

Form #1

OFFICE WEST VIRGINIA
SECRETARY OF STATE

\$4.40



Office of General Counsel
4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone Number (304) 926-3423
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March 16, 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 14
"Procedural Rules for the Workers' Compensation
Board of Managers"

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. 14 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

**SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 14
Procedural Rules for the Workers'
Compensation Board of Managers**

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.

The rule is amended to address the legislative amendments to Chapter twenty-three of the West Virginia Code that provide for the termination of the Board of Managers upon termination of the Workers' Compensation Commission.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 85, Series 14: Procedural Rules for the Workers' Compensation Board of Managers.

Type of Rule: Legislative Exempt Interpretive X 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
<u>ESTIMATED TOTAL COST</u>	Undetermined	Undetermined	Undetermined	Undetermined	N/A
PERSONAL SERVICES	0	0	0	0	N/A
CURRENT EXPENSE	Undetermined	Undetermined	Undetermined	Undetermined	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 changes become effective in the current fiscal year (FY'05). There should be no significant change in the estimated costs associated with conducting any specific meeting of the Workers' Compensation Board of Managers than what were previously incurred in conducting a meeting. Upon termination of the Workers' Compensation Commission (commission) the Board of Managers would also terminate and would eliminate any costs associated with conducting their meetings, such as travel to and from the meetings, the cost of the facilities used to conduct the meetings and the number of meetings held. If the governor issues the proclamation set forth in chapter twenty-three, article 2C of the Code of West Virginia, then, effective upon termination of the commission, the industrial council will have the responsibility to review and approve, reject or modify recommendations from the Insurance Commissioner for the development of the overall policy for the administration of chapter 23 of the Code of West Virginia and this rule would terminate. In the interim, or up until the time that the proclamation is signed by the governor, it cannot be reasonably determined what impact the transition period will have on the number of meetings held by the Board or their related cost.

3. Objectives of this rule:

The purpose of this rule is to establish the rules and procedures for conducting the meetings of the Workers' Compensation Board of Managers, including the transition period resulting from SB1004.

Rule Title: Title 85, Series 14: Procedural Rules for the Workers' Compensation Board of Managers.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that there will be no economic impact on State Government. This rule defines the Workers' Compensation Board of Managers role in fulfilling its duties and responsibilities during the transition period for establishing an employers' mutual insurance company as a result of enacting SB1004.

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

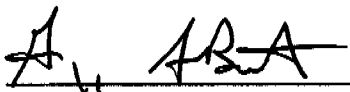
It is expected that there will be no direct impact from this rule.

C. Economic Impact on Citizens/Public at Large.

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

Date: 3-16-05

Signature of Agency Head or Authorized Representative



Gregory A. Burton
Executive Director, Workers' Compensation Commission

FILED

TITLE 85
PROCEDURAL RULE
WORKERS' COMPENSATION COMMISSION

2005 MAR 16 P 3:59

SERIES 14
PROCEDURAL RULES FOR THE WORKERS' COMPENSATION
BOARD OF MANAGERS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§85-14-1. General.

1.1. Scope. -- The West Virginia Open Governmental Proceedings Law, W. Va. Code §6-9A-1, of 1931, as amended, requires in section three that governing bodies of state public bodies shall promulgate rules by which the time, the place, and the purpose of all regularly scheduled meetings and the time, place, and purpose of all emergency meetings are made available, in advance, to the public and the news media to the extent possible. Similarly, W. Va. Code §29A-3-3, requires that agencies adopt procedural rules. The purpose of this rule is to comply with these requirements.

1.2. Authority. -- W. Va. Code §§6-9A-3, 23-1-1a(j)(3) and 29A-3-3.

1.3. Filing date. -- ~~January 29, 2004.~~

1.4. Effective date. -- ~~March 1, 2004.~~

~~1.5. Repeal and replacement. -- This rule repeals and replaces 85CSR14, entitled, "Procedural Rules for the Compensation Programs Performance Council." Under the provisions of Senate Bill 2013, as passed in the Second Extraordinary Session of the two thousand three Legislature, the Compensation Programs Performance Council of the Bureau of Employment Programs was replaced, effective October 1, 2003, by the Workers' Compensation Board of Managers.~~

§85-14-2. Application and enforcement.

2.1. Application. This procedural rule applies to the Workers' Compensation Board of Managers created pursuant to W. Va. Code §23-1-1a et seq. The enforcement of this rule is vested with the chairperson of the Board. In accordance with the provisions of Senate bill 1004, as passed in the First Special Session of the two thousand-five Legislature, the board of managers terminates upon termination of the commission. Upon that occurrence, this rule will also terminate.

2.2. Except as specifically required by this rule, the Board shall not use any formal points of parliamentary order, personal privilege, parliamentary inquiry or other technical forms.

2.3. Any matter, procedure or order not covered by these rules shall be referred to the presiding officer who shall decide the matter in conformity with the purpose of these rules in a fair and expeditious manner. The decision of the presiding officer may be reversed by an affirmative vote of six (6) Members of the Board.

§85-14-3. Definitions.

3.1. "Chairperson" means the member elected as provided for by W. Va. Code §23-1-1a(f).

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

3.3. "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order or measure on which a vote of the Board is required at any meeting at which a quorum is present.

3.4. "Meeting" means the convening of the Board for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. For the purposes of West Virginia Code Section §23-1-1a(h)(1), subcommittee meetings shall meet the definition of "Meeting" for those Members required to attend the subcommittee meeting.

3.5. "Quorum" means the presence of six (6) voting members of the Board. W. Va. Code §23-1-1a(f).

3.6. "Member" means a voting member as more fully set forth in W. Va. Code §23-1-1a(b)(1), et seq.

3.7. "Advisory Member" means a non-voting member as more fully set forth in W. Va. Code §23-1-1a(b)(2), et seq.

§85-14-4. Meetings; Rules of Order; Selection of Vice-Chairperson.

4.1. Meetings of the Board may be called by the chairperson, and the chairperson shall call a meeting upon the request of at least three (3) of the Members of the Board: Provided that, the Board must meet no less frequently than once every three (3) months. All meetings shall be held at locations and in facilities large enough to comfortably accommodate Members and Advisory Members and a reasonable number of public observers and participants.

4.2. The chairperson shall notify Members and Advisory Members in writing at least seven (7) days in advance of a meeting. The notice shall set forth the time and place of such meeting and the matters to be considered, except that such notice is not required if the time, the place, and the matters for consideration have been fixed in a meeting where all the members and advisory members are present.

4.3. The chairperson shall notify the public and the news media by filing with the office of the Secretary of State a public notice of the meeting. The notice shall be filed in a manner so as to allow each notice to appear in the state register at least five days prior to the date of the meeting. The public notice shall contain the time, the place, and purpose of the meeting. A copy of the notice shall be delivered to the press room located in the Capitol Building.

4.4. The provisions of this section shall not apply in the event of an emergency requiring immediate official action by the Board. In the event of an emergency requiring immediate official action, the Board may file an emergency meeting notice at any time prior to the meeting. The emergency meeting notice shall state the time, place, and purpose of the meeting and the facts and circumstances of the emergency. A copy of the notice shall be delivered to the press room located in the Capitol Building.

4.5. Meetings may be continued to a set time and place by an affirmative vote of six (6) Members without further notice to the Members and Advisory Members and without further publication unless such continued meeting is scheduled for more than fourteen (14) days from the date of the voting.

4.6. All Members and Advisory Members present at a meeting shall have the same right to participate in discussion of matters before the Board.

4.7. The Board shall consider any matter brought before it by the chairperson or any Member or Advisory Member and may consider, at its discretion, any matter referred to it by a person not a Member or Advisory Member of the Board.

4.8. Meetings of the Board shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

4.9. The Members of the Board shall select from one of their number a member to serve as chairperson and vice-chairperson. The vice-chairperson shall preside in the absence of the chairperson. The terms of the chairperson and vice-chairperson shall be for one year; from October 1 to September 30; but the incumbent shall continue to serve until replaced. A vacancy may be filled by electing a new chairperson or vice-chairperson for the remainder of a term. A Member may be reelected as chairperson or vice-chairperson. The Members of the Board also shall select from one of their number a Member to serve as secretary. The term of the secretary shall be for one year; from October 1 to September 30; but the incumbent shall continue to serve until replaced. A vacancy may be filled by electing a new secretary for the remainder of a term. A Member may be reelected as secretary.

4.10. To allow more Members and Advisory Members of the Board to participate in public meetings and hearings the Board will allow Members and Advisory Members to participate using the telephone provided at least four Members of the Board are physically present in the room where the public meeting is being held, and the sound system in the room and the electronic equipment is such that the Members and Advisory Members participating electronically can hear what is being said by all Members and Advisory Members participating in the meeting and any person from the public making a presentation or answering questions of the Board, and all of the Members and Advisory Members and the public physically present in the meeting or hearing room can reasonably hear what is being said by the Member(s) and Advisory Member(s) who is participating electronically.

4.11. A Member participating telephonically in a meeting may vote for or against any motion offered by a Member that is seconded by another Member. The moving Member and the seconding Member may be physically present or be participating telephonically or be any combination thereof.

4.12. In an effort to achieve desired efficiencies, the Chairperson will endeavor to set the meetings of the full Board in the afternoon with any necessary subcommittee meetings to take place in the morning of the same day.

§85-14-5. Agenda.

5.1. Prior to each regular meeting, the secretary of the committee shall publish an agenda that contains all items the Board anticipates acting upon at the meeting. The committee may adopt the agenda as presented, or may amend the agenda.

a. The secretary may utilize, for purposes of accomplishing his or her duties under this rule, clerical staff of the Commission as designated by the Executive Director or such clerical staff as the Board of Managers may employ. This utilization may include, but is not limited to, the designation of staff to receive proposed Agenda items, preparation of the Agenda, and all necessary public filing duties.

5.2. Agenda deadline. Any Member or Advisory Member may have an item included on the agenda by requesting the secretary to include the item by 5:00 p.m. on the Tuesday preceding the Wednesday by which the agenda must be filed in the State Register in order to comply with the open meetings laws of this State.

5.3. Notice of meeting.

a. If a meeting is to be held on a Sunday, Monday, Tuesday or Wednesday, notice of the meeting must be published in the State Register by noon on the second Wednesday immediately preceding the day of meeting.

b. If a meeting is to be held on a Thursday, Friday or Saturday of the calendar week immediately following publication of the State Register, notice of the meeting must be filed by noon on the Wednesday preceding the Friday publication of the State Register.

5.4. Items requested or filed after 5:00 p.m. on the Tuesday preceding the deadline for filing the Agenda in the State Register shall not be included on the Agenda unless a Member or Advisory Member deems the item of sufficient urgency to warrant immediate Board action. These items shall be designated as "Extra" items and will be considered at the end of the regular Agenda. The secretary shall record on the Extra item the name of the sponsoring Member or Advisory Member.

5.5. Withdrawal of items. Only the Member or Advisory Member requesting the placement of an item on the Agenda may withdraw the item prior to the filing of the Agenda in the State Register.

5.6. A Member or Advisory Member wishing the committee to continue, defer, or not act on an Agenda item has a right to make and have his or her motion to continue, defer, or not act on any Agenda item considered before any other act that the Board may consider on the Agenda item.

§85-14-6. Opening the meeting.

6.1. Call to order. The chair or vice chair of the Board shall call the meeting to order at the appointed hour. In the absence of the chair or vice chair, the secretary shall call the meeting to order and a temporary presiding officer shall then be selected under subsection 6.2.

6.2. Presiding officer. The chair, or in the chair's absence or incapacity, the vice chair, shall be the presiding officer at the meeting of the Board. If both the chair and the vice chair are absent, the secretary shall call the meeting to order and the Members present shall select a presiding officer by an affirmative vote of six (6) Members. In the absence of such an affirmative vote, the secretary shall remain and continue to be the presiding officer of the meeting.

6.3. Roll call. Before proceeding with the business of the Board, the secretary shall call the roll call of Members and Advisory Members present, and enter the name in the minutes of the meeting. The secretary shall determine the presence of a quorum as required by these rules.

6.4. Order of consideration of agenda items. Except as otherwise provided in these rules, each Agenda item shall be considered in the numerical order assigned by the secretary. Each Agenda item shall be separately announced by the presiding officer, or the secretary, for purposes of discussion and consideration. To announce an item it shall be sufficient to identify the item by the number assigned and summary provided by the secretary.

§85-14-7. Discussion.

7.1. The presiding officer shall control the discussion of the Board on each Agenda item to assure full participation in accordance with these rules.

a. A Member or Advisory Member shall speak only after being recognized by the presiding officer. A Member or Advisory Member recognized for a specific purpose shall limit his or her remarks to that purpose. A Member or Advisory Member, after being recognized, shall not be interrupted except by the presiding officer to enforce these rules.

b. Each Member and Advisory Member shall limit his or her remarks to a reasonable length.

c. The presiding officer as a Member of the Board may enter into any discussion. The presiding officer has the right to close debate and speak last on any item.

7.2. Closing debate. Discussion may be closed on any item by the presiding officer. Such closure may be reversed by a vote of six (6) Members of the Board.

§85-14-8. Motions; voting.

8.1. Motion to act on matters. At any appropriate place on the Agenda, any Member of the Board may make a motion for the Board to act upon any matter if the motion is germane to the matter then under consideration.

8.2. Motion required. All action requiring a vote shall be moved by a Member and seconded by a different Member of the Board.

8.3. Recording names of moving members. The secretary shall record the name of the Board Member moving and seconding each motion.

8.4. Call for vote. At the conclusion of debate, the presiding officer shall call for a vote: Provided, That an affirmative vote of six (6) Members may require a vote at any time.

8.5. Prevailing vote required; Vote by Proxy Prohibited. The vote of six (6) Members of the Board shall be necessary to take any action.

8.6. Motion to reconsider. A motion to reconsider must be made by a Member who was on the prevailing side in the original action.

§85-14-9. Proceeding to be Open; Exceptions; Executive Session Permitted.

9.1. All meetings of the Board shall be open to the public; Except that, an executive session closed to the public may be held during a regular or emergency meeting, after the presiding officer has identified the authorization under W. Va. Code §6-9A-4 for the holding of such executive session and has presented it to the Board and to the general public, but no decision shall be made in such executive session.

9.2. An executive session may be held only upon an affirmative vote of six (6) Members for the following (as stated in W. Va. Code §6-9A-4) reasons:

a. Matters of war, threatened attack from a foreign power, civil insurrection or riot; or

b. The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any public officer or employee, or other personnel matters, or for the purpose of conducting a hearing on a complaint against a public officer or employee, unless such public officer or employee requests an open meeting; or

c. The issuance, effecting, denial, suspension or revocation of a license, certificate or resignation under the laws of this State or any political subdivision, unless the person seeking such

license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting; or

d. The physical or mental health of any person, unless such person requests an open meeting; or

e. Matters which, if discussed in public, would be likely to affect adversely the reputation of any person; or

f. The development of security personnel or devices; or

g. Matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving competition which, if made public, might adversely affect the financial or other interest of the state or any political subdivision.

9.3. The Board may limit the number of members of the public present for a meeting if there is not room enough for all members of the public who wish to attend. This limitation may take the form of a limit on the number of members of the public present or the amount of time individual members of the public may remain, or both.

9.4. The chairperson is authorized to order the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised.

9.5. Upon an affirmative vote of six (6) Members, members of the public may be permitted to address the Board for a reasonable length of time or for such time as is fixed by the Board. Members of the public desiring to address the Board shall indicate their desire to do so by marking the register of attendance accordingly; Provided that, such person shall not be required to register to address the Board more than fifteen minutes prior to the time the scheduled meeting is to commence.

9.6. All members of the public present for a meeting of the Board shall indicate their presence by signing their name to a register of attendance which may also require the giving of each such person's address and who such person is representing. The register of attendance shall also provide a place for members of the public who wish to address the Board to so indicate.

§85-14-10. Citizen's right to address Board.

10.1. Persons other than Members and Advisory Members shall be permitted to address the Board only upon specific Agenda items, which may include an Agenda item called "General Public Comment Period."

10.2. Persons desiring to address the Board shall register to speak prior to the start of the Board meeting. The form for registration shall require the following information: (1) name of the person, (2) mailing address, (3) telephone number where the person may be reached during the day, (4) the person's group affiliation, if any, and (5) the Agenda item to which the person desires to speak. If the person does not desire to speak to a particular Agenda item, the person shall identify the subject matter about which he or she wishes to speak.

10.3. A person desiring to address the Board shall, after being recognized, step to the podium, state his or her name, address, and group affiliation (if any), and speak clearly into the microphone.

10.4. Time limits. Citizens shall be limited to five minutes speaking time per item, unless additional time is granted by the presiding officer. Total citizen in-put on any subject under Board

consideration can be limited to a fixed period by the presiding officer. An affirmative vote of six (6) Members may extend the time limitations of this rule.

10.5. This rule shall not apply to persons whom the Board has asked to come and address the Board. They shall have such time as the presiding officer or the Board allows for the presentation, including any question and answer period.

10.6. Remarks of citizens to be germane.

a. Citizen comments must be directed to a specific item on the Agenda, unless the comments are offered during a general public comment period when the public may comment on any aspect of the work of the Board.

b. The presiding officer shall rule on the germaneness of citizen remarks. The ruling may be initiated by the presiding officer or pursuant to a point of order raised by a Member or Advisory Member of the Board.

c. Citizens making personal, impertinent, or slanderous remarks shall be barred by the presiding officer from further comment before the Board during that meeting.

10.7. Matters not on Agenda. An affirmative vote of six (6) Members may allow citizens who wish to raise a matter not on the Agenda to speak.

10.8. With regard to exempt legislative rules, a member of the public may request the Board hold a public hearing on the Rule no later than fifteen (15) days from the date the Rule is filed for public comment with the Secretary of State's office. Requests may be made submitted to the Commission contact person identified on the "Notice of a Comment Period on a Proposed Rule." Whether a public hearing is held is within the sole discretion of the Chairperson.

§85-14-11. Subcommittees.

11.1. There shall be the following subcommittees: 1) Audit; 2) Claims; 3) Finance and Administration 4) Risk Management; and 5) Executive. Each subcommittee shall consist of three (3) Members. The chairperson shall designate each subcommittee's membership and chairperson. In addition, the Board chairperson may designate the subject matter to be considered by each such subcommittee and may create additional subcommittees. Only those Members assigned to the Subcommittee shall be required to attend a meeting of the subcommittee.

11.2. The Chairperson, in his or her discretion, may appoint Advisory Members as non-voting members of subcommittees

11.3. As set forth in paragraph 4.12, in an effort to achieve desired efficiencies, the Chairperson will endeavor to set the meetings of the full Board in the afternoon with any necessary subcommittee meetings to take place in the morning of the same day.

§85-14-12. Minutes.

12.1. The Board shall provide for the preparation of written minutes of all its meetings. All such minutes shall be available to the public within a reasonable time after the meeting and shall include the following information:

a. The date, time and place of the meeting;

- b. The name of each Member and Advisory Member present or absent;
- c. All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- d. The results of all votes and, upon request of a Member, the vote of each Member, by name.

12.2. Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with the provisions of W. Va. Code §6-9A-4 listed above.

§85-14-13. Records of the Board - Public.

Records of the Board are public records that may be inspected in accordance with W. Va. Code §29B-1-3 and copied at a charge reasonably calculated by the Commission to recover its reasonable costs associated with the production of documents.

