once all nominations have been made.
 - c. If candidates are unopposed, a simple voice vote may be used.
 - d. In the event two members are nominated either by another member or self-nomination, voting must occur by ballot or roll-call vote. In the event of a ballot vote, the secretary shall count the ballots.
 - e. A candidate must receive the majority of votes to win. In the event of a tie, the vote is repeated until a candidate receives the majority of votes.
- C. Duties of the board. Duties and authorities of the board are set forth in § 37-60-106, C.R.S and in Article 60, Title 37.
1. In order to make an informed decision, board members must identify and secure sufficient data, ensure the appropriate involvement of members in the review of key communications and in any policy-making activities; and coordinate with other boards or commissions,

- industry, educational institutions, and state agencies where responsibilities and interests overlap.
2. Board members must act in accordance with their roles as public representatives.

ARTICLE II – DEFINITIONS

When used herein, the following words, terms and phrases shall have the following meaning:

1. The term “board” shall mean the board of the Colorado Water Conservation Board as opposed to staff or the agency.
2. The term “Open Meetings Law” shall mean § 24-6-401 *et seq.*, C.R.S., as it may be amended from time to time.
3. The term “Colorado Open Records Act” shall mean § 24-72-201 *et seq.*, C.R.S., as it may be amended from time to time.

ARTICLE III – MEETINGS OF THE COLORADO WATER CONSERVATION BOARD

A. Frequency of regular meetings.

The board shall meet bi-monthly. Additional meetings including workshops and special meetings may be scheduled as desired.

B. Rules Governing Board Meetings.

1. Open Meetings.

The board is a “state public body,” subject to the requirements of the Colorado Open Meetings Law. Board meetings may occur in person, virtually, or telephonically, or a through a combination of in-person, virtual, and telephonic participation.

2. Notice of Meetings.

The Board shall provide the public notice of all upcoming board meetings via the CWCB website.

3. Quorum.

Six voting board members constitute a quorum.

4. Meeting attendance.

Board members shall notify the CWCB director if unable to attend a board meeting. If a board member misses three consecutive meetings without having first notified the CWCB director, the CWCB director will notify the director of the department of natural resources.

5. Board Decisions.

The board shall make formal decisions by motion, second, and vote. A simple majority is required to carry a motion.

6. Rules of Order.

Meetings shall be as informal as circumstances permit. The board may, at its discretion, agree to invoke Robert's Rules of Order. If board action is clear, such action is not invalid if the action failed to strictly adhere to processes spelled out in Robert's Rules of Order.

7. Public Session.

- a. The board shall make all final decisions in open public session.
- b. All open meetings of the board shall be recorded, and shall be memorialized in appropriate minutes, which shall be considered unofficial until approved by the board. Information recorded in the minutes will include 1) the time and location of the meeting, 2) names of board members present, and 3) actions taken by the board.
- c. The board encourages public comment. The chairperson is responsible for establishing procedure for accepting public input which is subject to change depending on circumstances.

8. Executive Session.

- a. The board shall deliberate in executive session only pursuant to the Colorado Open Meetings Law. No adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall occur at any session that is not open to the public.
- b. An affirmative vote of two thirds of the entire membership is required to go into executive session. § 24-6-402(3)(a), C.R.S. Thus an affirmative vote of 10 board members, whether voting members or not, is required for the board to go into executive session.
- c. Executive sessions shall be recorded and preserved in accordance with Colorado Open Meetings Law.

C. CWCB Authority.

The board shall operate within the limits of all applicable statutory directives, legislative intent, and any specific directions or laws related to its establishment and its powers and duties.

D. Annual Training

Consistent with section 24-3.7-102(1)(a), C.R.S. the board shall receive annual training which shall cover:

1. Understanding and operating within the limits of its statutory directives, legislative intent, and any specific directions or laws related to the board's establishment and its powers and duties;
2. Defining the board's mission or role in the oversight of projects or entities approved to receive public funding, if applicable;
3. Understanding the goals of the programs the board oversees, and align the board's processes with these goals;
4. Identifying and managing conflicts of interest;
5. Understanding the requirements of the Colorado Open Records Act and the Open Meetings Law;
6. Setting parameters regarding CWCB staff's duties relative to the board's mission or role;
7. Identifying and securing sufficient data in order to make informed decisions;
8. Ensuring the appropriate involvement of members in the review of key communications and in any policy-making activities;
9. Ensuring members act in accordance with their roles as public representatives;
10. Coordinating with other boards or commissions, industry, educational institutions, and state agencies where responsibilities and interests overlap; and
11. Annually reviewing management practices to ensure best practices are utilized.

ARTICLE IV – THE AGENCY

A. Staff.

1. Director. The board appoints the director, who must be well versed in water matters and qualified by experience, knowledge, and personality to represent the board and carry out its functions. The director is the

chief administrative head of the board under the direction and supervision of the board and has general supervision and control of all its activities, functions, and employees. The appointment or removal of such director shall be subject to section 13 of article XII of the state constitution and statutes enacted pursuant thereto relating to the state personnel system.

2. Roles and duties of staff. Staff of the Colorado Water Conservation Board serve as staff to the board. The board relies on input from staff and other stakeholders in developing policies and implementing strategies. Staff seeks approvals and guidance from the board relative to the board's mission and roles.

B. Program Goals and Considerations.

1. The CWCB performs numerous functions through distinct program areas in support of its role as Colorado's statewide water policy agency. As stated in the Strategic Framework, the board:
 - a. Provides common technical platforms for planning and policy decisions;
 - b. Builds and manages information to guide actions;
 - c. Helps reduce the impacts of floods and droughts
 - d. Takes action to protect Colorado's compact entitlements;
 - e. Holds water, interests in water, and water rights to preserve and improve the natural environment to a reasonable degree; and
 - f. Works with partners to develop policies and implement strategies for meeting Colorado's consumptive and non-consumptive water needs.
2. Each CWCB program is directed by the agency's Strategic Framework, as well as through statutory authority and responsibilities. CWCB staff works on programs and projects authorized by Article 60, Title 37. When acting to further these goals and programs, the board must understand the goals of the program and must align its processes with those goals. Board members will work with staff to ensure mutual understanding of goals of the projects and programs.
3. The CWCB offers numerous grants and loans to water providers and other entities statewide for a variety of water-related projects, studies, planning documents, awareness campaigns, and other activities. The CWCB has no ownership, authority, or oversight over the projects or entities for which it approves grants or loans, except to ensure repayment of loans.

C. Legal Counsel.

Attorneys within the Natural Resources and Environment Section of the Colorado Department of Law serve as legal counsel to the board and CWCB staff. In some instances, where board counsel may have a conflict of interest, or an apparent conflict of interest exists for board counsel's participation in any given proceeding or decision, the board may utilize conflicts counsel. The Deputy of the Natural Resources and Environment Section of the Attorney General's Office will assist in finding conflicts counsel.

ARTICLE V – COLORADO OPEN RECORDS ACT

The board is committed to transparency and open government. The Open Records Act applies to all public records kept by the board and the board members.

ARTICLE VI – CONFLICTS OF INTEREST

The board shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which they have a direct or substantial financial interest. See § 24-18-108.5(2), C.R.S.

ARTICLE VIII – EFFECTIVE DATE

- A. These By-Laws shall take effect immediately upon a vote of the board.
- B. These bylaws may be amended in whole or in part at a board meeting by vote pursuant to Article III.B.5. Adopted amendments shall take effect immediately.