WEST VIRGINIA
SECRETARY OF STATE
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Form #1

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2005 MAY 18 P 4: 13

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY: W. Va. Code §§23-1-1a(j)(3); 23-2C-3(f)(3)

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ______

TITLE OF RULE BEING AMENDED: ______

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 6

TITLE OF RULE BEING PROPOSED: Workers' Compensation Debt Reduction Fund Assessments

DATE OF PUBLIC HEARING: June 23, 2005 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Rooms 207-209
Charleston Civic Center
Charleston, West Virginia

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

T.J. Obrokta, General Counsel
Executive Offices
Workers' Compensation Commission
4700 MacCorkle Avenue, S. E.
Charleston, WV 25304

Fax # (304) 926-5372

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Authorized Signature

#3.80

Insuring a Working West Virginia
Workers' Compensation Commission
Gregory A. Burton, Executive Director

Office of General Counsel
4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone Number (304) 926-3423
Fax Number (304) 926-5441

May 18, 2005

The Honorable Betty Ireland
Secretary of State
State Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

Re: Proposed Rule
Title 85, Series 6
"Workers' Compensation Debt Reduction Fund Assessments"

Dear Secretary Ireland:

Please consider this letter to be my written approval for the filing of the above-noted proposed Rule.

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission is established as a government entity separate from the Bureau of Employment Programs. The Board of Managers of the Workers' Compensation Commission has approved the enclosed 85 C.S.R. 6 for filing as a proposed rule of the Workers' Compensation Commission.

Thank you very much for your assistance in this matter.

Very truly yours,

Gregory A. Burton
Executive Director

Enclosure

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 85, Series 6: Debt Reduction Fund Assessments

Type of Rule: X Legislative Exempt ___Interpretive ___Procedural

Agency Workers' Compensation Commission

Address 4700 MacCorkle Avenue, S.E.

Charleston, WV 25304

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	N/A
PERSONAL SERVICES	0	0	0	0	N/A
CURRENT EXPENSE	0	0	0	0	N/A
REPAIRS & ALTERNATIONS	0	0	0	0	N/A
EQUIPMENT	0	0	0	0	N/A
OTHER	0	0	0	0	N/A

2. Explanation of above estimates:

The above estimates are based on the assumption that the rule becomes effective in the current fiscal year (FY'05). There would be no change in the estimated costs for the Workers' Compensation Commission (commission) as the initial surcharges and assessments are not implemented until after the termination of the commission at 12/31/05. After 12/31/05, amounts billed for the surcharges and assessments will be owed to and administered by the West Virginia Insurance Commission. After 12/31/05, any costs associated with evaluating, maintaining and administering the surcharges and assessments levied against employers will be incurred by the Insurance Commission.

3. Objectives of this rule:

This rule provides for the levying of a surcharge on private carrier policy holders and an assessment against every self-insured employer for deposit into the "West Virginia Workers' Compensation Debt Reduction Fund" and, to the extent necessary, ultimately into the "West Virginia Workers' Compensation Debt Reduction Revenue Bond Debt Service Fund".

Rule Title: Title 85, Series 6: Debt Reduction Fund Assessments

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that the there will be no direct economic impact from this rule.

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

It is expected that there will be no impact from this rule. The collections from private carriers and self insured employers are limited to the amount set forth and provided by the Legislature in W.Va. Code §23-2C-3(f)(3).

C. Economic Impact on Citizens/Public at Large.

This rule will not have a direct economic impact on the citizens of West Virginia.

Date: 5/18/05

Signature of Agency Head or Authorized Representative

G. B.

Gregory A. Burton
Executive Director, Workers' Compensation Commission

SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 6
Workers' Compensation Debt Reduction Fund Assessments

Pursuant to Senate Bill 1004, First Special Session, 2005, the Workers' Compensation Commission may terminate. Thereafter, Workers' Compensation insurance in West Virginia will be provided through the successor to the Commission and other private insurance carriers.

As part of the termination of the Commission, the Legislature created various revenue streams to assist in funding "Old fund" liabilities. This rule provides for the revenue stream contemplated under the provisions of W. Va. Code §23-2C-3(f)(3) for deposit in the Workers' Compensation Debt Reduction Fund created in W. Va. Code §23-2D-5.

The rule provides for the establishment and collection of surcharges to be remitted to the insurance commissioner for deposit in the "West Virginia Workers' Compensation Debt Reduction Fund."

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION COMMISSION

SERIES 6
WORKERS' COMPENSATION
DEBT REDUCTION FUND ASSESSMENTS

§85-6-1. General.

1.1. Scope. --This exempt legislative rule provides for the establishment and collection of surcharges to be remitted to the insurance commissioner for deposit in the workers' compensation debt reduction fund as created in W. Va. Code §23-2D-5.

1.2. Authority. -- W.Va. Code §§23-1-1a, 23-2C-3(f)(3); 23-2D-5; 23-2D-6. Pursuant to West Virginia Code §23-1-1a(j)(3), rules adopted by the Board of Managers and the Commission are not subject to legislative approval as would otherwise be required under West Virginia Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. --

1.4. Effective Date. --

§85-6-2. Purpose of Rule.

This rule provides for the implementation of a policy surcharge on private carrier policy holders and assessments on self-insured employers for deposit into the "West Virginia Workers' Compensation Debt Reduction Fund" and, to the extent necessary, ultimately into the "West Virginia Workers' Compensation Debt Reduction Revenue Bond Debt Service Fund."

§85-6-3. Definitions.

As used in this rule, the following terms, words, and phrases have the meanings stated unless in any instance where such term, word, or phrase is employed and the context expressly indicates that another meaning is intended.

3.1. "Act" means the workers' compensation laws of the state of West Virginia which are codified at W. Va. Code §23-1-1 et seq.

3.2. "Board" means the Workers' Compensation Board of Managers created pursuant to the provisions of W.Va. Code §23-1-1a.

3.3. "Code of West Virginia" and "West Virginia Code" mean the West Virginia Code of 1931, as amended.

3.4. "Commission" means the Workers' Compensation Commission created pursuant to the provisions of W.Va. Code §23-1-1.

3.5. "Executive Director" means the executive director of the Workers' Compensation Commission as provided pursuant to the provisions of W.Va. Code §23-1-1b.

3.6.. "Gross wages" include: W-2 items, vacation pay, including accrued vacation at time of dismissal, holiday pay, sick pay (excluding 3rd party sick pay), partnership and S Corporation distributions of ordinary income from trade or business activities (do not report losses), draws taken for items other than business expenses, retroactive wages, bonuses, commissions, including draws against commissions, wages paid to summer interns, overtime wages, profit sharing, incentive programs, per diem payments to employees not directly related to travel, allocation to employees for such things as tools, equipment, machinery, etc. regardless if such allocation is labeled as per diem, hourly expense or other titles, stipend or other non-travel related payments to board members who are being covered under the employer's workers' compensation account, other compensation and perquisites paid to employees, owners and officers that have value, but are not per diem travel related, and value of gifts given to employees, owners, officers and board members.

"Gross wages" do not include: per diem expenses related to travel, the value of any special discount or markdown allowed a worker on goods or services purchased from or supplied by the employer if the purchase is optional with the worker and does not constitute regular or systematic remuneration for services, facilities or privileges such as cafeterias, restaurants, medical services or so-called 'courtesy discounts' on purchases furnished or offered by an employer merely as a convenience to workers or as a means of promoting their health, goodwill or efficiency, partnership and S Corporation distributions other than ordinary income from trade or business activities, payments, not required under any contract of hire, made to an individual with respect to a period of training or service in the armed forces of the United States, severance pay, savings plan proceeds, third party sick pay, and disability pay.

3.7. "Insurance Commissioner" means the insurance commissioner of West Virginia as provided in section one, article two, chapter thirty-three of the West Virginia Code.

3.8. "Payment interval" means each periodic payment of the employer's workers' compensation coverage obligation to the private carrier as established by the workers' compensation policy.

3.9. "Private carrier" means any insurer, including the successor to the Commission, authorized by the insurance commissioner to provide workers' compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code.

3.10. "Self-insurer" and "self-insured employer" mean employers who are eligible and have been granted self-insured status under the provisions of W. Va. Code §23-2-9.

3.11. "This rule" means this legislative rule designated as 85 C.S.R. 6, "Debt Reduction Fund Assessments."

3.16 "Total Premium Due" means the total amount of payable at each payment interval to a private carrier by an employer for its workers' compensation coverage, including, but not limited to, the base rate premium as adjusted by any experience modification factor, and shall include any amount due pursuant to an insurance commissioner regulatory budget assessment and any policy debits applied to a private carrier policy, but shall exclude any policy credit allowed by a private carrier.

§85-6-4. Initial Surcharge and Assessments Made Pursuant to W. Va. Code §23-2C-3(f)(3).

4.1. From the termination of the Commission through June 30, 2006, a surcharge shall be levied against every employer of 10.5% to the total premium due from each policy holder. The successor to the Commission shall collect said surcharge, and shall remit said surcharge to the insurance commissioner.

4.2 From the termination of the Commission through June 30, 2006, a monthly gross wages payroll assessment shall be levied against each self-insured employer at the rate of (0.0035) times each month's payroll . Each self-insured employer shall, as otherwise provided in this Rule, remit the assessment to the insurance commissioner within calendar ten (10) days of the end of each month.

§85-6-5. Subsequent Surcharge and Assessment Rates Set by the Insurance Commissioner Pursuant to W. Va. Code §23-2C-3(f)(3).

5.1 Beginning on July 1, 2006, the insurance commissioner shall assess, as otherwise provided for in this Rule, a surcharge percentage to the total premium due from each policy holder. The private carrier shall collect said surcharge and shall remit said surcharge to the insurance commissioner. The surcharge percentage shall be set by the insurance commissioner annually on or before May 1. The rate set by the insurance commissioner shall be effective July 1 of that year.

a. The policy surcharge applicable to each policyholder shall also be applicable to all uninsured employers [W. Va. Code §23-2C-8] and all employers assigned to the adverse risk fund [W. Va.. Code §23-2C-10].

5.2. The obligation of the private carrier is to collect and remit the surcharge percentage, as set by the insurance commissioner, from the total premiums received by the private carrier. The private carrier has no obligation to the insurance commissioner or to the Debt Reduction Fund to make up any difference in the amount projected to be collected as a result of the surcharge percentage set by the insurance commissioner and the amount actually collected.

5.3. Beginning on July 1, 2006, a monthly payroll assessment shall be levied against each self-insured employer at a rate established annually by the insurance commissioner on or before May 1. Each self-insured employer shall, as otherwise provided for in this Rule, remit the assessment to the insurance commissioner within ten (10) calendar days of the end of each month. The rate set by the insurance commissioner shall be effective July 1 of that year.

§85-6-6. Surcharge and Assessment Methodology for Collections Made Pursuant to W. Va. Code §23-2C-3(f)(3).

6.1 The policy surcharge imposed by this section shall be reflected on each premium invoice issued by a private carrier, regardless of the payment interval. The premium surcharge rate shall be applied against the total premium due and shall be a clearly ascertainable line item on the premium invoice. The policy surcharge shall be remitted by the private carrier to the insurance commissioner within ten (10) days of receipt.

6.2 Each self-insured employer, group self-insurer, or insurance carrier shall provide any information and submit any reports the Revenue Cabinet or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.

§85-6-7. Severability.

If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not affect the provisions or the applications of these 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.