



Board of Commissioners Special Meeting

Open Meeting

Friday, August 20, 2021 @ 8:30 AM

Virtual Meeting

211 North Broadway, 6th Floor

St. Louis, MO, 63102



Board of Commissioners Special Meeting -- August 20, 2021

Notice of Meeting and Agenda

- | | | |
|--|----------|-------------------------|
| 1. Call to Order | Approval | Vice Chair
Zimmerman |
| 2. Roll Call | Quorum | M. Bennett |
| 3. Revision to Board Policy, Section 70.020 - Compensation
(Resolution #1150) | Approval | T. Roach |
| A. Briefing Paper - 3 | | |
| B. Section 70.020 - original - 5 | | |
| C. Board Policy Section 70.020 revised - redlined copy - 6 | | |
| D. Board Policy Section 70.020 revised - clean copy - 7 | | |
| E. Resolution #1150 - 8 | | |
| 4. Amendment to Board Policy, Section 30.060 – Risk Management
(Resolution #1151) | Approval | K. Brittin |
| A. Briefing Paper - 11 | | |
| B. Board Policy Section 30.060 (2015) - 13 | | |
| C. Amendment to Board Policy Section 30.060 - redlined copy - 16 | | |
| D. Amendment to Board Policy Section 30.060 - clean copy - 19 | | |
| E. Resolution #1151 - 22 | | |
| 5. Adjournment | Approval | Vice Chair
Zimmerman |

**Bi-State Development Agency
Board of Commissioners
Special Meeting
Open Session Agenda Item
August 20, 2021**

From: Taulby Roach, President and Chief Executive Officer
Subject: **Amendment to Board Policy, Section 70.020 – Compensation**
Disposition: Approval:
Presentation: Taulby Roach, President and Chief Executive Officer

Objective:

To present to the Board of Commissioners for approval, the proposed amendment to the current Board Policy, Section 70.020 - Compensation.

Background: Board Policy Section 70.020 (B) – Additional Compensation

Bi-State Development (BSD), particularly Metro Transit, has been experiencing significant workforce shortages, especially in front-line essential roles including Call-A-Ride, MetroBus and MetroLink Operators, electricians, and mechanics. This workforce shortage is now impacting BSD's ability to provide service. In order to meet these workforce shortage challenges BSD needs the ability to implement swift and effective solutions with measures to attract and retain team members, including compensation incentives. The current Board Policy does not allow management to respond in an immediate, flexible and efficient manner. By amending the Board Policy to allow the President & CEO to inform the Board before implementation rather than seeking Board approval for each measure would enhance and improve BSD's ability to meet workforce challenges now and in the future.

Analysis:

We are proposing the following revisions to Board Policy, Section 70.020 – Compensation, to improve Agency administrative flexibility and operational efficiencies.

- Paragraph A. Policy. – Update for current department name and staff title.
- Paragraph B. Additional Compensation. – Change to allow the President & CEO to inform the Board of Commissioners before the implementation of any additional compensation.

Previous Action:

This item has not been presented to any Committee, however, due to the necessity of the proposed Board Policy revisions, the President and CEO has placed this item on the Agenda for the Board of Commissioners' Special Meeting on August 20, 2021.

Board Action Requested:

Management recommends that the Board of Commissioners approve amending Board Policy Section 70.020 – Compensation, with the recommended changes, and waive tabling of the amendment, pursuant to Board Policies, Article VI (D), to revise Board Policy Section 70.020 – Compensation, so that it is effective upon Board approval.

Funding Source:

Not Applicable.

Attachments:

Attachment A – Current Board Policy Section 70.020 - Compensation

Attachment B – Revised (redlined) Board Policy Section 70.020 - Compensation

Attachment C – Revised (clean) Board Policy Section 70.020 - Compensation

Section 70.020 Compensation *(Amended 9/26/08 and 11/21/08)*

A. Policy. *(Revised 9/26/08)* It is the policy of the Agency to maintain a compensation package, including both salary and benefits, to attract and retain outstanding employees. As a matter of routine, on an annual basis, the Human Resource Department will monitor, review and make recommendations concerning the Agency's compensation package. At least once every three years, the Human Resource Department will conduct a formal study, utilizing professional services as required, and prepare recommendations for Board approval. The recommended compensation structure will be based upon industry and applicable labor market comparisons, as well as the Agency's financial condition. Management must use qualifications and performance as the basis for compensation decisions related to hiring, promotion, transfer, demotion, advancement within the range or other internal personnel movements. In addition, the Board establishes the contractual and compensation arrangements for the President & CEO, and Director of Internal Audit.

B. Additional Compensation. *(revised 9/26/08 and 11/21/08)* Any bonuses, stipends, severance payments that are above and beyond the standard practices set forth in Metro's Human Resources Policies & Procedures Layoff and Recall Policy, or incentive compensation for any employee shall be approved by the Board of Commissioners. The Board shall approve any such payment only upon an opinion of the General Counsel that such payment is authorized under the Agency's Compact and in accordance with applicable law.

Section 70.020 Compensation (Amended 9/26/08, ~~and 11/21/08,~~ and 8/20/21)

A. Policy. (Revised 9/26/08) It is the policy of the Agency to maintain a compensation package, including both salary and benefits, to attract and retain outstanding employees. As a matter of routine, on an annual basis, the Talent Management ~~Human Resource~~ Department will monitor, review and make recommendations concerning the Agency's compensation package. At least once every three years, the Talent Management ~~Human Resource~~ Department will conduct a formal study, utilizing professional services as required, and prepare recommendations for Board approval. The recommended compensation structure will be based upon industry and applicable labor market comparisons, as well as the Agency's financial condition. Management must use qualifications and performance as the basis for compensation decisions related to hiring, promotion, transfer, demotion, advancement within the range or other internal personnel movements. In addition, the Board establishes the contractual and compensation arrangements for the President & CEO, and Chief Audit Executive ~~Director of Internal Audit~~.

B. Additional Compensation. (revised 9/26/08, ~~and 11/21/08,~~ and 8/20/21) The President & CEO shall inform the Board of Commissioners before implementation of Any bonuses, stipends, severance payments, or incentive compensation for any employee that are above and beyond the standard practices and policies of the Agency's Talent Management Department, set forth in Metro's Human Resources Policies & Procedures Layoff and Recall Policy, or incentive compensation for any employee shall be approved by the Board of Commissioners. The Board shall approve Any such payment shall be made only upon an opinion of the General Counsel that such payment is authorized under the Agency's Compact and in accordance with applicable law.

Section 70.020 Compensation *(Amended 9/26/08, 11/21/08, and 8/20/21)*

A. Policy. *(Revised 9/26/08)* It is the policy of the Agency to maintain a compensation package, including both salary and benefits, to attract and retain outstanding employees. As a matter of routine, on an annual basis, the Talent Management Department will monitor, review and make recommendations concerning the Agency's compensation package. At least once every three years, the Talent Management Department will conduct a formal study, utilizing professional services as required, and prepare recommendations for Board approval. The recommended compensation structure will be based upon industry and applicable labor market comparisons, as well as the Agency's financial condition. Management must use qualifications and performance as the basis for compensation decisions related to hiring, promotion, transfer, demotion, advancement within the range or other internal personnel movements. In addition, the Board establishes the contractual and compensation arrangements for the President & CEO, and Chief Audit Executive.

B. Additional Compensation. *(revised 9/26/08, 11/21/08, and 8/20./21)* The President & CEO shall inform the Board of Commissioners before implementation of any bonuses, stipends, severance payments, or incentive compensation for any employee that are above and beyond the standard practices and policies of the Agency's Talent Management Department. Any such payment shall be made only upon an opinion of the General Counsel that such payment is authorized under the Agency's Compact and in accordance with applicable law.

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE BI-STATE DEVELOPMENT AGENCY OF
THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT
TO APPROVE REVISIONS TO BOARD POLICY,
SECTION 70.020 - COMPENSATION**

PREAMBLES:

Whereas, the Bi-State Development Agency of the Missouri-Illinois Metropolitan District (the "Agency"/ "BSD") is a body corporate and politic, created by an interstate compact between the states of Missouri and Illinois, acting by and through its Board of Commissioners (the "Board"); and

Whereas, the Agency is authorized by Mo. Rev. Stat. §§ 70.370 et seq. and 45 Ill. Comp. Stat. 100/1 et seq. jointly referred to herein as the "Compact"); to make suitable rules and regulations consistent with its mission and not inconsistent with the constitution or laws of either state, or any political subdivision thereof; and

Whereas, Article VI of the Bylaws – Board Policies of the Agency, provides that any action by the Board establishing policy, administrative, business, or otherwise, shall be known as "Board Policies" and that the Board may adopt, amend or repeal, in whole or in part, the Board Policies at any meeting of the Board, except that unless otherwise designated by the Chair, all Board Policies shall be tabled for a period of one month and shall become effective upon adoption by the Board; and

Whereas, in an effort to improve Agency administrative flexibility and operational efficiencies it has been recommended that certain changes be made to the Board Policy, Section 70.020 - Compensation, as follows:

- Paragraph A. Policy. – Update for current department name and staff title,
- Paragraph B. Additional Compensation. – Change to allow President & CEO to inform the Board of Commissioners before implementation of any additional compensation; and

Whereas, staff has recommended that these measures be implemented as soon as approved; therefore, requiring the Board to waive tabling the proposed revisions to the Policy as provided in Article VI of the Bylaws, so that they are effective upon Board approval; and

Whereas, it is feasible, necessary and in the public interest for the Board of Commissioners to approve and adopt revisions to Board Policy, Section 70.020 - Compensation, in accordance with the terms and conditions described herein.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Findings. The Board of Commissioners hereby finds and determines those matters set forth in the preambles as fully and completely as if set out in full in this Section 1.

Section 2. Approval of Board Policy Revisions. The Board of Commissioners hereby approves and adopts revisions to Board Policy, Section 70.020 – Compensation, and waives tabling of the Section 70.020 - Compensation revisions, as provided in Article VI of the Bylaws, so that they are effective upon Board approval, under and pursuant to this Resolution and the Compact for the authorized Agency purposes set forth in the preambles hereof and subject to the conditions hereinafter provided.

Section 3. Form of the Board Policy Section 70.020 Revisions. The form of the Section 70.020 - Compensation revisions (as provided in the Attachments to the Briefing Paper and made a part hereof), substantially in the form presented to this meeting are hereby approved, and officers of the Agency, including without limitation, the President and CEO, are hereby authorized and directed to execute and deliver and attest, respectively, the Section 70.020 - Compensation revisions, with such changes, modifications, insertions and omissions as may be deemed necessary or desirable to affect the Section 70.020 – Compensation revisions with the necessity and desirability of such changes, modifications, insertions and omissions conclusively evidenced by their execution thereof.

Section 4. Actions of Officers Authorized. The officers of the Agency, including, without limitation, the President and CEO, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution and the execution of such documents or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 5. Severability. It is hereby declared to be the intention of the Board of Commissioners that each and every part, section and subsection of this Resolution shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Commissioners intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Resolution shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the intent of this Resolution.

Section 6. Rights Under Resolution Limited. No rights shall be conferred by this Resolution upon any person or entity other than the Agency, officers and employees.

Section 7. Governing Law. The laws of the State of Missouri shall govern this Resolution.

Section 8. No Personal Liability. No member of the Board of Commissioners, officer, employee or agent of the Agency shall have any personal liability for acts taken in accordance with this Resolution.

Section 9. Payment of Expenses. The Senior Vice President and CFO is hereby authorized and directed to pay or cause to be paid all costs, expenses and fees incurred in connection with or incidental to this Resolution.

Section 10. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval.

ADOPTED by the Board of Commissioners of The Bi-State Development Agency of the Missouri-Illinois Metropolitan District this 20th day of August, 2021.

In Witness Whereof, the undersigned has hereto subscribed his signature and caused the Seal of the Agency to be affixed.

**THE BI-STATE DEVELOPMENT AGENCY OF THE
MISSOURI-ILLINOIS METROPOLITAN DISTRICT**

By _____
Its _____

[SEAL]

ATTEST:

By _____
Deputy Secretary to the Board of Commissioners

**Bi-State Development Agency
Board of Commissioners
Special Meeting
Open Session Agenda Item
August 20, 2021**

From: Taulby Roach, President and Chief Executive Officer
Subject: **Amendment to Board Policy, Section 30.060 – Risk Management**
Disposition: Approval
Presentation: Kathy Brittin, Director Risk and Absence Management

Objective:

To present to the Board of Commissioners for approval, the proposed amendment to the current Board Policy, Section 30.060 – Risk Management.

Background: Board Policy Section 30.060 – Risk Management

Bi-State Development (BSD), has faced an increased number of claims, higher jury awards, and larger settlements, over the past several years. In order to promptly resolve costly claims, BSD needs to be able to settle claims more quickly as this enables more cost effective settlements. In the current Board Policy, the President and CEO can authorize settlements up to \$250,000. The current policy has not been revised since February 25, 2000. At that time, the settlement authority closely followed the Missouri Sovereign Immunity limit for damages at \$300,000, Missouri Revised Statutes, Section 537.610; however, the Missouri Sovereign Immunity limit is adjusted annually by the Missouri Department of Insurance and is currently set at \$441,130. At the present time if a Plaintiff seeks settlement above \$250,000, approval must be obtained from the Board, and often negotiations must be conducted before Board approval can be obtained. Providing the President and CEO with increased settlement authority will allow BSD to settle claims more quickly and on a more cost effective basis. This amendment seeks to adjust the President and CEO’s claims settlement authority to correspond with the annually adjusted Missouri Sovereign Immunity limit.

Analysis:

We are proposing the following revisions to Board Policy, Section 30.060 – Risk Management, to improve Agency claims handling response, litigation management and cost efficiencies.

- Paragraph C. Self-Insurance. – Punctuation: added hyphen to “self-insurance;” Deleted “...and self-administer those...” to reflect that as of 7/01/2021 BSD uses a Third Party Administrator and does not self-administer all claims.
- Paragraph D. Third Party Administrator. – This is a new paragraph to document the transition from BSD’s self-administered claims handling to a Third Party Administrator (TPA). Subsequent paragraphs were re-lettered.
- Paragraph E. Insurance. – Changed from Paragraph D to E.
- Paragraph F. Self-Insurance Fund. – Changed from paragraph E to F. Pluralized “account” and “Fund” to reflect that there are two Self-Insurance Funds: Casualty and Workers’ Compensation.

- Paragraph G. Excess Judgement Fund. – Changed from paragraph F to G. Pluralize Self-Insurance Fund.
- Paragraph H. Claim Settlement Authorization. – Changed from paragraph G to H. Deleted the \$250,000 settlement authority amount and replaced it with language to adjust settlement authority to correspond with the current Missouri Sovereign Immunity limit, which is adjusted annually by the Missouri Department of Insurance. There are provisions for the President and CEO for settlements from \$100,000 to the Sovereign Immunity limit, with notification and acknowledgement from both the Board of Commissioner’s Chair and Vice Chair. Settlement limits are also defined for the Director of Risk Management for settlements from \$20,000 to \$100,000, with notification and acknowledgement from the General Counsel.
- Paragraph I. Litigation Management and Board Notification. – Changed from paragraph H to I. Deleted subparagraph c. Documented special damages exceeding \$75,000, and re-lettered subsequent subparagraphs.
- Paragraph J. Review of Agency Contracts and Documents. - Changed from paragraph I to J.

Previous Action:

This item has not been presented to any Committee; however, due to the necessity of the proposed Board Policy revisions, the President and CEO has placed this item on the Agenda for the Board of Commissioners’ Special Meeting on August 20, 2021.

Board Action Requested:

Management recommends that the Board of Commissioners approve amending Board Policy Section 30.060 – Risk Management, with the recommended changes, and waive tabling of the amendment, pursuant to Board Policies, Article VI (D), to revise Board Policy Section 30.060 – Risk Management, so that it is effective upon Board approval.

Funding Source:

Not Applicable.

Attachments:

- Attachment A – Current Board Policy Section 30.060 – Risk Management
- Attachment B – Revised (redlined) Board Policy Section 30.060 – Risk Management
- Attachment C – Revised (clean) Board Policy Section 30.060 – Risk Management

Section 30.060 Risk Management (effective 2/25/2000)

A. General. One of the Agency's primary objectives is to provide safe, reliable, and cost-effective transportation services while complying with federal, state, and local laws. In support of that objective, the Agency will develop and maintain an effective, integrated risk management program. This policy applies to all exposures to risk of loss that are fortuitous and result from external causes. These exposures include, but are not limited to, fires, collisions, theft, windstorm, construction accidents, workers' compensation claims, and auto or general liability claims as well as associated lawsuits against the Agency.

B. Authority and Responsibility. The Director of Risk Management is responsible for recommending the overall direction of the Agency's risk management program as specified in the Agency's Management Policies & Procedures.

C. Self-Insurance. The Agency will self insure and self administer those routine risks associated with its core transit operations. Risk exposures above the self-insured retention will be covered by excess insurance if such excess insurance is available and affordable.

D. Insurance. Primary property and liability insurance will be purchased for unique or special risks of loss, for major construction projects, and when required by law or by contract. A Broker of Record will perform the insurance marketing function under the direction of the Director of Risk Management.

E. Self-Insurance Fund. The Agency will maintain an asset account, referred to as the "Self-Insurance Fund", as authorized by the Board of Commissioners on October 1, 1982, to support liabilities accrued as a result of its self-insured losses. The Chief Financial Officer of the Agency will maintain the Self-Insurance Fund, complying with prudent business practices and all applicable governmental pronouncements, and determine the amount of annual funding required. The fund is subject to following guidelines:

1. The current balance will be sufficient to pay estimated judgments, settlements, losses, and expenses for a three (3) year time period.
2. The amounts held in the Self Insurance Fund shall be used solely for the purpose of paying such liabilities and expenses.
3. The Chief Financial Officer, with concurrence of the President & CEO, is authorized to borrow amounts from the Self Insurance Fund to pay expenses of the Transit System in anticipation of routine operating subsidies and capital grants. All amounts borrowed from the Self Insurance Fund shall be reimbursed to such Fund as soon as possible with normal Agency revenues such as Farebox revenue, sales tax revenues, interest earnings and operating subsidy funds. The Board of Commissioners is to be notified, in writing, of any borrowing, outlining the amount borrowed.

F. Excess Judgment Fund. The Agency will maintain an additional asset account, referred to as the “Excess Judgment Fund”, as authorized by the Board of Commissioners on July 7, 1989, to provide supplemental cash flow to the Self-Insurance Fund, in the event of a large or catastrophic loss that is greater than 50 % of the Agency’s Self-Insured retention amount for that year. In addition, this fund will provide temporary or emergency funds for property losses that are equal or greater than \$ 500,000 and where the insurer has delayed payment or is questioning coverage under its policy. The Chief Financial Officer of the Agency will maintain the Excess Judgment Fund, complying with prudent business practices and all applicable governmental pronouncements. The fund is subject to following guidelines:

1. The goal is to attain and maintain a \$5,000,000 fund balance.
2. A minimum of \$250,000 shall be appropriated annually by the Board as part of the budget process until the fund goal of \$5,000,000 is reached.
3. Interest earned by monies in the fund shall inure exclusively to the fund on a cash basis until the fund goal of \$5,000,000 is reached.
4. Monies appropriated to the fund shall be deposited in the account at the beginning of the Fiscal Year, or as received from the funding jurisdictions.
5. This unencumbered balance of this fund may be used as collateral for short-term debt obligations.
6. The Chief Financial Officer, with concurrence of the President & CEO, is authorized to borrow amounts from the Excess Judgment Fund to pay expenses of the Transit System in anticipation of routine operating subsidies and capital grants. All amounts borrowed from the Excess Judgment Fund shall be reimbursed to such Fund as soon as possible with normal Agency revenues such as farebox revenue, sales tax revenues, interest earnings and operating subsidy funds. The Board of Commissioners is to be notified, in writing, of any borrowing, outlining the amount borrowed.

G. Claim Settlement Authorization. The Board of Commissioners must approve defense settlements exceeding \$250,000. Authorization granted by the Board of Commissioners is deemed to include an additional contingency amount, equal to 20% of the actual authorization granted, for extraordinary use by the President & CEO. This additional authorization may be granted by the President & CEO as trial approaches or during the actual trial. .

H. Litigation Management and Board Notification. In addition to requests for settlement, authorization, the Board of Commissioners will be notified by management about large claims or lawsuits that may significantly impact the Agency’s financial stability, its assets, or its public image.

1. The Director of Risk Management will regularly provide informational briefs to the Board on claims and lawsuits that fall into the following classifications:
 - a. Fatalities & severely disabling injuries.
 - b. Jury verdict range or settlement range is expected to exceed \$100,000.
 - c. Documented special damages exceeding \$75,000.
 - d. Other unusual or sensitive claims which may be of particular interest to the Commissioners.
 - e. Final results on claims where the Board has extended settlement authorization.
2. The briefing to the Board will contain:

- a. Facts & background of the case.
- b. Summary of injuries & special damages.
- c. Assessment of liability and expected outcome.
- d. Litigation history and status if in suit.
- e. Opinion of legal counsel (if assigned).
- f. Recommendations and strategy for an appropriate resolution.

3. The Director of Risk Management will maintain a written litigation management program, attorney billing guidelines, and procedures for selecting and retaining defense counsel as specified in more detail in the Agency's Management Policies & Procedures.

I. Review of Agency Contracts and Documents. The Director of Risk Management, in consultation with the Agency's General Counsel as needed, will review Agency contracts, leases, agreements, easements or other documents that transfer risk, specify indemnity obligations, or require specific insurance from one or more of the parties.

Section 30.060 Risk Management (revised effective 2/25/200, 2/25/2000, 08/20/2021)

A. General. One of the Agency's primary objectives is to provide safe, reliable, and cost-effective transportation services while complying with federal, state, and local laws. In support of that objective, the Agency will develop and maintain an effective, integrated risk management program. This policy applies to all exposures to risk of loss that are fortuitous and result from external causes. These exposures include, but are not limited to, fires, collisions, theft, windstorm, construction accidents, workers' compensation claims, and auto or general liability claims as well as associated lawsuits against the Agency.

B. Authority and Responsibility. The Director of Risk Management is responsible for recommending the overall direction of the Agency's risk management program as specified in the Agency's Management Policies & Procedures.

C. Self-Insurance. The Agency will ~~self insure~~ ~~self-insure~~ ~~and self administer those~~ routine risks associated with its core transit operations. Risk exposures above the self-insured retention will be covered by excess insurance if such excess insurance is available and affordable.

~~C.D.~~ Third Party Administrator. The Agency will contract with a third party adjusting (TPA) firm to assist in administering claims handling (TPA). The Risk Management Department will monitor the TPA and hold quarterly claims reviews. An annual audit will be performed.

~~D.E.~~ Insurance. Primary property and liability insurance will be purchased for unique or special risks of loss, for major construction projects, and when required by law or by contract. A Broker of Record will perform the insurance marketing function under the direction of the Director of Risk Management.

~~E.F.~~ Self-Insurance Fund. The Agency will maintain ~~an~~ asset accounts, referred to as ~~the~~ "Self-Insurance Funds", as authorized by the Board of Commissioners on October 1, 1982, to support liabilities accrued as a result of its self-insured losses. The Chief Financial Officer of the Agency will maintain the Self-Insurance Fund, complying with prudent business practices and all applicable governmental pronouncements, and determine the amount of annual funding required. The fund is subject to following guidelines:

1. The current balance will be sufficient to pay estimated judgments, settlements, losses, and expenses for a three (3) year time period.
2. The amounts held in the Self Insurance Funds shall be used solely for the purpose of paying such liabilities and expenses.
3. The Chief Financial Officer, with concurrence of the President & CEO, is authorized to borrow amounts from the Self Insurance Funds to pay expenses of the Transit System in anticipation of routine operating subsidies and capital grants. All amounts borrowed from the Self Insurance Funds shall be reimbursed to such Fund as soon as possible with normal Agency revenues such as Farebox revenue, sales tax revenues, interest earnings and operating subsidy funds. The Board of Commissioners is to be notified, in writing, of any borrowing, outlining the amount borrowed.

F.G. Excess Judgment Fund. The Agency will maintain an additional asset account, referred to as the “Excess Judgment Fund”, as authorized by the Board of Commissioners on July 7, 1989, to provide supplemental cash flow to the Self-Insurance Funds, in the event of a large or catastrophic loss that is greater than 50 % of the Agency’s Self-Insured retention amount for that year. In addition, this fund will provide temporary or emergency funds for property losses that are equal or greater than ~~\$~~ \$500,000 and where the insurer has delayed payment or is questioning coverage under its policy. The Chief Financial Officer of the Agency will maintain the Excess Judgment Fund, complying with prudent business practices and all applicable governmental pronouncements. The fund is subject to following guidelines:

1. The goal is to attain and maintain a \$5,000,000 fund balance.
2. A minimum of \$250,000 shall be appropriated annually by the Board as part of the budget process until the fund goal of \$5,000,000 is reached.
3. Interest earned by monies in the fund shall inure exclusively to the fund on a cash basis until the fund goal of \$5,000,000 is reached.
4. Monies appropriated to the fund shall be deposited in the account at the beginning of the Fiscal Year, or as received from the funding jurisdictions.
5. This unencumbered balance of this fund may be used as collateral for short-term debt obligations.
6. The Chief Financial Officer, with concurrence of the President & CEO, is authorized to borrow amounts from the Excess Judgment Fund to pay expenses of the Transit System in anticipation of routine operating subsidies and capital grants. All amounts borrowed from the Excess Judgment Fund shall be reimbursed to such Fund as soon as possible with normal Agency revenues such as farebox revenue, sales tax revenues, interest earnings and operating subsidy funds. The Board of Commissioners is to be notified, in writing, of any borrowing, outlining the amount borrowed.

G.H. Claim Settlement Authorization. The Board of Commissioners must approve defense settlements exceeding the Missouri sovereign immunity limit for any one person in a single accident or occurrence. The Claim Settlement Authorization, based upon the Missouri sovereign immunity limit, shall be adjusted annually as published by the in the Missouri Department of Insurance. Register 537.620 RSM ~~\$250,000~~. Authorization granted by the Board of Commissioners is deemed to include an additional contingency amount, equal to 20% of the actual authorization granted, for extraordinary use by the President & CEO. This additional authorization may be granted by the President & CEO as trial approaches or during the actual trial. For settlement amounts over \$100,000 and up to the sovereign immunity limit, the President & CEO will approve and must notify and receive acknowledgement from the Board of Commissioner’s Chair and Vice Chair. Settlements from \$20,000 to \$100,000 will require the approval of the Director of Risk Management who must notify and receive acknowledgement from the Agency’s General Counsel.

H.I. Litigation Management and Board Notification. In addition to requests for settlement, authorization, the Board of Commissioners will be notified by management about large claims or lawsuits that may significantly impact the Agency’s financial stability, its assets, or its public image.

1. The Director of Risk Management will regularly provide informational briefs to the Board on claims and lawsuits that fall into the following classifications:
 - a. Fatalities & severely disabling injuries.
 - b. Jury verdict range or settlement range is expected to exceed

\$100,000.

~~e.~~ ~~Documented special damages exceeding \$75,000.~~

~~d.c.~~ Other unusual or sensitive claims which may be of particular interest to the Commissioners.

~~e.d.~~ Final results on claims where the Board has extended settlement authorization.

2. The briefing to the Board will contain:
 - a. Facts & background of the case.
 - b. Summary of injuries & special damages.
 - c. Assessment of liability and expected outcome.
 - d. Litigation history and status if in suit.
 - e. Opinion of legal counsel (if assigned).
 - f. Recommendations and strategy for an appropriate resolution.

3. The Director of Risk Management will maintain a written litigation management program, attorney billing guidelines, and procedures for selecting and retaining defense counsel as specified in more detail in the Agency's Management Policies & Procedures.

I.J. Review of Agency Contracts and Documents. The Director of Risk Management, in consultation with the Agency's General Counsel as needed, will review Agency contracts, leases, agreements, easements or other documents that transfer risk, specify indemnity obligations, or require specific insurance from one or more of the parties.

Section 30.060 Risk Management (revised 2/25/200, 08/20/2021)

A. General. One of the Agency's primary objectives is to provide safe, reliable, and cost-effective transportation services while complying with federal, state, and local laws. In support of that objective, the Agency will develop and maintain an effective, integrated risk management program. This policy applies to all exposures to risk of loss that are fortuitous and result from external causes. These exposures include, but are not limited to, fires, collisions, theft, windstorm, construction accidents, workers' compensation claims, and auto or general liability claims as well as associated lawsuits against the Agency.

B. Authority and Responsibility. The Director of Risk Management is responsible for recommending the overall direction of the Agency's risk management program as specified in the Agency's Management Policies & Procedures.

C. Self-Insurance. The Agency will self-insure routine risks associated with its core transit operations. Risk exposures above the self-insured retention will be covered by excess insurance if such excess insurance is available and affordable.

D. Third Party Administrator. The Agency will contract with a third party adjusting firm to assist in administering claims handling (TPA). The Risk Management Department will monitor the TPA and hold quarterly claims reviews. An annual audit will be performed.

E. Insurance. Primary property and liability insurance will be purchased for unique or special risks of loss, for major construction projects, and when required by law or by contract. A Broker of Record will perform the insurance marketing function under the direction of the Director of Risk Management.

F. Self-Insurance Fund. The Agency will maintain asset accounts, referred to as "Self-Insurance Funds", as authorized by the Board of Commissioners on October 1, 1982, to support liabilities accrued as a result of its self-insured losses. The Chief Financial Officer of the Agency will maintain the Self-Insurance Fund, complying with prudent business practices and all applicable governmental pronouncements, and determine the amount of annual funding required. The fund is subject to following guidelines:

1. The current balance will be sufficient to pay estimated judgments, settlements, losses, and expenses for a three (3) year time period.
2. The amounts held in the Self Insurance Funds shall be used solely for the purpose of paying such liabilities and expenses.
3. The Chief Financial Officer, with concurrence of the President & CEO, is authorized to borrow amounts from the Self Insurance Funds to pay expenses of the Transit System in anticipation of routine operating subsidies and capital grants. All amounts borrowed from the Self Insurance Funds shall be reimbursed to such Fund as soon as possible with normal Agency revenues such as Farebox revenue, sales tax revenues, interest earnings and operating subsidy funds. The Board of Commissioners is to be notified, in writing, of any borrowing, outlining the amount borrowed.

G. Excess Judgment Fund. The Agency will maintain an additional asset account, referred to as the “Excess Judgment Fund”, as authorized by the Board of Commissioners on July 7, 1989, to provide supplemental cash flow to the Self-Insurance Funds, in the event of a large or catastrophic loss that is greater than 50 % of the Agency’s Self-Insured retention amount for that year. In addition, this fund will provide temporary or emergency funds for property losses that are equal or greater than \$500,000 and where the insurer has delayed payment or is questioning coverage under its policy. The Chief Financial Officer of the Agency will maintain the Excess Judgment Fund, complying with prudent business practices and all applicable governmental pronouncements. The fund is subject to following guidelines:

1. The goal is to attain and maintain a \$5,000,000 fund balance.
2. A minimum of \$250,000 shall be appropriated annually by the Board as part of the budget process until the fund goal of \$5,000,000 is reached.
3. Interest earned by monies in the fund shall inure exclusively to the fund on a cash basis until the fund goal of \$5,000,000 is reached.
4. Monies appropriated to the fund shall be deposited in the account at the beginning of the Fiscal Year, or as received from the funding jurisdictions.
5. This unencumbered balance of this fund may be used as collateral for short-term debt obligations.
6. The Chief Financial Officer, with concurrence of the President & CEO, is authorized to borrow amounts from the Excess Judgment Fund to pay expenses of the Transit System in anticipation of routine operating subsidies and capital grants. All amounts borrowed from the Excess Judgment Fund shall be reimbursed to such Fund as soon as possible with normal Agency revenues such as farebox revenue, sales tax revenues, interest earnings and operating subsidy funds. The Board of Commissioners is to be notified, in writing, of any borrowing, outlining the amount borrowed.

H. Claim Settlement Authorization. The Board of Commissioners must approve defense settlements exceeding the Missouri sovereign immunity limit for any one person in a single accident or occurrence. The Claim Settlement Authorization, based upon the Missouri sovereign immunity limit, shall be adjusted annually as published by the Missouri Department of Insurance. Authorization granted by the Board of Commissioners is deemed to include an additional contingency amount, equal to 20% of the actual authorization granted, for extraordinary use by the President & CEO. This additional authorization may be granted by the President & CEO as trial approaches or during the actual trial. For settlement amounts over \$100,000 and up to the sovereign immunity limit, the President & CEO will approve and must notify and receive acknowledgement from the Board of Commissioner’s Chair and Vice Chair. Settlements from \$20,000 to \$100,000 will require the approval of the Director of Risk Management who must notify and receive acknowledgement from the Agency’s General Counsel.

I. Litigation Management and Board Notification. In addition to requests for settlement, authorization, the Board of Commissioners will be notified by management about large claims or lawsuits that may significantly impact the Agency’s financial stability, its assets, or its public image.

1. The Director of Risk Management will regularly provide informational briefs to the Board on claims and lawsuits that fall into the following classifications:
 - a. Fatalities & severely disabling injuries.
 - b. Jury verdict range or settlement range is expected to exceed \$100,000.

- c. Other unusual or sensitive claims which may be of particular interest to the Commissioners.
 - d. Final results on claims where the Board has extended settlement authorization.
2. The briefing to the Board will contain:
- a. Facts & background of the case.
 - b. Summary of injuries & special damages.
 - c. Assessment of liability and expected outcome.
 - d. Litigation history and status if in suit.
 - e. Opinion of legal counsel (if assigned).
 - f. Recommendations and strategy for an appropriate resolution.
3. The Director of Risk Management will maintain a written litigation management program, attorney billing guidelines, and procedures for selecting and retaining defense counsel as specified in more detail in the Agency's Management Policies & Procedures.

J. Review of Agency Contracts and Documents. The Director of Risk Management, in consultation with the Agency's General Counsel as needed, will review Agency contracts, leases, agreements, easements or other documents that transfer risk, specify indemnity obligations, or require specific insurance from one or more of the parties.

**RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE BI-STATE DEVELOPMENT AGENCY OF
THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT TO APPROVE
REVISIONS TO BOARD POLICY, SECTION 30.060 – RISK MANAGEMENT**

PREAMBLES:

Whereas, the Bi-State Development Agency of the Missouri-Illinois Metropolitan District (the "Agency"/ "BSD") is a body corporate and politic, created by an interstate compact between the states of Missouri and Illinois, acting by and through its Board of Commissioners (the "Board"); and

Whereas, the Agency is authorized by Mo. Rev. Stat. §§ 70.370 et seq. and 45 Ill. Comp. Stat. 100/1 et seq. jointly referred to herein as the "Compact"); to make suitable rules and regulations consistent with its mission and not inconsistent with the constitution or laws of either state, or any political subdivision thereof; and

Whereas, Article VI of the Bylaws – Board Policies of the Agency, provides that any action by the Board establishing policy, administrative, business, or otherwise, shall be known as "Board Policies" and that the Board may adopt, amend or repeal, in whole or in part, the Board Policies at any meeting of the Board, except that unless otherwise designated by the Chair, all Board Policies shall be tabled for a period of one month and shall become effective upon adoption by the Board; and

Whereas, in an effort to improve Agency administrative flexibility and operational and cost efficiencies it has been recommended that certain changes be made to the Board Policy, Section 30.060 – Risk Management, as follows:

- Paragraph C. Self-Insurance. – punctuation: added hyphen to “self insurance;” Deleted “...and self administer those...” to reflect that as of 7/01/2021 BSD uses a Third Party Administrator and does not self-administer all claims.
- Paragraph D. Third Party Administrator. – This is a new paragraph to document the transition from BSD’s self-administered claims handling to a Third Party Administrator (TPA). Subsequent paragraphs were re-lettered.
- Paragraph E. Insurance. – Changed from Paragraph D to E.
- Paragraph F. Self-Insurance Fund. – Changed from paragraph E to F. Pluralized “account” and “Fund” to reflect that there are two Self-Insurance Funds: Casualty and Workers’ Compensation.
- Paragraph G. Excess Judgement Fund. – Changed from paragraph F to G. Pluralized Self Insurance Fund.
- Paragraph H. Claim Settlement Authorization. – Changed from paragraph G to H. Deleted the \$250,000 settlement authority amount and replaced it with language to adjust settlement to the current Missouri Sovereign Immunity limit, which is adjusted annually by the Missouri Department of Insurance. There are provisions for the President and CEO to notify and receive acknowledgement from both the Board Chair and Vice Chair. Settlement limits are also defined for the Director of Risk Management for settlements from \$20,000 to \$100,000, with notification and acknowledgement from the General Counsel.
- Paragraph I. Litigation Management and Board Notification. – Changed from paragraph H to I. Deleted subparagraph c. Documented special damages exceeding \$75,000, and re-lettered subsequent subparagraphs.
- Paragraph J. Review of Agency Contracts and Documents. - Changed from paragraph I to J.; and

Whereas, staff has recommended that these measures be implemented as soon as approved; therefore, requiring the Board to waive tabling the proposed revisions to the Policy as provided in Article VI of the Bylaws, so that they are effective upon Board approval; and

Whereas, it is feasible, necessary and in the public interest for the Board of Commissioners to approve and adopt revisions to Board Policy, Section 30.060 – Risk Management, in accordance with the terms and conditions described herein.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE BI-STATE DEVELOPMENT AGENCY OF THE MISSOURI-ILLINOIS METROPOLITAN DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Findings. The Board of Commissioners hereby finds and determines those matters set forth in the preambles as fully and completely as if set out in full in this Section 1.

Section 2. Approval of Board Policy Revisions. The Board of Commissioners hereby approves and adopts revisions to Board Policy, Section 30.060 – Risk Management, and waives tabling of the Section 30.060 – Risk Management revisions, as provided in Article VI of the Bylaws, so that they are effective upon Board approval, under and pursuant to this Resolution and the Compact for the authorized Agency purposes set forth in the preambles hereof and subject to the conditions hereinafter provided.

Section 3. Form of the Board Policy Section 30.060 Revisions. The form of the Section 30.060 – Risk Management revisions (as provided in the Attachments to the Briefing Paper and made a part hereof), substantially in the form presented to this meeting are hereby approved, and officers of the Agency, including without limitation, the President and CEO, are hereby authorized and directed to execute and deliver and attest, respectively, the Section 30.060 – Risk Management revisions, with such changes, modifications, insertions and omissions as may be deemed necessary or desirable to affect the Section 30.060 – Risk Management revisions with the necessity and desirability of such changes, modifications, insertions and omissions conclusively evidenced by their execution thereof.

Section 4. Actions of Officers Authorized. The officers of the Agency, including, without limitation, the President and CEO, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution and the execution of such documents or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 5. Severability. It is hereby declared to be the intention of the Board of Commissioners that each and every part, section and subsection of this Resolution shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Commissioners intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Resolution shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the intent of this Resolution.

Section 6. Rights Under Resolution Limited. No rights shall be conferred by this Resolution upon any person or entity other than the Agency, officers and employees.

Section 7. Governing Law. The laws of the State of Missouri shall govern this Resolution.

Section 8. No Personal Liability. No member of the Board of Commissioners, officer, employee or agent of the Agency shall have any personal liability for acts taken in accordance with this Resolution.

Section 9. Payment of Expenses. The Senior Vice President and CFO is hereby authorized and directed to pay or cause to be paid all costs, expenses and fees incurred in connection with or incidental to this Resolution.

Section 10. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval.

ADOPTED by the Board of Commissioners of The Bi-State Development Agency of the Missouri-Illinois Metropolitan District this 20th day of August, 2021.

In Witness Whereof, the undersigned has hereto subscribed his signature and caused the Seal of the Agency to be affixed.

**THE BI-STATE DEVELOPMENT AGENCY OF THE
MISSOURI-ILLINOIS METROPOLITAN DISTRICT**

By _____
Its _____

[SEAL]

ATTEST:

By _____
Deputy Secretary to the Board of Commissioners