

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Do Not Mark In This Box

Form #2

SEP 21 12 42 PM '93

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Rail Authority TITLE NUMBER: 172

RULE TYPE: Procedural CITE AUTHORITY: WV Code 29-18

AMENDMENT TO AN EXISTING RULE: YES xx NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 1

TITLE OF RULE BEING AMENDED: Organization & Meetings
formerly "By-laws"


IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON Oct 25, 1999 AT 4:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WVDOT
Attn: Richard Hartman
1900 Kanawha Blvd. E.
Building 5, Room 164
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Secretary, WVDOT
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$5.20



**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION**

1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • 304/558-0444

Cecil H. Underwood
Governor

Samuel G. Bonasso, P. E.
Secretary

172 CSR 1

Organization and Meetings

Summary of Content

The proposed amendments to the State Rail Authority Procedural Rule Organization and Meetings, 172 CSR 1, produce the following changes:

1. Reflect the change in position of the Secretary of Transportation from member to Chairman of the Board of Directors.
2. Establishes the reimbursement and compensation amounts and circumstances required of Board members to be eligible for payment.
3. Insures all Board meetings comply with the open meeting law.
4. Establish three sub-committees of the Board to address 1.) Marketing & Promotion, 2.) Finances, 3.) Operations.
5. Establish procedures for the Executive Director to utilize emergency purchasing authority.



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172 CSR 1

Organization and Meetings

Statement of Circumstances Requiring Filing

The proposed amendments to the State Rail Authority Procedural Rule Organization and Meetings, 172 CSR 1, are needed for the following reasons:

1. HB 2791, passed in 1999, made the Secretary of Transportation the Chairman of the Board of Directors of the State Rail Authority.
2. The Performance Evaluation and Research Division of the Office of Legislative Auditor determined within their Preliminary Performance Review that the reimbursement and compensation of Board members was subject to such broad interpretation that questionable payments were occurring at a frequent rate. Changes to the Board's rules were needed.
3. The above Review also pointed out several past violations of the Open Meeting Act.
4. The above Review stated the By-laws were out of date and needed updating.
5. HB 2141, passed in 1999, authorized the use of emergency purchasing procedures by the State Rail Authority.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Organization & Meetings

Type of Rule: Legislative Interpretive XX Procedural

Agency: State Rail Authority

Address: 120 Water Plant Dr.

Moorefield, WV 26836

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST					
PERSONAL SERVICES					
CURRENT EXPENSE		\$24,000	(\$24,000)	(\$24,000)	
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

The proposed changes will prevent reimbursement and compensation for members beyond those for official meetings.

3. Objectives of These Rules:

Establish reimbursement and compensation rates, Create sub-committees, insure compliance with open meetings law. Update terms, streamline organization and function.

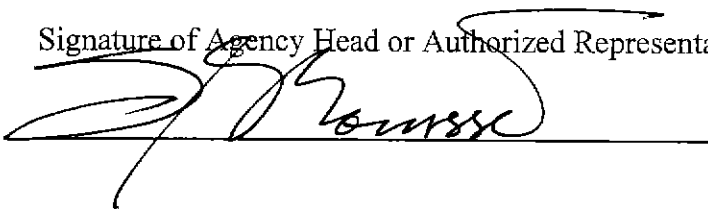
4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government: Meeting costs should decline by about \$24,000 per year.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:
NONE

C. Economic Impact on Citizens/Public at Large.
NONE

Date: 9/20/99

Signature of Agency Head or Authorized Representative:


172-1-1
OCT 21 11 25 AM '99
OFFICE OF THE CLERK OF COURTS
STATE OF WEST VIRGINIA

TITLE 172

WEST VIRGINIA PROCEDURAL RULES

WEST VIRGINIA RAILROAD MAINTENANCE AUTHORITY—STATE RAIL
AUTHORITY

BYLAWS
SERIES 1

ORGANIZATION AND MEETINGS

172-1-1. General

1.1. Scope - Procedural Rules for the conduct of meetings, organization, compensation and reimbursement, election of officers, appointment of an executive director, duties of the Board of Directors of the State Rail Authority.

1.2. Authority - WV Code 29-18

1.3. Filing Date -

1.4. Effective Date -

172-1-2. Office

2.1. The principal office of the ~~West Virginia Railroad Maintenance Authority~~ State Rail Authority (hereinafter "Authority") shall be located in ~~Kanawha~~ Hardy County, West Virginia. Regional sub-offices may be located at such other places as the Authority members (collectively hereinafter "Board of Directors") may, by resolution, so designate.

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

172-1-3. Board of Directors

3.1. The Board of Directors of the Authority shall consist of six members appointed pursuant to the provisions of ~~§29 Article 18 sub Section 4~~ of the West Virginia Code §29-18-4. ~~and the Governor of the State of West Virginia.~~

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

3.3. The Board of Directors shall hold an election during the month of January of each year and elect a ~~chairman and vice-chairman~~ to serve in ~~those that capacities~~ capacity during the coming year. Only appointed members of the Authority shall serve in ~~these capacities.~~ this capacity.

3.4. A secretary-treasurer, who need not be member of the Authority, shall also be elected by the Board of Directors. If for any reason an election cannot be held during the month of January 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 ~~at such later meeting shall expire at the end of the year in which that person was elected.~~ shall expire one year from the date of election.

3.5. Vacancies on the Board of Directors shall be filled by appointment of the Governor as set forth in §29-18-4 of the Code of West Virginia.

3.6. 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

3.7. 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.

3. 8. The Directors may hold their meetings at such place or places as they may from time to time determine.

3. 9. The property and business of the Authority shall be managed by its Board of Directors which may (subject to the limitations of the Laws of West Virginia and these ~~Bylaws~~ Procedural Rules) exercise all such powers of the Authority and ~~do all such lawful acts and things as are not by law or by these Bylaws forbidden.~~ as are authorized by law.

3. 10. ~~Directors shall receive such compensation and allowances as may be fixed by the Laws of the State of West Virginia.—~~ Directors, except for the Chairman, shall be entitled to reimbursement for travel expenses to and from Board meetings and during official duties assigned by majority vote of the Board or authorized by the Chairman. Reimbursement of travel expenses shall include mileage at the rate established for employees of the Department of Transportation. Reimbursement for meals, lodging and other legitimate expenses shall not exceed Eight-five Dollars (\$85) per day and shall require the submission of original receipts.

3.11. Directors, except the Chairman shall receive compensation of One Hundred Dollars (\$100.00) per day for days, or portions thereof, during which an official Board Meeting occurs.

172-1-4. Meetings of the Board

4.1. ~~Regular meetings of the Board may be held without notice at such time and place, either within or without the State of West Virginia, as shall from time to time be determined by resolution of the Board.—~~ All meetings shall be held in accordance with the West Virginia Open Governmental Proceeding Act (WV Code 6-9A et. Seq.)

4.2. Special Emergency meetings of the Board of Directors may be called by the Executive Director on three days notice to each member, personally or by telephone or e-mail; ~~telegram or radiogram~~, or on seven days notice by mail. Special Emergency meetings shall be

called by the Executive Director ~~or the Secretary-Treasurer~~ in like manner and on like notice on the written request of two members.

4.3 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. ~~If a quorum shall be present at any meeting of the Board of Directors, then any Director or Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.~~

~~Section 4.— Attendance of a member at any meeting of the Board of Directors shall constitute a waiver of notice of such meeting, except where a member attends for the express purpose of objecting to the transaction or any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the Board of Directors need be specified in the notice of waiver of notice of such meeting.~~

4.4. 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 Directors were assembled in physical proximity to each other.

~~Section 6.— Unless otherwise restricted by the Laws of West Virginia or these Bylaws, any meeting of the Board of Directors may be taken without a meeting, if prior to such action a written consent thereto is signed by all members of the Board as the case may be, and such written consent is filed with the minutes of proceedings of the Board.~~

Notices

~~Section 1.~~ Whenever under the provisions of the Laws of West Virginia or of these Bylaws, notice is required to be given to any member, it shall not be construed to require personal notice, but such notice to any member may be given in writing, by mail (to be air-mail in case the address is out-side continental United States) by depositing the same in the United States mail in continental United States, in a sealed wrapper, postage prepaid, addressed to such member at his address as it appears on the records of the Authority, and notice to any member may be given by telephone personally to such member, or by telegram or radio delivered to a telegraph or radiograph company for transmission addressed to such director at his address (or cable address) as it appears on the records of the Authority.

~~Section 2.~~ Whenever any notice is required to be given under the provisions of the Laws of West Virginia or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, or delivered to the Authority by telegraph or radiograph, whether before or after the time required for such notice or before or after the meeting, shall be deemed equivalent thereto.

172-1-5. Officers

5.1. The officers of the Authority shall be elected by the Board of Directors and shall be an ~~Executive Director~~ Vice-Chairman and a Secretary-Treasurer. Two or more offices may be held by the same person, but no person shall execute, acknowledge or verify any instrument in more than one capacity.

5.2. Each officer of the Authority shall hold his/her office until his/her successor is elected and qualified or until his/her earlier resignation or removal.

5.3. The chairman of the Board, and in his/her 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/her

absence any Director appointed by the Chairman or the presiding officer shall act as Secretary of meetings of the Board of Directors.

5.4. . The Board of Directors shall appoint an Executive Director of the State Rail Authority. The Executive Director shall meet the qualifications for the position as are detailed in the position description filed in the Office of the Secretary, West Virginia Department of Transportation. The appointment and removal of the Executive Director shall require the concurrence of the Secretary of the West Virginia Department of Transportation.

172-1-6. Duties of Officers

6.1. The Executive Director shall be the principal executive officer 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 Bylaws Procedural Rules, he 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.

6.2. ~~Without limitation of or by the provisions of Subsection A of this Section, the~~ The Executive Director shall have authority in his/her discretion unless otherwise restricted by the Laws of West Virginia to:

6.2.1. 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, no single

commitment shall involve a liability for the Authority in excess of \$_____ and that the aggregate liability of the Authority under all such commitments not specifically authorized or approved by the Board of Directors, at any time outstanding, shall not exceed \$_____, and provided further that no person dealing with the Executive Director shall be bound to inquire as to whether the aggregate amount of such commitment (not exceeding \$_____); made or entered into by the Executive Director even though at the time or as a result thereof the aggregate liability of the Authority under all such commitments outstanding shall or might exceed \$_____.

- 6.2.2. 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.
- 6.2.3. Make arrangements for offices, service contracts and other facilities, and enter into contracts or leases (within the limits of Subsection 1 hereof) for such purposes.
- 6.2.4. Carry on litigation, submit or agree to submit to arbitration and otherwise settle or compromise disputes.
- 6.2.5. The Executive Director is further authorized to delegate reasonable and customary authority to other officers or employees of the Authority in his/her discretion.
- 6.2.6. The Executive Director shall make periodic reports, and special reports when he/she deems it desirable or when requested by the Board of Directors summarizing in reasonable detail action by him/her pursuant to the above.

6.3. The Board of Directors may from time to time, subject to the provisions of these Bylaws Procedural Rules and the Laws of West Virginia, prescribe or modify the powers, authority or duties of the Executive Director.

6.4. 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/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 Executive Director, under whose supervision he/she shall be. He/she shall keep in safe custody the seal of the authority and, when authorized by the Board of Directors, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his/her signature or by the signature of the Treasurer or an Assistant Secretary.

6.5. . 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.

6.6. The Secretary-Treasurer shall disburse the funds of the Authority as may be ordered by the Board, or by the Executive Director in pursuance of the authority granted him by these Bylaws Procedural Rules or by resolution of the Board, taking proper vouchers for such disbursements, and shall render to the Executive Director and the Board, 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.

6.7: The Secretary-Treasurer shall give the Authority such bond in such sum and with such surety as may be required by the Laws of West Virginia.

172-1-7. Resignations

7.1. 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 Executive Director or to the Secretary-Treasurer of the Authority. Any such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

172-1-8. Fiscal Year

8.1. The fiscal year of the Authority shall begin on the first day of July and end on the last day of June in each year.

172-1-9 Seal

9.1. The Authority shall have a seal containing the name of the Authority and the words “West Virginia ~~Railroad Maintenance Authority~~ State Rail Authority”. Said seal may be used by causing it to be impressed or affixed or reproduced in any manner whatsoever.

172-1-10 Amendments

10.1. Amendments to these Bylaws may be made by a vote of a majority of the Directors at any meeting when notice of the proposed amendment is included in the notice of such meeting.

10.2. Amendments shall be adopted following the requirements for amendments to Procedural Rules within the West Virginia Administrative Procedures Act (WV Code 29A)

172-1-11. Organization

11.1. The Board of Directors shall create and assign duties to three sub-committees.

Staff may be assigned to assist such sub-committees. The sub-committees shall be:

1. Marketing & Promotion
2. Finances
3. Operations

11.2. Each sub-committee shall be composed of three Board members.

11.3. Each Board member, excluding the Chairman, shall be assigned to two (2) sub-committees.

11.4. Sub-committees shall meet on the same day and as a part of regular Board meetings and shall be included in the notice of regular Board meetings and shall be open to the public. Should a sub-committee schedule a meeting at a time, date or location outside of a regular Board meeting they shall provide notice and conduct such meeting according to the Open Governmental Proceedings Act (WV Code 6-9A).

11.5. Reimbursement of expenses shall be authorized for sub-committee meetings in accordance with Section 3.9. However, no compensation shall be permitted.

172-1-12. Emergency Purchasing Procedure

12.1. The expatiated purchasing procedures authorized under West Virginia Code 29-18-6 (a) (11) (B) shall only be exercised by the Executive Director or his/her appropriate staff following approval by the Chairman, or a representative within the Office of the secretary of the Department of Transportation.

12.2. Approval by the Chairman or a representative from the Office of the Secretary of the Department of Transportation may be verbal but shall be followed in a reasonable amount of time by a written authorization. Such written authorization may be by mail, fax, printed e-mail or other suitable means so as to create a written record of approval.

12.3. The Executive Director or his/her appropriate staff shall be required to state the event, which would allow the use of an emergency purchase procedure with the request for approval.



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Cecil H. Underwood
Governor

Samuel G. Bonasso, P. E.
Secretary

September 20, 1999

The Honorable Ken Heckler
Secretary of State
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Secretary Heckler:

As Secretary of the West Virginia Department of Transportation, and Chairman of the Board of Directors of the State Rail Authority, I am authorizing the promulgation of the attached proposed amendments to 172 CFR 1, Organization and Meetings.

Yours truly,

A handwritten signature in black ink, appearing to read "S. Bonasso", written over a horizontal line.

Samuel G. Bonasso, P.E.
Secretary

SGB:b

Attachments