

NEBRASKA DEPARTMENT OF ADMINISTRATIVE SERVICES

NOTICE OF PUBLIC HEARING

December 23, 2020

1:00 p.m. Central Time

Fourth Floor – Conference Room D

1526 K Street, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to the State Claims Board Rules and Regulations. The purpose of the proposed changes is to eliminate provisions that mirror statute(s), reduce regulatory burden, and to simplify and clarify the rules. There is no expected fiscal impact on state agencies, political subdivisions, or persons being regulated.

The proposed rules as amended are available at the offices of the Secretary of State, Regulations/Licensing Division, Room 1305, State Capitol, Lincoln, Nebraska 68509, and online at <http://www.sos.ne.gov>.

All interested persons are invited to attend and make oral or written comments at the hearings. Interested persons may also submit written comments prior to the hearings, which will be made part of the hearing record at the time of the hearing if received by the Department of Administrative Services on or before the hearing time on December 18, 2020. Written comments should be sent to the General Counsel of the Department of Administrative Services by mail to 1526 K Street, Suite 140, Lincoln, Nebraska 68509 or by email to amara.block@nebraska.gov.

Due to COVID-19, members of the public may participate in the public hearing by calling the phone conference line at 888-820-1398; Participant Code 8181679#.

Reasonable accommodations will be provided to persons with disabilities by contacting Amara Block at (402) 471-4114 or amara.block@nebraska.gov by December 17, 2020.

FISCAL IMPACT STATEMENT

Agency: DAS	
Title: Unknown	Prepared by: Kenny Zoeller
Chapter: N/A	Date prepared: 8/28/2020
Subject: State Claims Board Rules & Regulations	Telephone: 531-207-2944

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	()	()	()
Decreased Costs	()	()	()
Increased Revenue	()	()	()
Decreased Revenue	()	()	()
Indeterminable	()	()	()

Provide an Estimated Cost & a Description of Impact:

State Agency:

Political
Subdivision:

Regulated
Public:

If indeterminable, explain why:

TITLE 13 STATE CLAIMS BOARD

CHAPTER 1 REVIEWAL OF CLAIMS

001. DEFINITIONS.

001.01 BOARD. Means the State Claims Board.

001.02 RISK MANAGER. Means Risk Manager of the State of Nebraska.

001.03 ATTORNEY GENERAL. Means the Attorney General or his or her designee.

002. MEETING OF THE BOARD. The Board will have no fixed meeting date, but is subject to call by the Chairman, the Risk Manager or a majority of the Board, at a time and place designated by the one making said call.

003. ORDERS OF BOARD. The Board is considered in continuous session for the purpose of entering orders, issuing determinations, and making awards.

004. QUORUM. A majority of the membership of the Board will constitute a quorum for the transaction of all business, except that any award of \$10,000 or more will require approval of all members of the Board.

005. DESIGNATION BY NUMBER. The Risk Management Office is to assign a number to each claim.

006. CONTENTS OF CLAIM. Claims are to be completed per the Risk Management Standard Operating Procedures guides located on the State Risk Management Website.

007. INSPECTION OF CLAIMS. Claims and any documents or affidavits filed in connection with claims may be inspected and copied in the office of Risk Management by persons having an interest in the claim. All material supplied by the claimant, except the claim itself, will be kept confidential by the Risk Management, the Board, the Attorney General and any employees of any such persons until the first meeting of the Board, when the Board may decide that it is in the State's and claimant's best interest to continue such confidence, but this is to be done only where great harm would result from opening said file to anyone interested.

008. NOTICE. The Risk manager will notify the claimant of the time, date and place of hearing by direct mail, not less than ten but no more than thirty days, before the hearing date. Upon good cause shown, the Board may reschedule any hearing and the Risk Manager is to cause notice of such rescheduling to be mailed to the claimant.

009. VENUE. Hearings will be conducted in Lancaster County at the place designated by the Board.

010. RELEASE. The Risk Manager is to transmit, with notification of the determination, a release of the claim in consideration of the amount of the award fixed by the Board. The release will be on a form approved by the Attorney General.

011. ALLEGATIONS DENIED.

011.01 STATE DISCRETION. The State, at its discretion, may not answer a claim.

011.02 UNANSWERED CLAIMS. If the State fails to answer a claim all allegations contained therein are construed as denied.

012. INVESTIGATIONS. Upon receipt of said copy, the Attorney General will fully investigate the claim. They are ex officio empowered to administer oaths or to take testimony in the form of affidavits, depositions or oral or written interrogatories, or otherwise. In the event that the Board calls for a hearing upon the claim, the Attorney General may compel the attendance of witnesses and certify to any District Court for contempt.

013. NOTICE. The Risk Manager will notify the claimant of the time, date and place of hearing by direct mail not less than ten nor more than thirty days before the said hearing date. Upon good cause shown, the Board may reschedule any hearing and the Risk Manager will cause notice of such rescheduling to be mailed to the claimant as aforesaid.

014. HEARING PROCEDURE.

014.01 Hearings will be conducted under the rules of statutory and common law, with the right reserved in the Board to exercise discretion in relaxing therefrom. The Board will regulate the conduct of the hearing and of the parties and maintain order.

014.02 Claimant has the right to be represented by counsel. Only claimants or their designated counsel may speak at a hearing.

014.03 The Attorney General represents the State and has all rights afforded claimant.

014.04 Continuances may be granted by the Board for good cause at their discretion.

015. ACCEPTANCE. Return of the release properly executed by the claimant may constitute acceptance of the award in full settlement of the claim. In the event the claim is of two or more persons, each will separately execute the release; however, their attorney of record may by his execution on their behalf make a binding release for all of the claimants.

STATE CLAIMS BOARD

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~~STATE CLAIMS BOARD~~

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RULE NO. 1 - DEFINITIONS

As used in these rules and regulations: ~~"Board" means the State Claims Board; "Secretary" means the Secretary of the State Claims Board; "Attorney General" means the Attorney General of the State of Nebraska and his Deputy Attorney General, Claims Division, or any other attorney designated by either of them to act on their behalf to investigate, negotiate, try or in any other manner represent the State or its agencies concerning said claims; "Hearing Officer" means such person or persons as are duly designated by the Board to conduct hearings on behalf of the Board. The Hearing Officer can be a single member of the Board itself or its Secretary; "Claimant" means the person or persons, corporation, partnership, and their attorney, provided only that where in these rules it is clearly set out that the claimant or claimants themselves are referred to as distinguished from his attorney; other terms used herein are to be given such meaning as conforms to the wording and intent of Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

Source: ~~Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 2 -- MEETINGS OF BOARD~~

~~The Board shall have no fixed meeting date, but is subject to call by the Chairman, or the Secretary or a majority of the Board, at a time and place designated by the one making said call.~~

Source: ~~Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 3 -- ORDERS OF BOARD~~

~~The Board shall be considered in continuous session for the purpose of entering orders, issuing determinations, and making awards.~~

Source: ~~Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 4 -- QUORUM~~

~~A majority of the membership of the Board shall constitute a quorum for the transaction of all business, except that any award of \$5,000.00 or more shall require approval of all members of the Board.~~

Source: ~~Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 5 -- AWARDS~~

~~Besides the approval of the Board all awards shall have the approval of the Attorney General and any award of \$5,000.00 or more shall also have the approval of the District Court of Lancaster County.~~

Source: ~~Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 6 – FILING OF CLAIMS~~

~~Claims shall be filed in triplicate with the Secretary of the Board, State Capitol Building, State House Station, Lincoln, Nebraska 68509.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 7 – FORM OF CLAIM~~

~~All claims should be typewritten and upon a form provided by the Board, but claims printed by hand upon the Board's form will be accepted if legible. If sufficient space is not provided on the supplied form, claimant may use additional sheets provided they are also provided in triplicate.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 8 – VERIFICATION~~

~~Claims shall be verified.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 9 – ATTORNEY~~

~~Claims shall state the name and address of claimant's attorney, if any.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 10 – NAMES~~

~~If there are more than one claimant, names and addresses of those not signing the claim shall be given and the nature and amount of their interest in the claim shall be stated.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 11 - DESIGNATION BY NUMBER~~

~~The Secretary shall assign a number to each claim, and thereafter the claim may be transferred by such number. Tort Claims shall be assigned four digit numbers. All other claims shall be designated as Miscellaneous Claims and shall be given three digit numbers. Claimants have the right to appeal to the District Court tort claims denied or reduced by the Board. Miscellaneous claims cannot be appealed to the courts but may be subjected to legislative review. Claimant must inform the secretary if dissatisfied with designation, requesting the board to reconsider.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 12 - CONTENTS OF CLAIM~~

~~All claims shall contain all information called for on the Board's "Claim for Injury or Damage" form, including the instructions printed on the back of the blue sheet of the form set, and also such other information as is pertinent to the claim.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 13 - ALLEGATIONS DENIED~~

~~No answer to a claim shall be required of the State, and allegations of the claim shall be treated as denied.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 14 - INSPECTION OF CLAIMS~~

~~Claims and any documents or affidavits filed in connection with claims may be inspected and copied in the office of the Secretary by persons affected or interested in the subject matter thereof, except upon special request of the claimant or his attorney all material supplied by the claimant, except the claim itself shall be kept confidential by the Secretary, the Board, the Attorney General and any employees of any such persons until the first meeting of the Board, when the Board may decide that it is in the State's and claimant's best interest to continue such confidence, but this is to be done only where great harm would result from opening said file to anyone interested.~~

~~Source: Sections 81-8,209 through 81-239, R.R.S., 1943.~~

~~RULE NO. 15 -- INVESTIGATIONS~~

~~Upon receipt of said copy, the Attorney General shall fully investigate the claim. He shall ex officio be empowered to administer oaths or may take testimony in the form of affidavits, depositions or oral or written interrogatories, or otherwise. In the event that the Board calls for a hearing upon the claim, he may compel the attendance of witnesses and certify to any District Court for contempt.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S. 1943.~~

~~RULE NO. 16 -- NOTICE~~

~~The Secretary shall notify the claimant of the time, date and place of hearing by direct mail not less than ten nor more than thirty days before the said hearing date. Upon good cause shown, the Board may reschedule any hearing and the Secretary shall cause notice of such rescheduling to be mailed to the claimant as aforesaid.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 17 -- VENUE~~

~~Hearings shall be conducted in Lancaster County in the place designated by the Board, provided, however, that on application by the claimant or the Attorney General, the Board may, on good cause shown, designate a place not within Lancaster County.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 18 -- HEARING PROCEDURE~~

~~Hearings shall be conducted under the rules of statutory and common law, with the right reserved in the Board to exercise discretion in relaxing therefrom, unless request is made pursuant to Section 84-914, R.R.S., 1943, in order to expedite or to aid in ascertaining the substantial rights of the parties.~~

~~The Board shall regulate the conduct of the hearing and of the parties, and maintain order.~~

~~Claimant shall have the right to be represented by counsel. The Attorney General shall represent the State and shall have all rights afforded claimant.~~

~~Continuances may be granted by the Board for good cause at their discretion.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 19 – HEARING OFFICER~~

~~The Board may appoint one or more persons, including one of its members or the Attorney General, to act as a Hearing Officer to conduct hearings at places or times designated by the Board. The Hearing Officer shall conduct hearings in the same manner and under the same rules as hearings are conducted by the Board. The Hearing Officer shall, however, have a tape or stenographic record made of the hearing before him.~~

~~The Hearing Officer shall after the hearing make a prompt written report to the Board of his findings of fact, conclusion of law and recommendations.~~

~~The Board after evaluation of said report shall determine whether liability exists, and if so, the amount of damages in money to be awarded as compensation. In making this determination the Board may in their discretion review a transcription of the record made at the hearing together with all exhibits.~~

~~Source: — Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 20 – DETERMINATION~~

~~The Board at the conclusion of the hearing shall determine whether liability exists, and if so, the amount of damages in money to be awarded as compensation.~~

~~Source: — Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 21 – NOTIFICATION~~

~~The Secretary shall notify the claimant, in writing, of the Board's determination and of the amount of the award, if any.~~

~~Source: — Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 22 – RELEASE~~

~~The Secretary shall transmit, with notification of the determination, a release of the claim in consideration of the amount of the award fixed by the Board. The release shall be on a form approved by the Attorney General.~~

~~Source: — Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 23 -- ACCEPTANCE~~

~~Return of the release properly executed by the claimant shall constitute acceptance of the award in full settlement of the claim. In the event the claim is of two or more persons, each shall separately execute the release; however, their attorney of record may by his execution on their behalf make a binding release for all of the claimants.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 24 -- ATTORNEY FEES~~

~~Where claimant is represented by an attorney the Board shall determine the amount of the attorney's fee to be paid out of the award, but said fee may be finally determined only after the attorney has submitted to the Board his proposed charge.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 25 -- WARRANT~~

~~If the Board determines the claimant's attorney's fees to be reasonable and the release properly executed the Secretary shall cause the issuance of a warrant in the amount of the award, payable to claimant and to his attorney, if he has one.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 26 -- AWARDS OF MORE THAN \$5,000.00~~

~~Any claim which is comprised, settled, or allowed in an amount of more than \$5,000.00 shall have the unanimous approval of all the members of the Board and the Attorney General, and the Attorney General shall make application of approval of the District Court for Lancaster County. The claimant may join in such application. The fees of the Clerk of the District Court for such application shall be paid by the Board.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 27 -- SUIT~~

~~In the event the determination and the award, if any, are not acceptable to claimant, or if the Board makes no final disposition of the claim within six (6) months after it is filed, claimant may instigate suit against the State.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 28 – REPRESENTATION~~

~~Only duly licensed attorneys at law may practice in or before the hearing officers designated by the Board, but a claimant may represent himself.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 29 – AWARDS AND JUDGMENTS~~

~~Any award or judgment in excess of \$50,000.00 may be paid by the Secretary only to the amount of \$50,000.00 and the balance shall remain unpaid until it has been reviewed by the Legislature and specific appropriation is made therefor, nor shall the Secretary cause any award, compromise, settlement or judgment to be paid except from the Tort Claims Fund and if said fund shall become insufficient to make payment, satisfaction of the sum allowed shall be made after further appropriation by the Legislature.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 30 – LEGISLATIVE ACT~~

~~These rules and regulations are made in conformity with the authority granted to the Board by the State Tort Claims Act (Sections 81-8,209 through 81-8,239, R.R.S., 1943) and are intended to be in complete accord with the terms and conditions of said Act any discrepancy or inconsistency therewith by these rules or ambiguity of these rules shall be considered only in such manner as shall be compatible with the Act.~~

~~Source: Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 31 – NON-TORT CLAIMS~~

~~The Board shall receive and investigate non-tort claims for the payment of which no money has been appropriated and all requests on behalf of any department, board, or commission of the State for a waiver or cancellation of money or charges when necessary for fiscal or accounting purposes, the Secretary shall file such claims designating them by number, name or claimant, and short title. If the Board deems a hearing necessary or advisable it shall give to the claimant at least ten (10) days' notice, by direct mail, of the time and place of hearing. The Board shall have the right, power and duty to administer oaths, compel the attendance of witnesses and production of documentary evidence, and to punish for the disobedience of its subpoenas issued for these purposes. After investigation the Board shall either approve, approve with conditions or limitations or disapprove of each claim or request, and it shall make a report of its investigation and finding and together with the claim and original papers supporting it, deliver them to the chairman of the appropriate committee of the next Legislature convening after the filing of the claim or request.~~

Source: ~~Sections 81-8,209 through 81-8,239, R.R.S., 1943.~~

~~RULE NO. 32--WORKMEN'S COMPENSATION IN STATE AGENCIES~~

~~(1) — These rules and regulations are made in conformity with the authority granted to the Board under Sections 48-192 to 48-1,109, R.R.S., 1943, and are intended to be in complete accord with the terms and conditions of said sections. They are also intended to be in full accord with the other sections comprising Article I, Chapter 48, R.R.S., 1943, and Supplements thereto, with Sections 81-8,209 to 81-8,239, R.R.S., 1943, and amendments thereto and also with the Rules of Procedure of the Nebraska Workmen's Compensation Court. Any discrepancy or inconsistency of these rules and regulations with any of the above statutes or rules shall be void, but in interpreting them any seeming inconsistency or ambiguity of these rules shall be considered only in such manner as shall be compatible with the above mentioned statutes and rules of procedure.~~

~~(2) — All state agencies included under the provisions of said Sections 48-192 to 48-1,109, R.R.S., 1943, upon the injury or death of an officer or employee of said agency which is caused by accident or occupational disease arising out of and in the course of employment, except accidents caused by, or resulting in any degree from the employee's willful negligence or where said officer or employee of the agency has reported or claimed to have had such accident and injury or occupational disease, shall report by filing two copies of Form 1 of the Nebraska Workmen's Compensation Court, which form is entitled, "First Report of Alleged Accident or Occupational Disease," with the Claims Clerk of the State Claims Board (present address of the Claims Clerk is P.O. Box 94819, State Capitol, Lincoln, Nebraska 68509). The Claims Clerk will immediately forward one copy of said form to the Nebraska Workmen's Compensation Court. The agency shall also inform the Claims Clerk as to the name and address of the physician or hospital to whom the employee was referred or where treatment was received. The agency shall also report to the Claims Clerk the time of disability of the employee and full and complete information concerning time missed from work by reason of said injury and times and dates of returning to work. The agency shall further inform the Claims Clerk as to the financial fund to which plaintiff's regular salary is charged.~~

~~(3) — The Claims Clerk, after determination by the Attorney General that the injury and circumstances are such as to be within the purview of LB 390, shall open a separate file for the employee relating to this injury, numbering the same, and shall then notify the attending physician of the responsibility of the State for the payment of necessary and reasonable medical services and shall send proper forms to the physician for making necessary preliminary periodic and final reports. Payment of all medical and hospital expenses shall be made by voucher by the Claims Clerk against the Workmen's Compensation Claims Fund but only after approval of the Attorney General.~~

~~(4) — Upon the final payment of medical and hospital expense and of any compensation which may be payable to the employee, the Claims Clerk shall report to the Workmen's Compensation Court upon a Form 4 of said Court, properly showing the amount of payment, times of disability and amount of compensation paid to the employee.~~

~~(5) — The Claims Clerk shall also report monthly to the Workmen's Compensation Court on their Form 3, labeled "Periodical Statement," the name of the employee, the date of the~~

~~particular accident, the weeks of compensation allowed and the amount of payments for compensation, medical and hospital expenses as called for on said form.~~

~~(6) — Compensable injuries and diseases to officers and employees of such state agencies as are designated by the State Claims Board with the approval of the Workmen's Compensation Court shall be handled directly by said agency in the manner hereinafter designated.~~

~~(7) — In all cases where suits are brought in the Nebraska Workmen's Compensation Court, the suit shall be handled on behalf of the State by the Attorney General and in such manner as is set out in Article 1 of Chapter 48, R.R.S., 1943, and amendments thereto.~~

~~(8) — In the event of compensable injury or disease of an employee resulting in loss of time for which Workmen's Compensation is payable to the employee, the employing agency shall not make payment to the employee as wages, injury leave, sick leave, vacation leave or in any other manner for the amount due the employee as Workmen's Compensation. Amounts due as Workmen's Compensation shall be paid to the employee as such by the Claims Clerk or by the agency as set forth in these rules, and the employee may be paid the balance of his full salary through sick leave, injury leave, or vacation time as the case may be in accordance with the personnel rules governing said agency. In this manner only are the employee's rights protected concerning income tax reductions and future allowances for sick absences.~~

~~(9) — The Board under the provisions of Section 48-196, R.R.S., 1943, may delegate the handling of workmen's compensation claims of employees to such agencies as it deems possible.~~

~~(10) — Said agencies shall send to the Secretary of the Board in each claim:~~

~~A. — Two copies of the First Report of Alleged Accident (One of which shall be filed by the Secretary with the Workmen's Compensation Court)~~

~~32-2~~

~~B. — Copy of summary card.~~

~~C. — Vouchers for payment of claims and related medical, hospital and other bills for submission to the Department of Administrative Services. Warrants received from the Department of Administrative Services shall be sent by the Secretary of the agency for proper distribution.~~

~~D. — Workmen's Compensation Court, Form 4, upon the closing of a file, or in "Medical Only" cases, an additional copy of the voucher for payment of the medical bill in lieu thereof.~~

~~E. — Copy of Compensation Court's "Periodic Report" for filing by the Secretary with the Court.~~

~~(11) — Agencies shall number each case with an eleven digit number. The first two digits being the agency number, the next two the fiscal year of the alleged accident, the next four as is desired by the agency for internal purposes and the last three digits the numerical number of said cases by that agency within the fiscal year.~~

~~(12) — Determination and acceptance of an accident or occupational disease as a workmen's compensation case shall be made by the agency, but subject to review and approval of the Attorney General. Handling and processing of reports and payments shall be made by the agency with the aid and advice of the Secretary of the Claims Board and the Attorney General with payments being made from the State Workmen's Compensation Fund. Processing and handling by an agency shall be in the same manner as is set forth in these Rules 1 through 8 except as specially modified by Rule 10.~~

~~(13) — Each agency designated by the Board to process and administer its own workmen's compensation cases under these rules shall designate one or more persons as may be necessary to properly and promptly handle the workload necessary to comply with the legal requirements of the Workmen's Compensation laws and also to administer to the need of injured employees for quick and adequate medical attention and the prompt payment of compensation benefits.~~

~~Source: — Sections 48-192 to 48-1,109, R.R.S., 1943.~~