



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Workers Compensation

TITLE-SERIES: 85-13

RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Procedural Rules for the Industrial Council

CITE STATUTORY AUTHORITY: W.Va. Code 6-9A-3, 23-2C-5 and 29A-3-3

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

March 10, 2022

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

**Allen R Prunty -- By my signature, I certify that I am the person authorized to file
legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 85
PROCEDURAL RULE
WORKERS' COMPENSATION RULES OF THE
WEST VIRGINIA INSURANCE COMMISSIONER

SERIES 13
PROCEDURAL RULES FOR THE INDUSTRIAL COUNCIL

§85-13-1. General.

1.1. Scope. -- The West Virginia Open Governmental Proceedings Law, notably at W. Va. Code §6-9A-3, requires 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, 23-2C-5 and 29A-3-3.

1.3. Filing Date. -- March 10, 2022.

1.4. Effective Date. -- March 10, 2022.

§85-13-2. Application and Enforcement.

2.1. Application. This procedural rule applies to the Workers' Compensation Industrial Council created pursuant to W. Va. Code §23-2C-5. The enforcement of this rule is vested with the Chairperson of the Council.

2.2. Except as specifically required by this rule, the Council 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 three (3) Members of the Council.

§85-13-3. Definitions.

3.1. "Advisory Member" means a non-voting member as more fully set forth in W. Va. Code §23-2C-5(b).

3.2. "Chairperson" means the member elected as provided for by W. Va. Code §23-2C-5(b)(2)(D).

3.3. "Commissioner" means the West Virginia Insurance Commissioner.

3.4. "The Council" means the Workers' Compensation Industrial Council created under W. Va. Code §23-2C-5.

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

3.6. "Meeting" means the convening of the Council 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 W. Va. Code §23-2C-5(b)(3)(A), subcommittee meetings shall meet the definition of "Meeting" for those Members required to attend the subcommittee meeting: *Provided*, That when subcommittee meetings are held on the same day as a full Council meeting, Members may only receive compensation for the attendance of one meeting.

3.7. "Member" means a voting member of the Council as more fully set forth in W. Va. Code §23-2C-5(b).

3.8. "Presiding Officer" means the Chairperson or, in the absence of the Chairperson, the Vice-Chairperson. If both the Chairperson and Vice-Chairperson are absent, the presiding officer is the person elected pursuant to sections 6.1 and 6.2 of this rule.

3.9. "Quorum" means the presence of three (3) Members of the Council as provided for in W. Va. Code §23-2C-5(b)(2)(D).

§85-13-4. Meetings; Rules of Order; Selection of Vice-Chairperson.

4.1. Meetings of the Council may be called by the Chairperson, and the Chairperson shall call a meeting upon the request of at least three (3) Members: *Provided*, That the Council 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, Advisory Members and a reasonable number of public observers and participants. The Chairperson may elect to hold meetings in-person or virtually via videoconferencing or teleconferencing, or by a combination thereof, but is not required to permit virtual attendance options. The Chairperson may allow virtual public participation at his or her discretion.

4.2. The Chairperson, or his or her designee, 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, or his or her designee, shall notify the public and the news media by filing with the office of the Secretary of State an electronic public notice of the meeting. The notice shall be filed in a manner so as to allow each notice to appear on the Secretary of State's website at least five (5) business days prior to the date of the meeting. The public notice shall contain the time, the place, and purpose of the meeting. The Commissioner shall also post public notice of the meeting in an easily identifiable place on his or her public website.

4.4. The provisions of sections 4.1, 4.2 and 4.3 of this rule shall not apply in the event of an emergency requiring immediate official action by the Council. In the event of an emergency requiring immediate official action, the Council 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. The Commissioner shall also post public notice of an emergency meeting in an easily identifiable place on his or her public website as soon as reasonably practical prior to the meeting.

4.5. Meetings may be continued to a set time and place by an affirmative vote of three (3) 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 Council.

4.7. The Council 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.

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

4.9. Members shall select a Member to serve as Chairperson and another Member to serve as 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 (1) year, from July 1 to June 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 Commissioner, or his or her designee, shall serve as secretary of the Council.

4.10. A Member participating virtually in a meeting, whether through teleconferencing or videoconferencing, may vote for or against any motion offered by a Member that is seconded by another Member.

4.11. In an effort to achieve desired efficiencies, the Chairperson will endeavor to set the meetings of the full Council on the same day with any necessary subcommittee meetings.

§85-13-5. Agenda.

5.1. Prior to each regular meeting, the Commissioner, or his or her designee, shall publish an agenda that contains all items the Council anticipates acting upon at the meeting. The Council may adopt the agenda as presented or may amend the agenda.

5.2. The Commissioner may utilize, for purposes of accomplishing his or her secretarial duties under this rule, clerical staff designated by the Offices of the Insurance Commissioner. This utilization may include, but is not limited to, the designation of staff to receive proposed agenda items, preparation of the agenda, recording and preparation of minutes, and all necessary public filing duties.

5.3. Agenda deadline. Any Member or Advisory Member may have an item included on the agenda by requesting the Commissioner, or his or her designee, to include the item by 5:00 p.m. on the Tuesday preceding the Wednesday by which the agenda must be filed with the Secretary of State's Office for publication on the Secretary of State's website in order to comply with the open meetings laws of this State.

5.4. Notice of Meeting. The Commissioner, or his or her designee, shall electronically file a notice of each Council meeting with the Secretary of State for publication on the Secretary of State's website. Each notice shall be filed in a manner to allow it to appear on the Secretary of State's website at least five (5) business days prior to the date of the meeting. When calculating the days, the day of the meeting is not to be counted. If a meeting notice is filed anytime other than during the Secretary of State's regular business hours, the date of filing will be considered the next business day.

5.5. Items requested or filed after the deadline for electronically filing the agenda with the Secretary of State's Office shall not be included on the agenda unless a Member or Advisory Member deems the item of sufficient urgency to warrant immediate Council action. These items shall be designated as

“Extra” items and will be considered at the end of the regular agenda. The Commissioner, or his or her designee, shall record on the Extra item the name of the sponsoring Member or Advisory Member.

5.6. 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 electronic filing of the agenda with the Secretary of State’s Office.

5.7. A Member or Advisory Member wishing the Council 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 Council may consider on the agenda item.

§85-13-6. Opening the Meeting.

6.1. Call to order. The Chairperson or Vice-Chairperson of the Council shall call the meeting to order at the appointed hour. In the absence of the Chairperson or Vice-Chairperson, the Commissioner shall call the meeting to order and a temporary presiding officer shall then be selected as set forth under section 6.2 of this rule.

6.2. Presiding officer. The Chairperson, or in the Chairperson’s absence or incapacity, the Vice-Chairperson, shall be the presiding officer at the meeting of the Council. If both the Chairperson and the Vice-Chairperson are absent, the Commissioner, or his or her designee, shall call the meeting to order and the Members present shall select a presiding officer by a majority vote of present Members. In the absence of such vote, the Commissioner, or his or her designee, shall remain and continue to be the presiding officer of the meeting.

6.3. Roll call. Before proceeding with the business of the Council, the Chairperson shall call the roll of Members and Advisory Members present, and ensure that the names are recorded in the minutes of the meeting. The Chairperson or presiding officer 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 numerical order. Each agenda item shall be separately announced for purposes of discussion and consideration.

§85-13-7. Discussion.

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

7.1.1. 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.

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

7.1.3. The presiding officer 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 three (3) Members.

§85-13-8. Motions; Voting.

8.1. Motion to act on matters. At any appropriate place on the agenda, any Member may make a motion for the Council 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 Council.

8.3. Recording names of moving Members. The Commissioner, or his or her designee, shall record for the official minutes the name of the Council 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 three (3) Members may require a vote at any time.

8.5. Prevailing vote required; Vote by Proxy Prohibited. The vote of three (3) Members 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.

§85-13-9. Proceeding to be Open; Exceptions; Executive Session Permitted.

9.1. All meetings of the Council 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 Council and to the general public. No decision by the Council may be made in the executive session.

9.2. An executive session may be held only upon an affirmative vote of three (3) Members for the following reasons (as set forth in W. Va. Code §6-9A-4):

9.2.1. To consider matters of war, threatened attack from a foreign power, civil insurrection or riot;

9.2.2. To consider:

9.2.2.a. Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee or prospective public officer or employee requests an open meeting;

9.2.2.b. For the purpose of conducting a hearing on a complaint, charge or grievance against a public officer or employee, unless the public officer or employee requests an open meeting. General personnel policy issues may not be discussed or considered in a closed meeting. Final action by a public agency having authority for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of an individual shall be taken in an open meeting;

9.2.3. To issue, effect, deny, suspend or revoke 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;

9.2.4. To consider the physical or mental health of any person, unless such person requests an open meeting;

9.2.5. To discuss any material the disclosure of which would constitute an unwarranted invasion of an individual's privacy such as any records, data, reports, recommendations or other personal material of any educational, training, social service, rehabilitation, welfare, housing, relocation, insurance and similar program or institution operated by a public agency pertaining to any specific individual admitted to or served by the institution or program, the individual's personal and family circumstances;

9.2.6. To plan or consider an official investigation or matter relating to crime prevention or law enforcement;

9.2.7. To develop security personnel or devices;

9.2.8. To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the state or any political subdivision. Information relied on during deliberations on matters involving commercial competition are exempt from disclosure under the open meetings requirements of this article only until the commercial competition has been finalized and completed. However, information that is not subject to release pursuant to the West Virginia Freedom of Information Act does not become subject to disclosure as a result of executive session; or

9.2.9. To discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record within the meaning of the Freedom of Information Act as set forth in W.Va. Code §29B-1-1 *et seq.*

9.3. The Council 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 presiding officer 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 three (3) Members, members of the public may be permitted to address the Council for a reasonable length of time or for such time as is fixed by the Council. Members of the public desiring to address the Council 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 Council more than fifteen (15) minutes prior to the time the scheduled meeting is to commence.

9.6. All members of the public present for a meeting of the Council 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. If a member of the public is attending a meeting virtually, the person should indicate his or her presence verbally or through a chat or message function if participating through videoconferencing. Persons desiring to address the Council will also be required to provide the information set forth in section 10.2 of this rule.

§85-13-10. Citizen's Right to Address Council.

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

10.2. Persons desiring to address the Council shall register to speak prior to the start of the Council 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. If a member of the public is attending a meeting virtually, the person should register by providing the information required herein through electronic mail, fax, through a chat or message function if participating through videoconferencing, or by any other means acceptable to the Council.

10.3. A person desiring to address the Council shall, after being recognized, 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 (5) minutes speaking time per item, unless additional time is granted by the presiding officer. Total citizen input on any subject under Council consideration can be limited to a fixed period by the presiding officer. An affirmative vote of three (3) Members may extend the time limitations of this rule.

10.5. The time limits set forth in section 10.4 of this rule do not apply to persons whom the Council has asked to come and address the Council. Such persons shall have as much time as the presiding officer or the Council allows for the presentation, including any question-and-answer period.

10.6. Remarks of citizens to be germane.

10.6.1. 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 Council.

10.6.2. 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.

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

10.7. Matters not on agenda. An affirmative vote of three (3) 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 Council 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 submitted to the Council or the Commissioner's 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.

§85-13-11. Subcommittees.

11.1. The Council shall establish such subcommittees as it may from time to time determine are needed. Each subcommittee shall consist of at least two (2) Members. The Chairperson shall designate each subcommittee's membership and chairperson. In addition, the Chairperson may designate the subject matter to be considered by each such subcommittee. 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.

§85-13-12. Minutes.

12.1. The Council 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 their approval by the Council and shall include the following information:

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

12.1.2. The name of each Member and Advisory Member present or absent;

12.1.3. All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and

12.1.4. 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.

§85-13-13. Records of the Council - Public.

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