

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

FILED

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OFFICE OF THE SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: WV Department of Labor TITLE NUMBER: 42

CITE AUTHORITY: WV Code 21-9-4 and 29A-5-1

RULE TYPE: PROCEDURAL XX INTERPRETIVE

EXEMPT LEGISLATIVE RULE
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES, NO XX

IF YES, SERIES NUMBER OF RULE BEING AMENDED:

TITLE OF RULE BEING AMENDED:

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 18

TITLE OF RULE BEING ADOPTED: West Virginia Manufactured Housing Construction and Safety Board

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS March 5, 1990

Handwritten signature

FISCAL NOTE FOR PROPOSED RULES

Rule Title: WV Manufactured Housing Construction and Safety Board

Type of Rule: Legislative Interpretive XX Procedural

Agency Dept. of Labor Address 1800 Kanawha Blvd., East
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 5800	\$ --	\$5800	\$ 5800	\$ 5800
Personal Services	2800	--	2800	2800	2800
Current Expense	1500	--	1500	1500	1500
Repairs and Alterations	0	--	0	0	0
Equipment	0	--	0	0	0
Other	1500	--	1500	1500	1500

2. Explanation of above estimates:

Personal services and current expense are the mandated payments to the Board members for meetings (\$100 per day plus allowable expenses -mileage, meals and lodging). Other category are expenses for support services.

3. Objectives of these rules:

To establish procedures governing the Manufactured Housing Construction and Safety Board with respect to quarterly meetings and procedures to be followed during a contest hearing procedure.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

As defined in Item #1

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

- NONE -

C. Economic Impact on Citizens/Public at Large.

- NONE -

Date: 1-2-90

Signature of Agency Head or Authorized Representative

Ande AB ASST TO COMMISSIONER

TITLE 42
PROCEDURAL RULES
WEST VIRGINIA MANUFACTURED HOUSING CONSTRUCTION
AND SAFETY BOARD

SERIES 18
BOARD ORGANIZATION AND MEETING PROCEDURE;
CONTESTED CASE HEARING PROCEDURE

Section 1. General.

1.1. Scope. - These procedural rules govern all regularly scheduled meetings and special meetings of the West Virginia Manufactured Housing Construction and Safety Board, and establish procedures for the Board's adjudication of contested case hearings.

1.2. Authority. - W. Va. Code §21-9-4 and §29A-5-1
et seq.

1.3. Filing Date. - _____

1.4. Effective Date. - _____

Section 2. Application and Enforcement.

2.1. Application. - These procedural rules apply to the Board, to any and all persons desiring to attend or to address the Board, and to all persons involved in contested case hearings conducted by the Board.

2.2. Enforcement. - The enforcement of these rules shall be vested in the Board.

Section 3. Definitions.

3.1. "Board" means the West Virginia Manufactured Housing Construction and Safety Board.

3.2. "Commissioner" means the Commissioner of the West Virginia Department of Labor.

3.3. "Contested case hearing" means the procedural rights guaranteed to any person adversely affected by a decision of the Board as delineated in these rules and at W. Va. Code §29A-5-1 et seq.

3.4. "Person" means any individual, trust, estate, partnership, corporation, association, or any other legal entity recognized by the State of West Virginia, including any state or political subdivision.

Section 4. Regular Meetings.

4.1. The Board shall hold regular meetings on the first Thursday during each calendar quarter; provided, that when such date falls upon a legal holiday, the Board may designate another date for the regular meeting.

4.2. The Board shall commence all regular meetings at 1:00 p.m. unless otherwise changed by resolution of the Board.

4.3. All regular meetings shall be conducted in the offices of the the Commissioner unless changed by resolution of the Board.

4.4. All regular meetings shall be general meetings for the consideration of any and all matters which may properly come before the Board.

Section 5. Special Meetings.

5.1. The Board shall convene special meetings at either the request of the Commissioner or upon the written demand of any three (3) members of the Board.

5.2. Special meetings shall be for the consideration of only those matters designated by the Board member or members requesting the meeting unless otherwise changed by resolution of the Board.

Section 6. Open Proceedings; Notice.

6.1. All meetings of the Board shall be open to the public, except for such executive sessions as permitted by W. Va. Code §6-9A-4.

6.2. Any person who desires to address the Board at a regular or special meeting may do so provided that such person registers his or her intent to address the Board fifteen (15) minutes prior to the time the meeting is scheduled to commence.

6.3. The Board may cause the removal from a meeting of any person, other than a Board member, who is disrupting it to the extent that orderly conduct of the meeting is compromised.

A determination to remove any person shall be vested in the sole discretion of the Commissioner.

6.4. Except in the event of an emergency requiring immediate official action, notice of any regular or special meeting shall be filed in a manner to allow it to appear in the State Register published by the West Virginia Secretary of State at least five (5) days prior to the date of the meeting. Each such notice shall state the time, place, and purpose of the meeting. This notice shall be made similarly available to the news media.

6.5. In the event of an emergency requiring immediate official action, the Board may file a notice with the Secretary of State at any time prior to the meeting, provided that all Board members have been notified of such meeting in writing or by telephone at least twenty-four (24) hours in advance of the time scheduled for the commencement of the meeting. The notice filed with the Secretary of State in such an emergency shall state the time, place, and purpose of the meeting, and the facts which constitute the emergency. This notice shall be made similarly available to the news media.

Section 7. Minutes.

7.1. The Board shall provide for the preparation of written minutes of all its meetings. All minutes shall specify the following:

- (a) the date, time, and place of the meeting;
- (b) the name of each Board member present and absent;
- (c) all motions, proposals, resolutions, orders, ordinances, and measures proposed, the name of the Board members proposing the same, and their disposition; and
- (d) the results of all votes and, upon the request of a Board member, the vote of each member, by name.

7.2. All minutes shall be available to the public after they have been approved by the Board at any regular or special meeting. Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with W. Va. Code §6-9A-4.

Section 8. Board Membership; Conflict of Interest.

8.1 Members of the Board shall be appointed and serve as provided by W. Va. Code §21-9-3.

8.2. The Commissioner shall serve as the permanent chairman of the Board.

8.3. The Commissioner shall preserve order and conduct all proceedings according to accepted parliamentary procedure, and demand conformity thereto on the part of the members. The Commissioner shall appoint all committees as from time to time shall be deemed necessary or expedient by the Board, and shall sign his or her name to all official papers and actions involving the Board.

8.4. No Board member shall participate in any matter pending before the Board involving any person in which he or she is or was, at any time in the preceding twelve (12) months, either a director, officer, owner, partner, employee, member, or stockholder, or in which his or her spouse or unemancipated minor child or children is or was, at any time in the preceding twelve (12) months, either a director, officer, owner, partner, employee, member or stockholder. In all such cases, the Board member in question shall disqualify himself or herself from any participation in the matter, including all discussion and votes. A record of such disqualification shall be noted in the minutes of the meeting.

Section 9. Reimbursement of Board Members.

9.1. Each Board member shall receive one hundred dollars (\$100.00) for each day or portion thereof spent in attending meetings of the Board.

9.2. In addition to the per diem amount specified in Section 9.1, each member shall be reimbursed for all reasonable and necessary expenses incurred incident to his or her duties as a Board member.

Section 10. Board Staff and Offices.

10.1. The Commissioner shall make available all necessary office space, secretarial assistance, and other personnel, equipment, and supplies as the Board may reasonably require in the performance of its duties and functions.

10.2. The Commissioner may employ an administrator who shall work under the immediate supervision of the Board in administering the Board's day-to-day activities.

10.3. In providing for the material and human resource needs of the Board, the Commissioner shall have access to the special account established pursuant to W. Va. Code §21-9-9(g).

The Commissioner's utilization of this account shall at all times be consistent with any operational budget approved by the Board.

Section 11. Board Actions.

11.1. A majority of the members of the Board shall constitute a quorum.

11.2. A majority vote of the members of the Board present at any regular or special meeting shall constitute an official Board action, provided that a quorum is present.

11.3. Absent Board members shall not be permitted to vote by proxy.

Section 12. Contested Case Hearings.

12.1. Any person entitled to a contested case hearing under the laws and rules of the Board shall be entitled to each of the following:

(a) written notice at least ten (10) days in advance which sets forth the date, time, and place of the hearing, as well as a short and plain statement of the matters in issue;

(b) an opportunity at the hearing to present testimony, other evidence, and argument with respect to the matters and issues involved;

(c) an opportunity at the hearing to cross-examine any witness providing testimony, and to present rebuttal evidence; and

(d) the assistance of an attorney duly qualified to practice in the State of West Virginia.

12.2. All testimony at a contested case hearing shall be reported by stenographic notes and characters or by other mechanical or electrical means. The Board shall prepare an official record, which shall include a transcript of the testimony and all exhibits admitted into evidence. Any person participating in the hearing shall be entitled to a copy of the record, including the transcript, at his or her own expense.

12.3. Contested case hearings may be conducted as part of any regular or special meeting of the Board. Alternatively, at the Board's discretion, a hearing examiner may be appointed by the Board to preside at a contested case hearing. A hearing examiner shall be empowered to administer oaths and affirmations, to examine witnesses under oath, to rule on

evidentiary questions, to hold conferences for the settlement or simplification of issues by consent of the Board and the persons participating in the contested case hearing, and to otherwise conduct hearings as provided for herein. The function of a hearing examiner is to preside at the hearing and to cause a record to be prepared so that the Board can discharge its functions. The hearing examiner shall prepare recommended findings of fact and conclusions of law for submission to the Board.

12.4. The rules of evidence as applied in civil cases in the circuit courts of West Virginia shall be followed.

12.5. Contested case hearings may be continued from one day to another upon a showing of good cause. The Board shall rule on all such motions for a continuance.

12.6. Evidentiary depositions may be taken and read into evidence as in civil actions in the circuit courts of West Virginia.

12.7. Any person participating in a contested case hearing may submit proposed findings of fact and conclusions of law within twenty (20) days of the conclusion of such hearing, or from the date the final transcript is available, whichever is later.

12.8. A final order adjudicating a contested case hearing shall be issued in writing by the Board within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, proposed or recommended findings of fact, and proposed or recommended conclusions of law. The final order shall be accompanied by the Board's findings of fact and conclusions of law.

12.9. At all contested case hearings, the Board shall be deemed a participant and shall have the right to be represented by an attorney duly qualified to practice in the State of West Virginia, to present testimony and other evidence, and to exercise all other rights granted herein. Members of the Board and its officers, agents, and employees shall be competent to testify at a contested case hearing; provided, that no Board member, officer, or agent who testifies at a hearing shall thereafter participate in deliberations or decisions of the Board with respect to the case in which he or she so testified.

12.10. The requirements and procedures outlined at W. Va. Code §29A-5-1, §29A-5-2, and §29A-5-3 shall at all times govern the Board's contested case hearings.

Section 13. Appeals.

13.1. An appeal from any final order entered by the Board in accordance with these rules shall be governed by the provisions of W. Va. Code §29A-5-4 and §29A-6-1.

Section 14. Severability.

14.1. If any provisions of these rules or their application to any person be held invalid, such invalidity shall not affect the provisions or application of the rules which can be given effect without the invalid provisions or application, and to this end the provisions of these rules are declared to be severable.