



# COMMISSIONER HANDBOOK

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**QUESTIONS REGARDING THE COMMISSIONER HANDBOOK SHOULD BE DIRECTED TO THE COMMISSION’S OFFICE OF CHIEF COUNSEL.**

## AUTHORITY

### Statutory Authority

The Pennsylvania Fish and Boat Commission's (PFBC or Commission) Board of Commissioners (Board or Commissioners) was created by the Pennsylvania General Assembly. The Board is defined in statute, [30 Pa.C.S.A. § 301 \(a\)](#), and consists of ten Pennsylvania citizens who are appointed by the Governor with the advice and consent of a majority of the Pennsylvania Senate. Eight Commissioners are appointed to represent different geographic districts around the state and two are appointed to represent the boating interests of the Commonwealth. All of this is set forth in more detail in [Section 301](#), along with more information about the terms of office, compensation, vacancies, meetings, officers, quorum, and powers.

Under [30 Pa.C.S.A. § 321](#), The Board administers and enforces the Fish and Boat Code relating to:

- (1) The encouragement, promotion, and development of the fishery interests.
- (2) The protection, propagation, and distribution of fish.
- (3) The management of boating and the operation of boats.
- (4) The encouragement, promotion, and development of recreational boating.

The Board plays an important role in the acquisition of property. [Section 724](#) of the Code requires a majority of the Board of Commissioners to consent to any property acquisition. The requirements for the exchange or sale of property, rights-of-way, easements, and licenses are generally similar.

The Board has the power to create general and special rules and regulations. [Section 322](#) of the Code provides the Commission may promulgate rules and regulations concerning (1) fishing to aid in the better protection, preservation, and management of fish, and (2) boating and the management and operation of boats.

Specific Code sections for rulemaking pertain to [fish and fishing](#), as well as [boats and boating](#). Of note, the Board must receive the [advice and opinions](#) of the Boating Advisory Board for any boat and boating rules and regulations.

It is important to understand that Title 30, Fish, is a collection of statutes. The language of a statute may only be changed by the General Assembly with approval by the Governor. The Board, through the Executive Director and staff, can work with the General Assembly to propose and pass a bill changing the statutory language, or removing or adding statutes. The General Assembly could also unilaterally make changes to Title 30.

Statutes give the Board the power to create general and special rules and regulations as part of Pennsylvania's regulatory or rulemaking process. Regulatory or rulemaking comprises the majority of the work that is on the Board's agenda for any given Board or committee meeting. The rulemaking process is described in more detail in a separate section of this document; however, generally the public must be given notice of a proposed rule, the public must be able to provide comments on that proposed rule, and after staff and the Board consider the public comments, the proposed rule may or

may not be approved by the Board as a final rule. If the Board approves the proposed rule as final, it becomes a regulation that is found in [Title 58, Recreation](#), of the Pennsylvania Code. The General Assembly has no role in this process.

It is important to understand that the agency is an independent, administrative commission, which means that it does not fall under the Governor's jurisdiction like most of Pennsylvania's state agencies. For example, the Governor selects the leader of the agencies under their jurisdiction, whereas the Board select the leader, also known as the Executive Director, of the Commission. This independence provides much flexibility and much responsibility.

### **Funding**

The Fish and Boat Commission is primarily funded by two funds: 1) the [Fish Fund](#), and 2) the [Boat Fund](#). Both funds are generally funded by license fees, boat registrations, and penalties received under Title 30. There are also strict requirements for how the monies in the funds may be spent. Both funds require a budget to be approved by the Governor. In addition, the Commission also receives grant money and other state and federal funds (such as excise taxes through [Sportfish Restoration Funds](#)) to which separate rules and requirements apply. The Commission has the authority to set fees for certain licenses, permits, and issuing agent fees under [Section 322.1](#) of the Code, with this authority expiring July 15, 2025, unless extended by legislation.

## **OPERATIONAL GUIDANCE**

### **Election of Officers**

Section 301(e) of the Fish and Boat Code, 30 Pa. C.S. § 301(e), provides that at the July meeting each year, the Commission shall elect one of its members as President and one of its members as Vice President, who shall hold office for one year. When electing officers, the following process shall be followed:

1. The Board will appoint a nominating committee of three or more Commissioners at least 30 days prior to the July meeting. The current President is ineligible to serve on the committee.
2. The nominating committee will contact all Commissioners to ask for nominations, or self-nominations, for President and Vice President.
3. After discussion and deliberation, the nominating committee will present its recommendations for President and Vice President at the July meeting.
4. The Commission President will ask if there are additional nominations.
5. If there are none, the President will call for a motion and a second that the nominations be closed, the nominations presented be approved, and the nominated President and Vice President be elected to a one-year term.
6. If there are additional nominations, the President will call for a motion, second, and majority vote to accept each additional nomination. The President will then call for a motion, second, and vote to close the nominations. The President will then call for votes from each Commissioner to elect a President and/or a Vice President by majority vote.
7. In the event the office of the President or Vice President becomes vacant unexpectedly, the vacancy shall be filled by the Board through a majority vote election.

### **Commission Meetings and Committees**

The Board generally meets quarterly – in January, April, July, and October each year. However, [by law](#), they are required to meet only in January and July. The January and July meetings must be held in the Harrisburg area. The Commission may hold other meetings or hearings at such times and places within the Commonwealth as it designates for the transaction of business. Six members of the Commission constitute a quorum.

### **Committees**

The President may, from time to time, establish committees to assist it in fulfilling the Board's responsibilities.

- Committees will be used judiciously, as to avoid interference with the wholeness of the Board's job.

- Committees will not be formed without a well-developed, purpose that defines respective roles, membership, suggested staff contacts, and objectives.
- Committee assignments, committee chairs, and committee vice chairs should be announced by the President prior to the fall meeting each year.
- Standing committees may be established by the President for specific purposes.
  - Committees will be comprised of Board members and may include Boating Advisory Board members, Commission staff, and when appropriate, resource users, interested groups, and outside experts when they believe their opinions and expertise can lend value to its deliberations.
- Committee chairs will report on their respective committee activities at the next regularly scheduled Commission meeting.
- From time to time, the President may establish, in their sole discretion, special committees to address specific areas of concern regarding Board governance and monitoring.
- The Board will assure that committees do not conflict with the authority or direction it has delegated to the Executive Director.
- Committee roles and responsibilities may not be changed without the consent of the Commission President and the committee chair. If the two are unable to agree, the Commission President or committee chair may present the proposed changes to the Board of Commissioners for final resolution.
- Board and committee meetings at which a quorum of the Board or committee members, respectively, are present are considered public meetings (unless specifically exempted from the Sunshine Act) and must be held in an open, public forum.

### **Workgroups**

From time to time, the President of the Board or the chair of a committee may wish to form a workgroup comprised of a few Commissioners (fewer than a quorum of the Board or committee forming the workgroup), PFBC staff, and in some instances members of the public. Workgroups differ from committees in that they do not deliberate or take official action on agency business. Their function is limited to a fact-finding role in which they gather information and report their findings to the full Board or a committee. It will then be up to the committee to meet in public and discuss the issue and ultimately make a recommendation to the full Board. Workgroups do not make recommendations or vote.

Because workgroups do not deliberate or take official action, their meetings are not subject to the Sunshine Act. Therefore, it is important that workgroups truly function as workgroups and not as committees.

It also is important when reporting the activities of a workgroup that workgroup members refer to themselves as a workgroup and not as a committee.

### **Board Relationship with the Executive Director**

The Board's authority to staff will be delegated through the Executive Director. Therefore, all authority and accountability of staff are the authority and accountability of the Executive Director. Such delegation will be consistent with [Section 302 of Fish and Boat Code](#).

The Board will direct the Executive Director to meet specific priorities and objectives. The Executive Director will be responsible for developing a strategic plan consistent with those priorities and objectives to guide the agency's actions and decisions. The Executive Director is accountable for the entire agency meeting expectations and will be evaluated accordingly.

The Board will monitor and evaluate the annual progress the Executive Director is making toward achieving Board priorities and objectives. The Executive Director will provide the Commissioners with at least quarterly updates on progress in implementing the strategic plan. Such updates shall include an overall written report from the Executive Director and may be supplemented by oral presentations by staff and discussions during Board committee meetings. The Executive Director is expected to report on both progress and difficulties in implementing the plan.

The President of the Board will coordinate an annual work performance evaluation of the Executive Director with input from all Commissioners. In their evaluation, the Commissioners will utilize quarterly strategic plan implementation reports and any other information they deem appropriate relative to the Executive Director's job performance for the preceding year. This evaluation is considered a confidential personnel matter between the Board and the Executive Director. The Board will review the position description for the Executive Director on an annual basis.

The Board expects the Executive Director to reasonably interpret its direction. To that end, the Executive Director may make all decisions, take all actions, establish all practices, and develop all activities necessary to achieve the Board's specific priorities and objectives.

The Board may change its priorities and objectives at any time. By doing so, the Board could alter the specific results to be achieved and/or the boundaries within which the Executive Director must function. However, so long as particular priorities and objectives are in place, the Board will respect and support the Executive Director's choices.

Decisions of the Board acting as a body are binding on the Executive Director. Exceptions may occur in circumstances when the Board specifically authorizes such authority as a group or through its President.

If individual Commissioners or committee members request information, the Executive Director may refuse to provide such information if, in their judgment such a request would require inordinate use of staff time, imprudent commitment of agency resources, or loss of focus on Board policies or the strategic plan.

In the event a Commissioner receives an Equal Employment Opportunity or other formal complaint against the Executive Director, the following steps and consultation shall take place:

1. Notify the Board President.
2. Board President will meet with the Commission's Chief Counsel.
3. In the event the Chief Counsel is not available, the Board President may consult with the Commission's Equal Employment Opportunity (EEO) Officer if the complaint alleges discrimination or sexual harassment and the EEO Officer will make the notifications required by Management Directive 410.10. The Office of Administration, Office for Human Resources Management, Bureau of Equal Employment Opportunity may investigate if circumstances warrant or if a reasonably perceived or actual conflict of interest exists.

### **Board Interaction with Staff**

Commissioners may consult directly with staff for the purpose of asking questions and gaining information. However, Commissioners will not place demands upon the staff that involve inordinate time commitments, expenses, or diversions from operational priorities. Requests from Commissioners to staff will go through the Executive Director and/or Board President.

Commissioners will not provide direction to staff.

Questions about the proper role of the Commissioners in communicating with staff will be directed to the Executive Director. Should a Commissioner have a concern or complaint regarding any Commission staff member, other than the Executive Director, it should be kept confidential and forwarded to the Executive Director.

### **Ethics**

Commissioners should ensure that every action they engage in on behalf of the Commission passes the eye of public scrutiny and complies with existing laws and policies. Perception by the public of a wrongdoing can be as detrimental as an actual infraction. As public officials of the Commonwealth of Pennsylvania, Commissioners are subject to two ethics laws:

- The [Public Official and Employee Ethics Act](#) (65 Pa. C.S. § 1101 *et seq.*) and
- The [Governor's Code of Conduct, Executive Order 1980-18](#) (4 Pa. Code §§ 7.151 – 7.179), amended by [Executive Order 2023-04](#).

These laws are intended to help Commissioners with decision making on behalf of the Commission and to ensure ethical behavior.

The Public Official and Employee Ethics Act was enacted to strengthen the faith and confidence of the people of the Commonwealth in their government. In adopting the Ethics Act, the General Assembly declared that public office is a public trust, and any effort to realize personal gain through public office other than compensation provided by law is a violation of that trust. The General Assembly further



declared that the people have a right to be assured that the financial interests of holders, nominees, or candidates for public office do not conflict with the public trust. The General Assembly stated that because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, the Ethics Act is to be liberally construed to promote complete financial disclosure as specified by the Act.

The Governor's Code of Conduct applies to all officials and employees of agencies under the Governor's jurisdiction. The Commission historically has followed it even though it is an independent, administrative commission. As with the Ethics Act, the Governor's Code of Conduct was established to ensure that the citizens of the Commonwealth have complete confidence in those individuals appointed and employed to serve the Commonwealth, and to provide governmental services in an efficient fashion that is not endangered by acts of misconduct by appointed officials or employees.

Both the Ethics Act and the Governor's Code of Conduct include requirements, restrictions, and prohibitions. These documents also impose affirmative duties and responsibilities upon public officials with regard to the filing of financial disclosure statements. Additionally, they restrict and prohibit public officials from engaging in certain types of conduct that violate the public trust. Commissioners are encouraged to review and become familiar with both documents.

### **Gifts, Food & Beverages**

Both the Ethics Act and the Governor's Code of Conduct have detailed requirements that apply to Commissioners when accepting gifts, food, and beverages. [Executive Order 2023-04](#) (as well as the [Return to Reasonableness Policy](#) by the Shapiro Administration) provides much guidance on when it is permissible to accept gifts, food and beverages when acting as a Commissioner.

### **Filing Statements of Financial Interests**

**Code of Conduct Statements of Financial Interests:** Commissioners must complete and file the financial interest statements (Form STD-323) with the Secretary of Administration by May 1 each year. The financial information to be disclosed is for the preceding calendar year. Additional clarification and instruction are contained in Management Directive 205.9, Code of Conduct Statement of Financial Interest – Filing, located at [Management/Administrative Support \(205-260\) \(pa.gov\)](#).

**Ethics Act Statements of Financial Interests:** Commissioners must complete and file financial interest statements every year by no later than May 1. The financial information to be disclosed is for the preceding calendar year. The form must be filed by May 1 each year the position is held and the year following completion of their term. Persons serving in multiple public positions must satisfy the filing requirements for all such positions. The State Ethics Commission will coordinate the notification and submission of financial interest statements for all members of boards, commissions, or councils. Commissioners should file the original with the State Ethics Commission and a copy with the PFBC's Human Resources Office. Additional guidance can be found in Management Directive 205.10, Financial Disclosures Required by the Public Official and Employee Ethics Act, located at [Management/Administrative Support \(205-260\) \(pa.gov\)](#).

Any person who is required to file a Statement of Financial Interests, and fails to do so properly, may be found guilty of a misdemeanor and upon conviction may be fined not more than \$1,000 and/or imprisoned for not more than one year.

### **Conflict of Interest and Other Restricted Activities**

As public officials, Commissioners are prohibited from engaging in conduct that constitutes a conflict of interest and other restricted activities.

A conflict of interest is defined as use by a public official or public employee of the authority of their office or employment or any confidential information received through their holding public office or employment for the private pecuniary benefit of themselves, a member of their immediate family, or a business with which they or a member of their immediate family is associated. "Conflict" or "conflict of interest" does not include an action having a de minimis economic impact or that affects to the same degree a class consisting of the general public, or a subclass consisting of an industry, occupation, or other group that includes the public official or public employee, a member of their immediate family, or a business with which they or a member of their immediate family is associated.

### **Law Enforcement Activities**

Section 301(f) of the Fish and Boat Code (Code) provides: "Except for the power conferred by Section 925 (relating to acknowledgement of guilt and receipt for payment), members of the Commission may exercise any of the powers conferred by this title on waterway conservation officers." Notwithstanding this provision, there is a legal and societal expectation that any individual engaged in law enforcement activities is adequately trained and certified in various subjects, including the use of force. The training must include a thorough understanding of laws and regulations, criminal procedure, constitutional protections and civil rights, case law, and all the applicable policies and procedures.

Persons performing law enforcement activities under the Code expose the Commission and themselves individually to liability for law enforcement activities that are improperly conducted. For example, the Commission may be held liable for actions of law enforcement officers taken in violation of civil rights guaranteed under the federal and state constitutions, or improper actions taken because of insufficient training. Law enforcement officers may be held personally liable if they violate a defendant's civil rights.

Confronting an individual who is suspected of violating a law or regulation can quickly become a difficult and possibly dangerous situation, especially if the individual is uncooperative. Further, confronting a violator in civilian clothing can make effective law enforcement even more difficult. The general public is continually reminded to be cautious about individuals posing as law enforcement officers. Most law enforcement departments, including the Commission, require their officers by policy to be in uniform when confronting a violator (Bureau of Law Enforcement SOP 1010-1).

Due to the complexity of law enforcement activities, the vital necessity of proper training, the dangers attendant with confronting a violator out of uniform, and the risk of liability for both the Commission as an agency and a Commissioner personally, it is recommended that Commissioners refrain from exercising their law enforcement powers unless they have successfully completed the required training

for Deputy Waterways Conservation Officers. If a Commissioner observes a violation of the Code, they should report the violation to the regional law enforcement office or Captain.

All questions regarding this guidance should be directed to the Director of the Bureau of Law Enforcement or the Chief Counsel.

### **Dress Code**

Commissioners should present themselves in a neat and professional manner while conducting Commission-related duties. This includes wearing clothing or gear with a Commission logo that indicates they are a Commissioner only when acting in a Commissioner role. The Commission will provide any such clothing or gear for use by Commissioners. Examples of appropriate use and wear of Commission and Commissioner-branded clothing include, but are not limited, to:

- Commission sponsored events
- Speaking engagements on behalf of the Commission
- Legislative events involving Commission activities
- Meetings with agency partners and stakeholders.

It is not appropriate to wear Commission and Commissioner-branded clothing at non-Commission related events or on personal travels.

The Board President will determine the appropriate dress code for Commission meetings (quarterly and committee) and convey this information to Commissioners in a timely fashion before such meetings take place.

## PROCEDURAL GUIDANCE

### Sunshine Act

Under the Sunshine Act, official action<sup>1</sup> and deliberations<sup>2</sup> by a quorum of the members of an agency or any of its committees must take place at a meeting open to the public unless closed under certain exceptions. See 65 Pa. C.S. § 704. Six members of the Commission constitute a quorum and a majority of the members of a committee constitute a quorum. Exceptions include executive sessions and briefings.

**What is Official Action?** There are four types of official actions that must be open to the public:

- Recommendations made by the Commission in accordance with the Fish and Boat Code or executive order.
- Establishment of policy by the Commission.
- Decisions on Commission business.
- Votes taken by the Commission on any motion, proposal, resolution, rule, regulation, report, or order.

**What is Commission Business?** The framing, preparation, making, or enactment of policy or regulations, the creation of liability by contract or otherwise, or the adjudication of rights, duties, and responsibilities.

**What is a Deliberation?** The discussion of Commission business held for the purpose of making a decision.

**What are the Requirements of a Public Meeting?** The public must be given notice of the time and place of the meeting. All votes taken at the public meeting must be publicly cast. Written minutes must be kept of all open, Commission meetings. The Commission must provide a reasonable opportunity for the public to provide comments to the Commission on any matter of concern, official actions, or deliberations prior to the Commission taking any official action. The Commission may take all public comments at the beginning of the meeting.

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<sup>1</sup> The Sunshine Act defines “official action” as “(1) Recommendations made by an agency pursuant to statute, ordinance or executive order; (2) The establishment of policy by an agency; (3) The decisions on agency business made by an agency; (4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report, or order.” 65 Pa. C.S. § 703.

<sup>2</sup> The Sunshine Act defines “deliberation” as the “discussion of agency business held for the purpose of making a decision.” 65 Pa. C.S. § 703.

**What are the Exceptions of the Open Meeting Rule?** There are two exceptions described in the Sunshine Act – executive sessions and conferences. Both exceptions are discussed in more detail below. Commission members also may meet in small groups as long as there is not a quorum of the Commission or any committee. In addition, Commission members may participate in special workgroups comprised of Commissioners, staff, and the public.

**What is an Executive Session?** The Commission may hold an executive session for five specific purposes:

- To discuss employment matters, including the appointment, termination, evaluation of performance, promotion, or discipline of a Commission employee.
- To hold sessions with respect to collective bargaining agreements or labor arbitrations.
- To consider the purchase or lease of real property.
- To consult with Commission attorneys regarding litigation or anticipated litigation.
- To review Commission business which, if conducted in public, would violate a lawful privilege, or lead to the disclosure of information or confidentiality protected by law, including investigations and quasi-judicial deliberations.

Under the Sunshine Act, an executive session may be held during an open meeting, at the conclusion of an open meeting, or may be announced for a future time. The Commission must disclose the reason for the executive session at either the meeting prior to the executive session or the meeting held immediately after the executive session. No official action may be taken at an executive session.

**What is a Conference?** A conference, sometimes called a briefing, is a training program or seminar that is organized and conducted for the sole purpose of providing information to Commissioners on matters directly related to their official responsibilities. Deliberation of Commission business may not occur at a conference. A conference is distinguished from a meeting in that Commissioners attend a conference to receive information and not to discuss agency business. Commissioners who attend a conference must avoid significant or substantive discussion of agency business and avoid discussions that directly or indirectly indicate how members will vote upon matters subject to official action. Even though Commissioner participation in a conference is generally limited to receiving information, Commissioners may ask questions.

**What are the Consequences of Violating the Sunshine Act?** If a court determines that the Sunshine Act was violated, the court may void, in its discretion, any business transacted at the unauthorized meeting. There also could be personal liability stemming from a Sunshine Act violation. Any Commissioner who participates in a meeting with the intent and purpose of violating the Sunshine Act commits a summary offense and, upon conviction, will be sentenced to pay (1) for a first offense, the costs of prosecution plus a fine of at least \$100 and, in the discretion of the sentencing authority, of not more than \$1,000 and (2) for a second or subsequent offense, the costs of prosecution plus a fine of at least \$500 and, in the discretion of the sentencing authority, of not more than \$2,000. The

agency will not make a payment on behalf of or reimburse a Commissioner for a fine or cost resulting from the member's violation of the Act. If a court determines that the Commission willfully or wantonly disregarded the Sunshine Act, the Commission will be responsible for reasonable attorneys' fees and costs of litigation of the other party.

The Sunshine Act, 65 Pa. C.S. §§ 701 – 716, is located at the following link:

<http://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=65&div=0&chpt=7>.

Commissioners should review this document and become familiar with its contents.

### **Parliamentary Procedure**

The main purposes of parliamentary procedure are to expedite business, ensure legality of the actions taken, and to protect the rights of the minority. Although no specific parliamentary procedure is required by law, the members of the Commission have decided to follow Robert's Rules of Order. Members of the Commission do not have to strictly adhere to Robert's Rules but should follow them to the extent reasonably practicable.

### **Making a Motion**

There are six steps in making a motion:

1. A member makes a motion.
  - It is important that the member uses language that describes exactly what is intended so that all members understand the motion.
  - The motion may reference the agenda commentary, an exhibit, or the published notice of proposed rulemaking, or it may be unique. Example: "I move that the Commission approve the publication of a notice of proposed rulemaking containing the changes to section as described in the Commentary."
  - As a general rule, the member should not simply state, "I move that we accept the staff recommendation."
2. Another member seconds the motion. Example: "I second it."
3. The President re-states the motion, formally placing it before the Commission. Example: "There was a motion to approve the publication of a notice of proposed rulemaking containing an amendment to section. The motion was seconded. Is there any discussion?"
4. The members debate the motion.
5. The President puts the question (the motion) to a vote. Example: "Are you ready for the question? All those in favor, say aye. Those opposed, say no."

6. The President announces results of the vote. Example: “The ayes have it, and the motion is adopted.” OR “The nos have it, and the motion is defeated.”

### **Additional Motion Guidance**

- If there is no second to a motion, the motion dies.
- Debate is limited to the specific motion.
- Motion to amend:
  - Motions may be amended, but only twice.
  - Motions to amend must be specific and germane to the main motion.
  - Each motion to amend requires a vote followed by a vote on the main motion.
- Motion to table:
  - The objective of this motion is to allow the Commission to set aside a pending motion in order to attend to more urgent business. The question laid on the table remains there until taken off or until the end of the next regularly scheduled Commission meeting.
  - The motion to table is often improperly used. It should not be used to kill a motion or to postpone a motion until the next meeting.
- Motion to postpone to a certain time:
  - Sometimes the Commission does not have all information that it needs to make a decision, or the Commission is not ready to make a decision for other reasons. Under those circumstances, a motion to postpone should be used to put off the motion until a specific time. Example: “I move to postpone consideration of this matter until the April Commission meeting.”
- Motion to postpone indefinitely:
  - This motion should be used to “kill” a main motion.
- Point of order
  - If a member believes that the rules are not being followed, the member can say “Point of order!” and present an objection. The presiding officer (the Commission President) must then make a ruling.
- Parliamentary inquiry

- If a member wants to do something but is not sure how to do it, the member may make a parliamentary inquiry.
- Withdrawal of a motion:
  - If a member wants to withdraw a motion prior to the President re-stating it and turning it over for debate, the member may withdraw it without permission.
  - However, if a member wants to withdraw a motion after the President re-states it and turns it over for debate, the member must get permission. This may be handled by the presiding officer saying, “Is there any objection to allowing (the maker of the motion) to withdraw their motion?” (Pause) “Hearing no objection, the motion is withdrawn.” Note: If anyone objects, the member then makes a motion to withdraw the motion, and it takes a majority vote for it to pass.
- Motion to reconsider:
  - To move to reconsider a motion that has already been voted upon, the member must have voted in favor of it if it passed or against it if it failed.
- Nominations generally do not require a second, but a second is acceptable if so desired.
- Call for the question:
  - When done properly, a call for the question should be a rare occurrence.
  - It should be done when a debate has dragged on longer than a member believes is really warranted. Under those circumstances, a member may “call for the question,” at which time the President should immediately ask the members to determine whether or not the debate should be cut off or continue. If two-thirds of the members agree that the discussion should have ceased some time ago, they will support the call. Then, and only then, will the vote be taken on the question (motion) itself.
- Given the public nature of all Commission meetings, Commissioners are encouraged to be thoughtful and professional in their actions, comments, and debate.
- If a Commissioner has an item for “New Business” they should confer with the Board President and Executive Director prior to the meeting.

### **The Rulemaking Process**

The Commission has statutory authority to promulgate rules and regulations regarding a variety of fishing and boating related topics. The extent of the Commission’s authority is specifically outlined in the Fish and Boat Code.



Generally, the rulemaking process is initiated in one of three ways: A Commissioner, the Commission staff, or the public proposes a regulatory change. If initiated by Commission staff, the proposed regulatory change is submitted through the appropriate channels to the bureau level, and the bureau director submits the proposal to the Office of Chief Counsel for possible inclusion in the agenda for a future Commission meeting. If initiated by a Commissioner, staff will review the request and proceed in the same manner as above. All agenda items initiated by staff or a Commissioner are reviewed by the Executive Director.

When initiated by a member of the public, petitions or requests for regulations must be submitted to the Commission in the format required by the General Rules of Administrative Practice and Procedure. Commission staff reviews every petition for regulations to ensure that it is complete as required by the administrative rules; that it requests an action within the authority or jurisdiction of the Commission; and that it does not conflict with applicable Commonwealth or federal law. If staff determines that the petition is appropriate for further consideration, the petitioner will be given an opportunity to make up to a 5-minute oral presentation on the petition at the next Commission meeting. The Board will decide whether or not to accept the petition for further review after the oral presentation. If the Board accepts the petition, staff has 180 days to prepare a report evaluating the petition and containing staff's recommendations. Staff then provides the report to the petitioner who has 30 days to submit written comments, objections, or suggestions concerning the staff report. The petition, the report, and the written comments are submitted to the Office of Chief Counsel for inclusion in the agenda for a future Commission meeting.

The Board has also established a set of Commissioner committees to review and provide guidance on Commission actions. Prior to formal action by the Commission, these committees may review all agenda items. Occasionally, the Commission also establishes special workgroups to analyze and make recommendations to staff regarding regulatory issues. These workgroups do not have any formal rulemaking authority but act to enhance public involvement and input into the rulemaking process.

All boating rules and regulations must conform to federal laws and regulations on the same subject. In addition, the Commission must seek the advice of the Boating Advisory Board prior to their final adoption.

The decision to move forward with a proposed regulatory change takes place at a public meeting. If the Commission decides to move forward, it will approve the publication of a notice of proposed rulemaking containing the proposal. When adopting regulations, the Commission must follow the Commonwealth Documents Law. The Commonwealth Documents Law requires an agency to give public notice of its intention to promulgate, amend, or repeal a regulation by publication in the *Pennsylvania Bulletin* of a notice of proposed rulemaking. The Office of Chief Counsel prepares the notice of proposed rulemaking, which must include the text of the proposed regulatory change. It must also contain: (1) a statement of the statutory or other authority under which the change is proposed to be promulgated; (2) a brief explanation of the proposed change; (3) a request for written comments by any interested person concerning the proposed change; (4) a statement as to the time, place, and nature of the public rulemaking proceedings; and (5) any other statement required by law.

After the Office of Chief Counsel prepares and approves the notice of proposed rulemaking, the notice is sent to the Legal Review Section of the Office of Attorney General and to the Bureau of Legislative and Regulatory Analysis in the Office of Budget for their review. All proposed rules and regulations of Commonwealth agencies must be reviewed for form and legality by the Attorney General. After review by the Office of Attorney General and the Office of Budget, the notice of proposed rulemaking is forwarded to the Legislative Reference Bureau. The Legislative Reference Bureau then publishes the notice in the *Pennsylvania Bulletin*.

Before acting on any proposed regulatory change, the Commission must review and consider any written comments submitted in response to the notice of proposed rulemaking. The public must be given at least 30 days after publication in the *Pennsylvania Bulletin* to submit comments. The Commission may also publicize the opportunity for submitting public comments in Commission news releases and on its web page. Public hearings may be held on items of exceptional public interest or concern. The public comment process is important because it protects against unwise or improper exercise of administrative discretion and provides affected persons with an opportunity for public participation in the formulation of standards governing their conduct, thereby increasing the likelihood of the Commission's responsiveness to their needs and concerns. In addition, it enables the Commission to obtain information relevant to the proposed rule and facilitates the consideration of alternatives, detrimental effects, criticism, and advice. All these factors contribute to the soundness of the proposed regulatory change.

The last step in the regulatory process is the final rulemaking stage. The Commission must take final action on a regulatory change at a public meeting. If the Commission approves the regulatory change, the Office of Chief Counsel prepares an order adopting the change, and the Executive Director signs the order. Both the Attorney General's office and the Office of Budget perform their final review. After the final review process, the order adopting the regulation is sent to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Regulations are effective upon publication in the *Pennsylvania Bulletin*, or such other date as specified by the Commission.

From start to finish, the whole rulemaking process takes approximately six months to one year, and once a regulation has been promulgated, it has the force and effect of law. It is binding on the agency, the courts, and the public. The regulation also enjoys a presumption of reasonableness.

There are instances when the Executive Director may take immediate action to temporarily modify fishing regulations without formal Commission action. Those instances include when they find that such modifications are necessary and appropriate for the protection, preservation, and management of fish or fish habitat, to conserve and preserve fishing opportunities or to provide for the health and safety of persons who fish such waters. The Executive Director also may take immediate action to post and mark waters, establish speed zones or otherwise when they determine that a hazard exists that may threaten the safety of persons or property, or both. When the Executive Director takes action under these circumstances, they must follow up by notifying the Commissioners of the action.

## Public Participation

### Written Public Comments Regarding Proposed Regulations and Amendments

Under the Commonwealth Documents Law (45 P.S. § 1201), the Commission is required to give public notice of its intention to promulgate, amend, or repeal any administrative regulation. The form of that notice is the publication of a notice of proposed rulemaking in the *Pennsylvania Bulletin*. The Commonwealth Documents Law further provides that the notice must include a request for written comments by any interested person concerning the proposed administrative regulation or change therein. In addition to publishing its notices of proposed rulemaking in the *Bulletin*, the Commission also posts them and solicits public comments on its web page. The Commission, by law, must solicit written comments for a period of at least 30 days. Where there is exceptional public interest concerning a proposed regulation or amendment, the Commission, in its discretion, may seek written comments for a period exceeding 30 days.

In cases where the formal comment period has expired, the Commission will not accept written comments that are received less than two weeks prior to the meeting at which the proposed regulation or amendment is to be considered for final adoption. The Commission will consider all written comments received during the formal comment period, and the Commission, in its discretion, may consider written comments received before and after the formal comment period.

In addition, the Commission will accept only those written comments that are submitted in accordance with the Commission's published instructions – that is, comments that are addressed to the Executive Director at the Commission's Harrisburg headquarters or comments that are submitted electronically to [RA-pfbcregulations@pa.gov](mailto:RA-pfbcregulations@pa.gov). The following types of written comments will not be accepted and will not be made part of the record: comments addressed to individuals other than the Executive Director, comments submitted electronically in a manner other than that described above, and comments submitted by facsimile. The Commissioners, in their discretion, may consider written comments that are not properly submitted.

### Written Public Comments Regarding Proposed Designations of Streams as Wilderness Trout Streams, Class A Wild Trout Streams, and Wild Trout Streams

Prior to taking formal action to designate waters as wilderness trout streams, Class A wild trout streams, or wild trout streams, the Commission will solicit public comments by publishing a notice of proposed designation in the *Pennsylvania Bulletin* for a period of at least 30 days. Where there is exceptional public interest concerning a proposed designation, the Commission, in its discretion, may seek written comments for a period exceeding 30 days. The Commission will endeavor to solicit public comments regarding the proposed designation of Class A wild trout streams or wild trout streams at least 60 days prior to the Commission meeting when the proposed designation will be considered. In addition to publishing its notices of proposed designation in the *Bulletin*, the Commission may also post them and solicit public comments on its web page. The Commission will accept, make part of its record, and consider written public comments regarding proposed designations in accordance with the above policy for written public comments regarding proposed regulations and amendments.

### **Public Participation in Designation of Waters for Special Regulations**

Under 58 Pa. Code Chapter 65 (relating to special fishing regulations), the Commission may designate certain streams, stream sections, and lakes as being subject to special fishing regulations. The majority of these regulations have a common feature: to place waters into the special regulation programs and to take waters out, the Executive Director, with the approval of the Commission, may designate waters into or out of the established programs. In most cases, this means that the Commission reviews a proposed designation at a single public meeting. The designation is published as a notice in the *Pennsylvania Bulletin*, and the special regulations are in effect when posted at the site after publication of the notice.

In order to allow for greater public participation in the designation process, the Commission will use the following protocol in seeking public input on proposed special regulation designations:

1. Before taking any action to seek landowner or public input concerning a proposed special regulation designation, staff should ensure that the Commissioner in whose district the waters are located is informed of the proposal.
2. Staff should seek input from landowners whose lands abut waters proposed for special regulation designation by personal contact, telephone, mail, or public notice.
3. Staff should seek angler input into proposed special regulation designations through sportsmen's clubs, public notice, and other informal contacts.
4. Except in unusual circumstances, staff should publish a notice in the *Pennsylvania Bulletin* not less than 30 days before the Commission meeting when the proposed special regulation will be considered to give notice of the proposed designation and seek public comments. The Commission will accept, make part of its record, and consider written public comments regarding proposed designations in accordance with the above policy for written public comments regarding proposed regulations and amendments.
5. In cases where there is exceptional public interest in a proposed designation, staff, in coordination with the Commissioner in whose district the waters are located, may conduct at least one public information meeting before the Commission acts on the special regulation designation.
6. Except in special circumstances where prompt action is required to maintain or expand public fishing opportunities or to provide for better protection and management of fish or fish habitat, all special regulations designations should be completed by the July meeting of the year before they are to take effect to ensure that they can be published in the *Summary of Fishing Regulations and Laws* given to anglers.

### **Public Comments at Meetings**

The Commission may accept public comments at its regularly scheduled or special meetings that are held for the transaction of Commission business. The comments may relate to proposed regulations or amendments, proposed designations under Chapter 65, designations of streams as wilderness trout streams, Class A wild trout streams or wild trout streams, and other matters relating to fishing and boating. At Commission meetings, the Commission will follow its regulations at 58 Pa. Code § 51.7

(relating to public comments at Commission meetings). This section is located at the following link: <http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/058/chapter51/s51.7.html&d=reduce>.

### **Notational Voting**

Historically, notational voting has been an acceptable and occasionally used method of voting within the Commission. Robert's Rules of Order do not specifically address notational voting. However, 4 Pa. Code § 1.43, which codified former Executive Order 1983-3, provides guidance in that regard. Although this guidance was intended for executive agencies,<sup>3</sup> the Commission has relied upon it in defining its own process and procedures for notational voting.

Consistent with 4 Pa. Code § 1.43(c), Commissioners may cast votes by the use of notational or round-robin voting whereby Commissioners vote individually and separately upon a recommended written motion, proposal, resolution, rule, regulation, property transaction, or order prepared by staff or an individual Commissioner and circulated for approval to the Board. The Commission may utilize notational voting only to expedite decision making or to remove uncontested or noncontroversial matters from the agenda of public meetings in order to facilitate public deliberations of contested or significant items. The Commission will not utilize notational voting for the purpose of avoiding the public discussion of significant issues or to conceal the actual casting of votes by Commissioners at an open meeting.

If a Commissioner has a problem with the method of voting, (*i.e.*, notational vote), the Commissioner will raise the matter immediately with the Commission President. It is not appropriate for a Commissioner to raise an objection when or after a vote is cast.

When notational voting is used, Commissioners will be contacted by email, usually by the Commission's Executive Director or Chief Counsel. Commissioners will be provided with information regarding the matter on which they will be voting and a staff recommendation. Commissioners typically will be given one week in which to vote.

Commissioners will cast their vote by replying to the sender only (*i.e.*, Executive Director or Chief Counsel). Commissioners should not "reply all." When voting, Commissioners should simply respond by indicating "yes," "no," or "abstain." Commissioners are discouraged from explaining their vote or providing additional commentary, except in those instances where they are abstaining because of a conflict of interest.

Commissioners will not be permitted to change their votes after they have voted. Therefore, Commissioners are encouraged to consider their votes carefully prior to voting. The Commission President or designee will announce the results of the notational vote when all Commissioners have voted or the deadline contained in the notational vote has passed, whichever occurs first. The Commission President or designee will announce these results as soon as possible, typically by email.

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<sup>3</sup> 4 Pa. Code § 1.43 is contained in the subchapter entitled, "Interpretation of the Sunshine Act of 1986 as Applied to Executive Agencies."

At the first public meeting after the notational vote, the agency's Chief Counsel or designee will announce the notational vote. The substance of official actions taken by notational voting and a record of the votes cast by individual Commissioners will be included in the minutes of the meeting.