

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #5

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

AGENCY: Department of Transportation, State Rail Authority TITLE NUMBER: 172

CITE AUTHORITY §29-18, et. seq.

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: Organization and Meetings

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS September 1, 2001



Fred VanKirk, P.E.
Secretary/Commissioner of Highways

State Rail Authority, Series 1
Organization and Meetings
Notice of Agency Adoption of a Procedural Rule

SUMMARY OF PUBLIC COMMENTS and RESPONSES:

The public comment period was advertised in the State Register, published June 22, 2001. No comments were received on the proposed amendments. Therefore, no changes were made to the proposed rule filed with the Secretary of State on July 25, 2001.

PROMULGATION HISTORY

Notice of Agency Adoption of a Procedural Rule
172CSR1
Organization and Meetings

State Rail Authority

6/19/2001	Filed Notice of a Comment Period on a Proposed Rule
6/22/2001	Comment Period Advertised in State Register
7/22/2001	Comment Period Ends
7/25/2001	Filed Notice of Agency Adoption of a Procedural Rule
9/1/2001	Effective Date

**TITLE 172
LEGISLATIVE RULE
DEPARTMENT OF TRANSPORTATION
STATE RAIL AUTHORITY**

FILED

2001 JUL 25 A 10: 56

**SERIES 1
ORGANIZATION AND MEETINGS**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§172-1-1. General.

1.1. Scope. -- This procedural rule addresses the conduct of meetings, the organization, the compensation and reimbursement, the election of officers, the appointment of an Executive Director and the duties of the Board of Directors of the West Virginia State Rail Authority.

1.2. Authority. -- W. Va. Code §29-18, et. seq.

1.3. Filing Date. -- July 25, 2001

1.4. Effective Date. -- September 1, 2001

§172-1-2. Definitions.

2.1. "Authority" means the West Virginia State Rail Authority.

2.2. "Board of Directors" means the Authority members duly appointed by the Governor of West Virginia.

§172-1-3. Office of the Authority.

3.1. The principal office of the Authority shall be located in Hardy County, West Virginia. Regional sub offices may be located at such other places as the Board of Directors may, by resolution, so designate.

3.2. The Board of Directors may, by resolution, change the location of any regional office of the Authority.

§172-1-4. Board of Directors.

4.1. The Board of Directors of the Authority shall consist of six members appointed pursuant to the provisions of W. Va. Code §29-18-4.

4.2. The Secretary of the West Virginia Department of Transportation shall serve as the Chairman of the Board of Directors.

4.3. The Board of Directors shall hold an election for vice chairman during the last board meeting of each fiscal year. Only appointed members of the Authority shall serve in this capacity.

4.4. A secretary-treasurer, who need not be a member of the Authority, shall also be appointed by the Board of Directors.

4.5. If for any reason an election cannot be held during the last board meeting of each fiscal year, the officers serving shall continue to act in their elected capacity until a meeting can be held to elect new officers. The term of office of any person elected shall begin on July 1st. and expire on June 30th. in the next calendar year.

4.6. Vacancies on the Board of Directors shall be filled by appointment of the Governor as set forth in W. Va. Code §29-18-4.

4.7. If for any reason any member of the Board of Directors is unable to attend three consecutive meetings, the Chairman of the Board shall direct a communication to such member pointing out the fact that three consecutive meetings have been missed and requesting the resignation of such member.

4.8. If at any time a member of the Board of Directors resigns, the Chairman or his designated representative, shall immediately inform the Governor of West Virginia of such resignation and request that a new member be appointed.

4.9. The Board of Directors may hold their meetings at such place or places as they may from time to time determine.

4.10. The property and business of the Authority shall be managed by the Board of Directors which may (subject to the limitation of the laws of West Virginia and these rules) exercise all such powers of the Authority as are authorized by law.

4.11. Board of Director members, except for the Chairman, shall be entitled to reimbursement for travel expenses to and from Board of Directors meetings and during official duties assigned by majority vote of the Board of Directors or authorized by the Chairman. Reimbursement of travel expenses shall include mileage at the rate established for employees of the West Virginia Department of Transportation. Reimbursement of meals, lodging and other legitimate expenses shall be in accordance with W. Va. Code §4-2A-7.

4.12. Board of Director members, except for the Chairman, shall receive the same compensation as is paid to members of the West Virginia Legislature for their interim duties in accordance with W. Va.. Code §4-2A-7.

§172-1-5. Meetings of the Board of Directors.

5.1. All meetings shall be held in accordance with the West Virginia Open Governmental Proceeding Act, W. Va. Code §6-9A.

5.2. The Chairman may call special meetings of the Board of Directors on three days notice to each member, personally or by telephone or e-mail, or on seven days notice by mail. The Chairman shall call special meetings in like manner and on like notice on the written request of two members.

5.3. At all meetings of the Board of Directors, four members of the Authority shall constitute a quorum and the affirmative vote of four members shall be necessary for any action taken by vote of the Board of Directors.

5.4. Any meeting of the Board of Directors may be attended by members by means of any form of electronic voice communication, provided that all members can simultaneously hear the proceedings and be heard by all the other members and the public in attendance at the meeting. A quorum for any meeting so held shall be computed on the basis of all persons in voice contact with each other. Any meeting so held shall be a formal meeting of the Board of Directors for all purposes, and any business may be transacted at such meeting that could be transacted if the members of the Board of Directors were assembled in physical proximity to each other.

§172-1-6. Officers of the Authority.

6.1. The Chairman, Vice Chairman and the Secretary-Treasurer shall be officers of the Authority.

6.2. Each officer of the Authority, other than the Chairman, shall hold his or her office until the next annual election or resignation of the officer as provided in subsections 3.7 and 3.8 of this rule.

6.3. The Chairman of the Board of Directors, and in his absence the Vice Chairman, and in their absence any Director chosen by the members present, shall act as Chairman of meetings of the Board of Directors. The Secretary-Treasurer and in his or her absence any Director appointed by the Chairman or the presiding officer shall act as Secretary of meetings of the Board of Directors.

6.4. The Board of Directors shall appoint an Executive Director of the Authority. The Executive Director shall meet the qualification for the position as are detailed in the position description in the Office of the Secretary, West Virginia Department of Transportation.

§172-1-7. Duties of Officers.

7.1. The Executive Director shall be the principal executive of the Authority and shall, in general, supervise and control all of the business and affairs of the Authority. Except as restricted

by the laws of West Virginia and these rules, he or she may sign any deeds, mortgages, bonds, contracts or other instruments which are authorized to be executed; and in general shall have and perform all powers and duties incident to the office of the Executive Director and such other powers and duties as may be prescribed by the Board of Directors from time to time.

7.2. The Executive Director shall have authority in his discretion unless otherwise restricted by the laws of West Virginia to:

7.2.a. make or enter into contracts, commitments, underwriting, investments, loans and sales of any nature, herein collectively called "commitments," in the ordinary course of business; provided, however, that except as may be specifically authorized or approved by the Board of Directors;

7.2.b. employ or enter into agreements with agents, employees, independent contractors or consultants or advisors or advisory services and prescribe their duties and their compensation, fees and expenses;

7.2.c. make arrangements for offices, service contracts and other facilities and enter into contracts or leases for such purposes;

7.2.d. carry on litigation, submit or agree to arbitration and otherwise settle or compromise disputes.

7.2.e. The Executive Director is further authorized to delegate reasonable and customary authority to other officers or employees of the Authority in his discretion.

7.2.f. The Executive Director shall make periodic reports and special reports when he or she deems it desirable or when requested by the Board of Directors summarizing in reasonable detail action by him pursuant to the above.

7.3. The Board of Directors may from time to time, subject to the provisions of these rules and the laws of West Virginia, prescribe or

modify the powers, authority or duties of the Executive Director.

7.4. The Secretary-Treasurer shall attend all sessions of the Board of Directors and record all votes and the minutes of all proceedings in a book to be kept for that purpose. He or she shall give, or cause to be given, notice of all special meetings of the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors or Chairman under whose supervision he or she shall be. He or she shall keep in safe custody the seal of the Authority and, when authorized by the Board of Directors, shall affix the same to any instrument requiring it and, when so affixed, it shall be attested by his or her signature or, in his or her absence, by the signature of the Chairman or the Vice Chairman.

7.4.a. The Secretary-Treasurer shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Authority and shall deposit all moneys and other valuable effects in the name and to the credit of the Authority in such depositories as may be designated by the Board of Directors or the Executive Director.

7.4.b. The Secretary-Treasurer or the Executive Director in pursuance of the authority granted him or her by these rules or by resolution of the Board of Directors, shall disburse the funds of the Authority as may be ordered by the Board of Directors, taking proper vouchers for such disbursements and shall render to the Executive Director and the Board of Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Authority.

7.4.c. The Secretary-Treasurer and all Directors, other than the Chairman, shall give the Authority a bond in the sum as may be required by the laws of West Virginia.

§172-1-8. Resignations.

8.1. Any member, officer or agent of the Authority may, subject to the contrary provision in any applicable contract, resign at any time by giving written notice to the Board of Directors, to the Chairman or to the Secretary-Treasurer of the Authority. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

§172-1-9. Fiscal Year.

9.1. The fiscal year of the Authority begins on the first day of July and ends on the last day of June in each year.

§172-1-10. Seal.

10.1. The Authority shall have a seal containing the name of the Authority and the words "State Rail Authority." Said seal may be used by causing it to be impressed or affixed or reproduced in any manner whatsoever.