

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Municipal Pensions Oversight Board TITLE NUMBER: 211

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

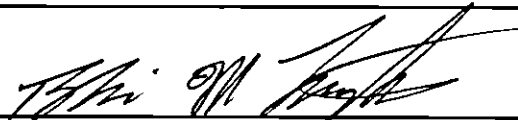
TITLE OF RULE BEING PROPOSED: Policemen's and Firemen's Pension Disability
Calculation

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB4039

SECTION §64-9-1, PASSED ON March 8, 2014

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 28, 2014



Authorized Signature

**TITLE 211
LEGISLATIVE RULE
MUNICIPAL PENSIONS OVERSIGHT BOARD**

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**SERIES 1
POLICEMEN'S AND FIREMEN'S PENSIONS DISABILITY CALCULATION**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§211-1-1. General.

- 1.1. Scope. -- This legislative rule governs the methodology used to calculate disability pensions paid from the municipal policemen's and firefighter's pension plans.
- 1.2. Authority.-- W.Va. Code §8-22-18a(g).
- 1.3. Filing Date. -- March 28, 2014.
- 1.4. Effective Date. -- April 28, 2014.

§211-1-2. Definitions.

2.1 "Member" means any paid police officer or firefighter participating in a municipal pension fund who has applied for disability retirement who's medical condition, injury, illness or mental condition qualifies that person unfit for duty under the standards set forth by National Fire Protection Association standard 1001 in effect at the time of the application for disability.

2.2. "Salary or compensation" means remuneration actually received by a member, plus the member's deferred compensation under sections 125, 401(k), 414(h)(2) and 457 of the United States Internal Revenue Code of 1986, as amended: Provided, that the remuneration received by the member during any twelve-consecutive-month period used in determining benefits, which is in excess of an amount which is twenty percent greater than the "average adjusted salary" received by the member in the two consecutive twelve-consecutive-month periods immediately preceding the twelve-consecutive-month period used in determining benefits, shall be disregarded.

2.3. "Year-one" means the second twelve-consecutive-month period preceding the twelve-consecutive-month period used in determining benefits.

2.4. "Year-two" means the twelve-consecutive-month period immediately preceding the twelve-consecutive-month period used in determining benefits.

2.5. "Year-three" means the twelve-consecutive-month period used in determining benefits.

2.6. "Active military duty" means at least one full year of continuous, chronological military service.

2.7. "Pension secretary" means the person appointed by the policemen's or firefighter's pension board of trustees to keep a full and permanent record of all the proceedings of the board.

2.8. "Municipal treasurer" means the treasurer or other municipal officer, exercising the power and authority commonly exercised by a treasurer. The municipal treasurer is custodian and fund fiduciary of all the assets of the municipal policemen's and firemen's pension and relief funds.

2.9. "Base salary" means remuneration received by a member, exclusive of all overtime and other remuneration.

2.10. "Total salary" means all remuneration received by a member, including any deferred compensation.

§ 211-1-3. Qualified Military Experience

3.1. Members qualify for benefit enhancement for up to four years of qualified military experience. To meet the criteria for qualified military experience, a member shall:

3.1.1. have been on active military duty;

3.1.2. have received an honorable discharged from the United States armed forces; and

3.1.3. if the member is returning to employment following active duty:

3.1.2.a. present himself or herself for resumption of duty to the appointing municipal officer within six months from his or her date of discharge, or within two years if the member has been hospitalized for, or was convalescing from, an illness or injury incurred in, or aggravated during military service; and

3.1.3.b. be accepted by two medical examiners, at least one of which is appointed by the oversight board, as being mentally and physically capable of performing the required duties as a member of the paid police or fire department at the time of hire or resumption of duty.

§211-1-4. Total and Temporary Disability and Total and Permanent Disability Calculations

4.1. The pension secretary and the municipal treasurer shall independently determine the monthly amount paid to a member awarded a total and temporary or total and permanent disability in accordance with the provisions of West Virginia Code §8-22-24, and shall calculate the member's salary or compensation in accordance with West Virginia Code §8-22-16(d). Specifically the monthly sum to be paid to each member eligible for disability received as a proximate result of service rendered in the performance of his or her duties under the provisions of West Virginia Code §8-22-23a shall be equal to sixty percent of the monthly salary being received by the member, at the time he or she is disabled, or the sum of five hundred dollars per month, whichever is be greater. The pension secretary and the municipal treasurer shall compare their independently arrived at calculations to ensure their accuracy.

4.2. The following formulas shall be used to calculate disability awards:

4.2.1. Year one adjusted salary = year three base salary ÷ year one base salary x year 1 total salary

4.2.2. Year two adjusted salary = year three base salary ÷ year two base salary x year 2 total salary

4.2.3. Average adjusted salary = (year one adjusted salary + year two adjusted salary) x 50%

4.2.4. One hundred twenty percent of average adjusted salary = average adjusted salary x 120%

4.2.5. Annual salary = the lesser of one hundred twenty percent (120%) of average adjusted salary or year three total salary

4.2.6. Monthly salary = annual salary ÷ 12

4.2.7. If a member does not have qualifying military experience, then monthly disability salary = monthly salary x 60%

4.2.8. If a member does not have qualifying military experience, the member shall receive the amount calculated in subdivision 4.2.7 of this subsection, or \$500.00 per month, whichever amount is greater

4.2.9. If a member has one year of qualifying military experience, then monthly disability salary = monthly salary x 61%

4.2.10. If a member has one year of qualifying military experience, the member receives the amount calculated in subdivision 4.2.9 of this subsection, or \$500.00+ 1% of monthly salary, whichever amount is greater

4.2.11. If a member has two years of qualifying military experience, then monthly disability salary = monthly salary x 62%

4.2.12. If a member has two years of qualifying military experience, the member receives the amount calculated in subdivision 4.2.11 of this subsection, or \$500.00+ 2% of monthly salary, whichever amount is greater

4.2.13. If a member has three years of qualifying military experience, then monthly disability salary = monthly salary x 63%

4.2.14. If a member has three years of qualifying military experience, the member receives the amount calculated in subdivision 4.2.13 of this subsection, or \$500.00+ 3% of monthly salary, whichever amount is greater

4.2.15. If a member has four or more years of qualifying military experience, then monthly disability salary = monthly salary x 64%

4.2.16. If a member has four or more years of qualifying military experience, the member receives the amount calculated in subdivision 4.2.15 of this subsection, or \$500.00+ 4% of monthly salary, whichever amount is greater

Table 211-1-4 of this rule provides a disability calculation scenario for use in subdivisions 4.2.1 through 4.2.16 of this subsection.

Table 211-1-4

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1				Total Salary		Average	Ave Adj			Monthly	Monthly Disability Salary with Military Service			
2		Twelve Consecutive	Base Salary	Inclusive	Adjusted	Adjusted	Salary @	Annual	Monthly	Disability	Active Duty/Qualified Military Years of Service			
3	Year	Month Period	No Overtime	of Overtime	Salary	Salary	120%	Salary	Salary	Salary	Year 1	Year 2	Year 3	Year 4
4														
5	Final					44,495.65	53,394.78	37,000.00	3,083.33	1,850.00	1,880.83	1,911.67	1,942.50	1,973.33
6	3	5/1/12 thru 4/30/13	34,000.00	37,000.00										
7	2	5/1/11 thru 4/30/12	25,000.00	35,000.00	47,600.00									
8	1	5/1/10 thru 4/30/11	23,000.00	28,000.00	41,391.30									
Year one (E8) = (C6+C8)x D8 or (34,000.00+23,000.00)x 28,000.00= 41,391.30														
Year two (E7) = (C6+C7)x D7 or (34,000.00+25,000.00)x 35,000.00= 47,600.00														
Average Adjusted Salary (G5) = (E7+E8) x 50% or (47,600.00+41,391.30) x 50% = 44,495.65														
Average Adjusted Salary @ 120% (H5) = G5 x 120% or (44,495.65 x 120%) = 53,394.78														
Annual Salary (I5) = the lesser of (D6) and (H5) or MIN(37,000.00; 53,394.78) = 37,000.00														
Monthly Salary (J5) = (I5 + 12) or (37,000.00 + 12) = 3,083.33														
Monthly Disability Salary (K5) = (J5 x 60%) or (3,083.33 x 60%) = 1,850.00														
Active Duty/Qualified Military Years of Service Year 1 (M5) = (J5 x 61%) or (3,083.33 x 61%) = 1,880.83														
Active Duty/Qualified Military Years of Service Year 2 (N5) = (J5 x 62%) or (3,083.33 x 62%) = 1,911.67														
Active Duty/Qualified Military Years of Service Year 3 (O5) = (J5 x 63%) or (3,083.33 x 63%) = 1,942.50														
Active Duty/Qualified Military Years of Service Year 4 (P5) = (J5 x 64%) or (3,083.33 x 64%) = 1,973.33														

Earl Ray Tomblin
Governor

Stephen Neddo
Chairman

Blair M. Taylor
Executive Director



Municipal Pensions Oversight Board

Board Members
John Kee,
Vice Chairman
Lisa Dooley,
Secretary/Treasurer
Jeffrey E. Fleck
Donald Lucci
Craig Slaughter
Darren Williams
C. Seth Wilson
Firefighter (Vacant)

Memorandum

To: Natalie E. Tennant, Secretary of State

From: Blair M. Taylor
Executive Director

Date: March 28, 2014

Re: Final Filing of Legislative Rule Title 211 Series 1

This packet of information from the Municipal Pensions Oversight Board includes the Final Filing of Legislative Rule Title 211, Series 1 with the Secretary of State's Administrative Law Division.

Form 6 is attached and completed along with a paper copy of the Final Filing using the required formatting. In addition, a copy of the draft minutes of the March 19, 2014 meeting of the Municipal Pensions Oversight Board is attached that shows the motion passed by the Board authorizing Blair Taylor, Executive Director, to final file the Legislative Rule once the Governor had signed HB4039. The motion further states the rule is to be effective 30 days from the date of the final filing. An electronic version of Legislative Rule Title 211, Series 1 (Microsoft Word) has been emailed to JCooper@wvsos.com.

Thanking you in advance for your staff's attention to the Board's final filing. If you or your staff have any questions, please contact me.

MUNICIPAL PENSIONS OVERSIGHT BOARD

Minutes of Meeting

March 19, 2014

The Municipal Pensions Oversight Board (MPOB) met on March 19, 2013, at 10:00 a.m. at 1700 MacCorkle Ave. SE, Charleston, West Virginia. The Chair, Mr. Neddo, called the meeting to order and declared a quorum was present.

ATTENDEES

Board Members:

- Lisa Dooley, absent
- Jeffrey Fleck, present
- John Kee, present
- Donald Lucci, present
- Stephen Neddo, present
- Craig Slaughter, absent
- Darren Williams, absent
- Seth Wilson, present – by teleconference

General Counsel:

- Kelli Talbott, Chief Counsel Attorney General's Office, present

Staff:

- LeAnne Neccuzi, Administrative Assistant
- Les Smith, Accountant
- Blair Taylor, Executive Director

Guests:

- Jason Matthews

Minute Taker:

- LeAnne Neccuzi

APPROVAL OF MINUTES

Minutes for the MPOB meeting on December 19, 2013 were presented for approval. *Motion: Moved by Mr. Fleck; Seconded by Mr. Kee; Passed unanimously:*

RESOLVED, that the minutes of the December 19, 2013, MPOB meeting be accepted with additional information added.

LEGISLATIVE RULES COMMITTEE

Mr. Taylor reported that the Legislature passed **HB 4039** which was the “bundled” rules bill. It contains the MPOB’s rule, **Title 211, Series 1**, for Calculation for Disability Pensions. It has been sent to the governor for his signature. He has 15 days from the end of the session (including any extended session) to review the bill. Once he has signed the bill, then the MPOB will have to submit the final version of the rule with the West Virginia Secretary of State’s Office. If the Governor does not sign or veto the bill within the timeframe, the bill becomes law without his signature. Mr. Neddo recommended that a motion be made to allow the MPOB to file the final bill upon receipt of signature from the Governor. *Motion: Moved by Mr. Lucci; Seconded by Mr. Fleck; Passed unanimously:*

RESOLVED, to allow Blair Taylor, Executive Director, to file Rule Title 211, Series 1, contained in HB 4039, with the West Virginia Secretary of State’s Office. It will be filed in its final form with the approval date being 30 days from the time that it is filed.

FINANCIAL REPORT AND P-CARD EXPENDITURES

Mr. Smith presented the financial report for February 2014ⁱ and the p-card expendituresⁱⁱ for December 2013, January and February 2014. *MOTION: Moved by Mr. Kee; Seconded by Mr. Lucci; Passed unanimously.*

RESOLVED, that the MPOB accept the February 2014 financial report as written and approve the p-card expenditures for December 2013, January 2014 and February 2014.

EXECUTIVE DIRECTOR’S REPORT

Mr. Taylor presented his report. He reported that there are eight active disability applications. He will be conducting training in Martinsburg on April 18th with their Fire Pension trustees. He reported that the final amount that was not drawn down from the September 2012 allocation is \$230,452.88 and will be reallocated in the September 2014 allocation. There are six plans who must receive additional funding from their municipalities before they can grant COLAs starting July 1, 2014. Those plans will receive explicit letters indicating that without the additional

payments, no COLA may be granted to retirees. Plans continue to provide GRS with data so that they may start the actuarial study as of July 1, 2013.

ADJOURNMENT - Having concluded its business, the meeting adjourned. *MOTION: Moved by Mr. Fleck; Seconded by Mr. Lucci; Passed unanimously:*

RESOLVED, that the meeting of the MPOB is adjourned.

Stephen Neddo, Chairman

Minutes approved _____.
(date)

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- ⁱ Financial Report – February 2014
ⁱⁱ P-Card Expenditures Report