

## Chapter IV

### *PROCEDURES FOR CONDUCT OF LOCAL SCHOOL BOARD MEETINGS*

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The rules of procedure set forth below are designed for use by the local board of education. Essentially, the rules are a modified version of Robert's Rules of Order, Revised (hereinafter referred to as RRO). RRO is intended to guide the deliberations of a large legislative body; consequently, its rules are not always appropriate for a school board. A small board can afford to do some things that are not practical for a large body, and in some cases, the procedure prescribed by RRO is unnecessarily cumbersome. RRO was modified with these principles in mind:

1. The board must act as a body.
2. The board should proceed in the most efficient manner possible.
3. The board must act by at least a majority of a quorum of its members.
4. All members should have an equal opportunity to participate in decision- making.
5. The board's action should result from a decision on the merits rather than a manipulation of the procedural rules.

Any procedural rules adopted by a governing board must, of course, follow any requirements specifically prescribed by law for that board; but so long as that is done and the board adheres to the general principles just listed, it has a free hand in designing its own method of procedure. Most of these rules are merely suggested procedures, and the board should feel free to change them to suit local needs and customs.

For example, one rule eliminates the requirement of a second to a motion. The board may or may not adopt that rule. Whatever the rules adopted, the board must follow them consistently, unless the rules are properly suspended.

These rules refer to the Open Meetings Act and since all boards are sworn to uphold the laws of the state, adherence to the Open Meetings Act is mandatory.

A quorum of the board must be present in order to convene and conduct any official meeting. A quorum is three for five-member boards and four for seven-member boards. Once a quorum is present, action may be taken by majority vote of the members constituting a quorum.

A good board meeting begins on time, ends on time, and moves efficiently through the agenda with homework done in advance by all concerned. The board meeting is the time for planning for the adoption of school policies and the appraisal of the school system.

## RECOMMENDED RULES OF PROCEDURE

### *SECTION A. - Regular Meeting*

Under the provisions of Section 22-5-12 [A], NMSA 1978, the board must hold at least one regular meeting each calendar month. The date, time, and place of the regular board meeting shall be established by board action which shall be announced to the public pursuant to the requirements of the Open Meetings Act. (See section D, "Public Notice", below)

### *SECTION B. - Special or Emergency Meetings*

The board president or superintendent may call a special meeting at any time by giving actual notice to each board member of the time and place of the meeting and the subjects to be considered. If reasonable efforts to give each member actual notice do not succeed, written notice in advance should be given to each member. Public notice of special meetings shall be given as required by the Open Meetings Act and local policy.

### *SECTION C. - Organizational Meeting*

Board elections are held on the first Tuesday in February of each odd-numbered year. New board members shall take the oath of office on March 1 or at the first meeting of the board in the month of March. Reorganization of the board, at which the officers thereof are chosen, may occur at any board meeting, unless the board restricts its right to re-organize by board policy.

COMMENT: Each local board may establish, by local policy, how often and in what manner it shall be organized.

### *SECTION D. - Public Notice*

The New Mexico Open Meetings Act, Section 10-15-1, NMSA 1978, provides that any meeting of a quorum of the members of a school board held for the purpose of formulating public policy discussing public business, or taking action within the authority of the board, or at which the discussion or adoption of any proposed resolution, rule, regulation, or formal action occurs shall be held only after reasonable notice to the public. In accordance with the Open Meetings Act, the board shall establish, at least annually, what constitutes reasonable notice of its meetings.

COMMENT: Boards of education must have a local policy which provides what is reasonable public notice for all regular, special, or emergency meetings of the board. The Open Meetings Act requires the policy to be readopted annually at a public meeting. This provides a yearly opportunity to refine the policy if experience indicates that changes are needed.

#### *SECTION E. - Agenda*

The board president, in cooperation with the superintendent, shall prepare an agenda for each meeting.

Any board member may, by a timely request, have an item placed on the agenda. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency, the agenda shall be available to the public at least twenty-four hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, an "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body.

It shall be the practice of the board for each board member to receive a copy of the agenda, and for the agenda to be available for public inspection and/or distribution when it is distributed to the board members. At the meeting, the board may, by majority vote, add or delete an item on the agenda.

It shall be the duty of the superintendent to have information related to agenda items sent to board members in advance of the meeting so that the meeting itself can be utilized for discussion and action rather than reading.

#### *SECTION F. - Order of Business*

COMMENT: This section lists points to consider in developing a policy rather than the text of a policy. A good board meeting is one that proceeds routinely, smoothly, and without delay. A definite order of business helps to produce this kind of meeting. It is suggested that something like the following categories be on each board agenda, but with the recognition that agenda may be structured in a way that meets the specific needs of the District or the particular meeting:

1. Call to Order and Roll Call
2. Approval & Signing of Minutes
3. Approval of Agenda
4. Financial Report
5. Public Hearings (if any)
6. Superintendent's Report
7. Unfinished Business
8. New Business
9. Public Comment
11. Adjournment

It is suggested that the policy allow items to be considered out of order by the consent of the board president or board vote on approval of the agenda.

#### *SECTION G. - Public Address to the Board*

Any individual or group, desiring to address the board shall ask the superintendent to place his/her/its name on the agenda. However, the board shall determine, at the meeting, whether it will hear the individual or group. Such determinations will be made on the basis of the Board's need for efficiency in the conduct of the Board's business and is justified by the Board's authority to control the time, place and manner of such "public comment" at Board meetings. Any restrictions or refusal to allow a particular request shall be based on legitimate, non-discriminatory reasons and shall not infringe the First Amendment rights of the attendees.

COMMENT: Although the Open Meetings Act requires only that the public be permitted to attend and listen to the proceedings of the board, the board may decide, as a matter of policy, to set aside part of each meeting for citizens to address the board. This suggested rule allows any individual or group to request to appear on the

agenda but permits the board to decide whether, when, and how such comment will be heard, so long as its reasons for doing so are not improper.

#### *SECTION H. - Open and Closed Meetings*

In addition to requiring public notice of board meetings (see Section D), the Open Meetings Act requires all board meetings to be open to the public at all times unless an exception found in the Act permits a closed meeting. The following types of issues may be dealt with in executive session:

1. Meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidences is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;
2. Limited personnel matters; provided that for purposes of the Open Meetings Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this subsection is not to be construed as to exempt final actions on personnel from being taken at open public meetings; nor does it preclude an aggrieved public employee from demanding a public hearing.
3. Deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, an "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;
4. The discussion of personally identifiable information about any individual student, unless the student, his parent or guardian request otherwise;
5. Meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;
6. That portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars (\$2,500) that can be made only from one source and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code are discussed during the contract negotiations process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;
7. Meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant;
8. Meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body.

If any meeting is closed pursuant to the exclusions, the closure:

1. If made in an open meeting, shall be approved by a majority vote of a quorum of the board; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be

recorded in the minutes. Only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; and

2. If called for when the board is not in an open meeting, shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed, is given to the members and to the general public.

Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the board as part of the minutes.

#### *SECTION I. - Presiding Officer*

The president shall preside at board meetings. To address the board, a member must be recognized by the president. The president shall have the following powers:

1. To rule motions in or out of order, including the right to rule out of order any motions patently offered for obstructive or dilatory purposes;
2. To determine whether a speaker has gone beyond reasonable standards of courtesy in his/her remarks and to entertain and rule on objections from other members on this ground;
3. To entertain and answer questions of parliamentary law or procedure;
4. To call a brief recess at any time;
5. To adjourn in an emergency.

COMMENT: The procedural powers given to the presiding officer in this rule are intended to replace the question of order and appeal in RRO. This rule increases the presiding officer's authority in that his/her decisions regarding decorum in debate and rules of parliamentary procedure are final and cannot be appealed to the membership. Also, whereas in RRO a recess can be taken only on a motion and vote by the members, this rule gives the president the concurrent authority to call a recess when necessary to "clear the air" and thus reduce friction among the members.

#### *SECTION J. - Presiding Officer When the President is in Active Debate*

The president shall preside at board meetings, unless he/she becomes actively engaged in debate on a particular proposal, in which case he/she may designate another board member to preside over the debate. The president shall resume the duty to preside as soon as action on the matter is concluded.

COMMENT: Good leadership depends, to a certain extent, on not taking sides during debate. On a small board, this may not always be feasible or desirable; yet an unfair advantage occurs to the side whose advocate controls access to the floor. This rule is designed to ensure even-handed treatment to both sides during a heated debate. Ordinarily, the president should ask the vice-president to preside in this situation, but if that person is also engaged in the debate, the president should feel free to call on someone else in order to achieve the purpose of this rule.

*SECTION K. - Action by the Board*

The board shall proceed by motion. Any member, including the president, may make a motion.

COMMENT: Traditionally, if the president wishes to have a motion made, instead of making it himself/herself, he/she states, "The Chair will entertain a motion that . . .". This rule does not prevent such a practice; it merely makes clear that being president does not prevent one from making a motion. The board may want to follow the procedure set forth in Section J. if the president's motion is a controversial one.

*SECTION L. - Second not required*

A motion need not be seconded.

COMMENT: The philosophy underlying the requirement of a second is that if a proposal is not supported by at least two members, it is not worth the time required to consider the matter. This concept is not applicable to a small board whose consideration of a proposal that initially has the support of only one member would not seriously impair efficient use of the board's time.

*SECTION M. - One Motion at a Time*

A member may make only one motion at a time.

*SECTION N. - Substantive Motion*

A substantive motion is out of order while another substantive motion is pending.

COMMENT: This rule sets forth the basic principle of parliamentary procedure that distinct issues will be considered and dealt with one at a time, and a new proposal may not be put forth until action on the preceding one has been concluded.

RRO does not specifically refer to substantive motions; instead it uses such adjectives as "main" or "principal." The words "substantive motion" are used here to underscore the distinction between it and the various procedural motions listed in Rule 15 of RRO. Basically, a substantive motion is any motion other than the procedural motions listed in Rule 15. The possible subject matter of a substantive motion is coextensive with the board's legal powers, duties and responsibilities.

Indeed, in view of the fact that Rule 9 of RRO provides that the board shall proceed by motion, the substantive motion is the board's exclusive mode of action. The procedural motions detailed in the succeeding rules set forth the board's various options in disposing of substantive motions.

*SECTION O. - Adoption by Majority Vote*

A motion is adopted upon the affirmative vote of a majority of the quorum of members present at the meeting, unless otherwise required or permitted by these rules or the laws of the State of New Mexico. The president is permitted to vote on all motions.

*SECTION P. - Debate*

The president shall state the motion and then open the floor to debate on it. The president shall preside over the debate according to the following general principles:

1. The introducer (the member who makes the motion) is entitled to speak first;

2. A member who has not spoken on the issue shall be recognized before someone who has already spoken;
3. To the extent possible, the debate shall alternate between opponents and proponents of the measure.

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#### *SECTION Q. - Procedural Motions*

In addition to substantive proposals, the following procedural motions and no others shall be in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority vote for adoption.

COMMENT: This rule is a substantial departure from RRO. Each procedural motion in RRO was reviewed to determine whether it was appropriate for use by a local school board; substantial modifications and deletions were the result. The following enumeration of procedural motions is exhaustive; if a procedural option is not on the list, it is not available.

While a substantive motion is out of order if another substantive motion is pending, under both RRO and these rules several procedural motions may be entertained in succession without necessarily disposing of the immediately pending one. The order of priority establishes which procedural motion may be made and considered while another one is pending.

In order of priority (if applicable), the procedural motions are as follows:

1. To adjourn. The motion to adjourn may be made only when action on a pending matter concludes; it may not interrupt deliberation of a pending matter.

COMMENT: This motion differs from the RRO motion in several respects. According to RRO, it is not debatable or amendable and can be made at any time, thus interrupting substantive deliberations.

Because the number of members is small and procedures to limit debate are available, this rule allows debate and amendment of the motion to adjourn but allows the motion to adjourn only when action on a pending matter concludes.

The motion to defer consideration or to postpone to a certain time or day may be used first if the board wants to adjourn before completing final action on the matter.

2. To take a recess

COMMENT: RRO does not allow debate on this motion, but because the number of members is small and procedures to limit debate are available, this rule allows debate on the motion. As in RRO, the motion is in order at any time. Under these rules, the board president also has the power to call a brief recess, without board action.

3. Call to follow the agenda. The motion must be made at the first reasonable opportunity or it is waived.

COMMENT: This motion is patterned after the call for the orders of the day in RRO. It differs in that it may be debated and must be made as soon as an item of business that deviates from the agenda is proposed or the right to insist upon following the agenda is waived for that item.

4. To suspend the rules. For adoption, the motion requires a vote equal to the number required for a quorum.

COMMENT: This motion is the same as RRO's motion of the same name except that it is debatable and amendable and the number of necessary votes is a quorum, rather than two-thirds. This means that if a board has five members, three members (the number required for a quorum) must vote for the motion; if only three members are present at a particular meeting, all three must vote for the motion in order to adopt it. It is in order when the board wishes to do something that it may legally do but cannot accomplish without violating its own rules, unless the rules are suspended.

Frequent use of the motion to prevent one member from presenting his proposals to the board or from speaking on an issue before the board is of doubtful legality.

5. To divide a complex motion and consider it by paragraph.

COMMENT: This motion is the same as the motion to divide a question and consider it by paragraph in RRO except it is debatable.

6. To defer consideration. The board may vote to defer action or consideration of a pending matter indefinitely. A substantive motion consideration of which has been deferred expires 100 days thereafter unless a motion to revive consideration is adopted.

COMMENT: This motion replaces the motion to lay on the table in RRO and was renamed to avoid confusion. It allows the board temporarily to defer consideration of a proposal. It differs from the RRO motion in that it may be debated and amended. It also differs from RRO in that a motion that has been deferred, dies if it is not taken up by the board (via a motion to revive consideration) within 100 days of the vote to defer consideration, whereas in RRO a motion that has been laid on the table dies at the end of the session in which it was introduced. One hundred (100) days is merely a suggested period of time.

7. Call of the previous question. The motion is not in order until there has been debate and every member has had an opportunity to speak.

COMMENT: This motion differs from the motion of the same name in RRO. The RRO motion is always in order, is not debatable or amendable, and requires a two-thirds vote for adoption. Thus, it may be used to compel an immediate vote on a proposal without any debate on the issue. Such a device may be necessary to preserve efficiency in a large assembly. However, because there are so few members, a minimum period of debate on every proposal that comes before the board of education strikes a better balance between efficiency and effective representation by all board members. Since every member will have an opportunity to speak, the debate may be ended by a majority vote.

8. To postpone to a certain time or day.

COMMENT: This motion allows the board to defer consideration to a specified time or day and is appropriate when more information is needed or the deliberations are likely to be lengthy.

9. To refer to a committee. Sixty days after a motion has been referred to a committee, the introducer may compel consideration of the measure by the entire board, regardless of whether the committee has reported the matter back to the board.

COMMENT: This motion is the same as RRO's motion of the same name except that the introducer's right to compel consideration by the full board after a specified period of time prevents its use as a mechanism to defeat a proposal by referring it to a committee that is willing to sit on it. If the board does not use committees, this rule is unnecessary.

10. To amend. An amendment to a motion must be pertinent to the subject matter of the motion, but it may achieve the opposite of the motion's intent. The motion may be amended, and an amendment may be amended, but no further amendments may be made.

COMMENT: This motion is identical to the motion of the same name in RRO.

11. To revive consideration. The motion is in order anytime for 100 days after a vote to defer consideration. A substantive motion whose consideration has been deferred expires 100 days thereafter unless a motion to revive consideration is adopted.

COMMENT: This motion replaces the motion to take up from the table in RRO and was renamed to avoid confusion. This motion may be debated and amended, whereas the motion in RRO may not. If the motion to revive consideration does not succeed within 100 days of the date on which consideration was deferred, the substantive motion expires. The subject matter of the motion may be brought forward again by a new motion.

12. To reconsider. The motion must be made by a member who voted with the prevailing side. It must be made at the same meeting as the vote was taken, it cannot interrupt deliberation on a pending matter but is in order at anytime before actual adjournment.

COMMENT: According to RRO, the motion may be made at the same meeting as the vote was taken or on the next legal day, and it may interrupt deliberation on another matter. To avoid placing a measure in limbo, the availability of the motion has been restricted to the same meeting as the original vote.

13. To rescind or repeal.

COMMENT: This motion is in order only for those measures adopted by the board that may legally be repealed or rescinded; it is not intended to suggest that the board may unilaterally rescind a binding contract.

14. To ratify.

COMMENT: This motion appears in RRO on the principle that an assembly may later ratify that which it could have authorized. To the extent the board may legally do so, the option is retained by these rules.

15. To prevent reconsideration for six months. The motion is in order immediately following the defeat of a substantive motion and at no other time. For adoption, the motion must receive a vote equal to the number required for a quorum. It is valid for six months or until a new board member is appointed, whichever occurs first.

COMMENT: This is a clincher motion to prevent the same motion from being continually introduced when the subject has been thoroughly considered. RRO contains no comparable motion, although the objection to considering a question accomplishes much the same purpose. Because this motion curtails a member's right to bring a matter before the board, a vote equal to a quorum is required to adopt it. As with every other motion, a clincher motion may be, in effect, dissolved by a motion to suspend the rules. Six months is merely a suggested period of time; however, in order to give a new board a clean slate, the motion should not be effective beyond the terms of the current members.

#### *SECTION R. - Renewal of Motion*

A motion that is defeated may be renewed at any subsequent meeting unless a motion to prevent reconsideration has been adopted.

#### *SECTION S. - Withdrawal of Motion*

A motion may be withdrawn by the introducer at any time before a vote.

COMMENT: RRO provides that once a motion has been stated by the Chair for debate, it may not be withdrawn without the assembly's consent. Such a procedure is necessary for a small board.

#### *SECTION T. - Duty to Vote*

Every member must vote unless excused by the remaining members. A member who wishes to be excused from voting shall so inform the president, who shall take a vote of the remaining members present. No member shall be excused from voting except on matters involving his own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present or has withdrawn without being excused by a majority vote of the remaining members present shall be recorded as an affirmative vote.

COMMENT: A board member who refuses to vote without a legal excuse, avoids his responsibility to make the decisions he was elected or appointed to make. Therefore, this rule takes the position that a member must vote, and it counts his vote as affirmative if he attempts to abstain. Note that it is impossible not to count the effect of an abstention: Without this rule, if a member does not vote for a proposal, in effect, he votes against it.

#### *SECTION U. - Public Hearings*

Public hearings required by law or deemed advisable by the board shall be organized by a special order, which is adopted by a majority vote that sets forth the subject, date, place and time of the hearing as well as any rules regarding the length of time of each speaker, etc. At the appointed time the president or his designee shall call the hearing to order and then preside over it, unless a hearing officer is chosen to preside. When the allotted time expires or when no one wishes to speak who has not already done so, the president or his designee shall declare the hearing ended.

COMMENT: A public hearing is typically called for the purpose of adjudicating the rights of individuals and deciding issues within the jurisdiction of the local board.

The specific procedures for most hearings held by the board will be found in statutes or regulations, and must be scrupulously followed. Those procedures, where applicable, will supersede this paragraph and any inconsistent local policy.

#### *SECTION V. - Minutes*

Pursuant to the New Mexico Open Meetings Act, written minutes shall be kept of all public school board meetings and all minutes shall be open to public inspection. Draft minutes shall be prepared within 10 working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Draft minutes may be inspected by members of the public after completion in final draft form but shall not become official until approved by the board.

Minutes shall include the following:

1. The nature of the meeting (regular, special or emergency), the date, time, place, members present, and members absent.
2. The substance of all proposals considered.

3. A record of any decisions made.

4. A record of all votes taken which shows how each member voted.

COMMENT: The minutes of the meetings of the board of education constitute the written record of board action. For most purposes, the board speaks only through the minutes, and it is by the minutes that the record of what the board has done, or not done, is proven. Regardless of the importance of any discussion at the meeting, official action of the board may only occur through motion and a vote by a majority of members present, which action is recorded in the minutes. Mere discussions do not constitute board action and are in no way binding.

Members who are late should be marked absent on the roll call and a note inserted immediately after the roll call indicating the approximate place on the agenda where the member entered. It is important that the entry of late members and the withdrawal of members be recorded. Proper recording of these events can prevent confusion.

The clerk, or secretary, should attempt to include the wording of a motion, the name of the member making the motion, the name of the member seconding it, if applicable, the record of the vote on the motion, and the declaration of that presiding officer that the motion passed or failed, attested to by the clerk. These minutes must be available for public inspection in the school district offices after they have been approved. Draft minutes should be made available if requested after they have been completed in draft form, but with the understanding that they will not become official until the board has approved them.

#### *SECTION W. - Appointments*

The board shall use the following procedure to make appointments to various subordinate offices:

The president shall open the floor to nominations. At this time, the names of possible appointees shall be put forward by the members and debated. When the debate ends, the president shall call the roll of the members, and each member shall cast his vote. The votes shall not be tallied until all members have voted.

#### SINGLE APPOINTMENT

OPTION 1. The nominee who receives the highest number of votes shall be appointed; or

OPTION 2. The voting shall continue until one nominee receives a majority of the votes cast, whereupon he/she shall be appointed.

#### MULTIPLE APPOINTMENTS

OPTION 1. If more than one appointee is to be selected, each member shall have as many votes as there are positions to be filled. A member must cast all of his votes and cast them for different nominees; or

OPTION 2. If more than one appointee is to be selected, each member shall have as many votes as there are positions to be filled. A member need not cast all of his/her votes.

COMMENT: This procedure is not applicable to the employment of personnel by the board. The options, presented above, detail the various methods that may be used to make appointments. Some school boards use an appointment committee. The committee receives nominations from other board members, reviews the nominees' qualifications, and reports its recommendations to the full board.

*SECTION X. - Reference to Robert's Rules of Order (RRO)*

To the extent not provided for in these rules and to the extent that the reference does not conflict with the spirit of these rules, the board shall refer to Robert's Rules of Order, Revised for unresolved procedural questions.

COMMENT: RRO was designed to govern a large legislative assembly, and many of its provisions may be inappropriate for small boards. Nevertheless, it is the best source of parliamentary procedure; care should simply be taken to adjust RRO to meet the needs of small governing boards.

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