

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

Form #3

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: MUNICIPAL PENSIONS OVERSIGHT BOARD TITLE NUMBER: 211

CITE AUTHORITY: W.VA. CODE 8-22-18a(g)

AMENDMENT TO AN EXISTING RULE: YES NO

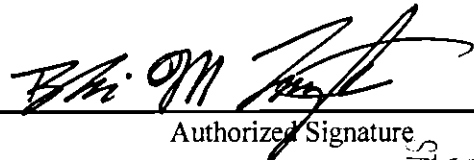
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: SERIES 1

TITLE OF RULE BEING PROPOSED: POLICEMEN'S AND FIREMEN'S PENSION DISABILITY
CALCULATION

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

SECRETARY OF STATE
STATE OF WEST VIRGINIA

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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Policemen's and Firemen's Pensions Disability Calculation

Type of Rule: Legislative Interpretive Procedural

Agency: Municipal Pensions Oversight Board

Address: 1700 MacCorkle Avenue, SE
Charleston, West Virginia 25314

Phone Number: 304-356-2422 Email: MPOB@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed Legislative Rule does not have any impact on the costs or revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Policemen's and Firemen's Pensions Disability Calculation

Rule Title:

Policemen's and Firemen's Pensions Disability Calculation

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The proposed Legislative Rule will have no impact on the costs or revenues of state government.

MEMORANDUM

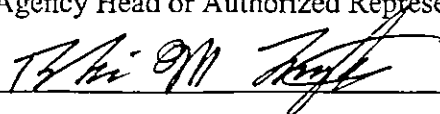
Please identify any areas of vagueness, technical defects, reasons the proposed rule would **not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

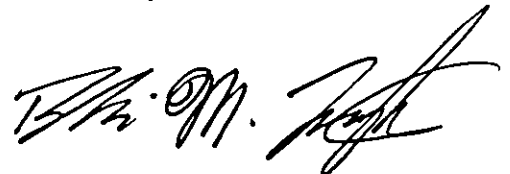
The proposed Legislative Rule will not have a fiscal impact on costs or revenues of state government. The proposed rule provides municipal Pension Secretaries and Municipal Treasurers steps to follow for them to determine the correct monthly amount to pay a member who has been granted a total and temporary disability or total and permanent disability by the respective trustees of a municipal policemen's or municipal firemen's pension and relief fund.

Date: June 3, 2013

Date: July 25, 2013

Signature of Agency Head or Authorized Representative





QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 25, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Municipal Pensions Oversight Board

1700 MacCorkle Avenue, S.E.

Charleston, WV 25314

LEGISLATIVE RULE TITLE: _____

Policemen's and Firemen's Pension Disability Calculation

1. Authorizing statute(s) citation _____

W.Va. Code 8-22-18a(g)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 7, 2013

b. What other notice, including advertising, did you give of the hearing?

Each Municipal Policemen's and Firemen's Pension and Relief Fund's Mayor, and/or City

Manager and Pension Secretary were provided an email with the proposed rule attached

on June 6, 2013.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 8, 2013

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached n/a

No comments received 0

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 26, 2013

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Blair Taylor, Executive Director

1700 MacCorkle Avenue, S.E.

Charleston, WV 25314

Phone: 304-356-2418 Fax: 304-558-1016

Email: Blair.M.Taylor@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

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
David E. Palmer
Craig Slaughter
Darren Williams
C. Seth Wilson

Memorandum

To: Natalie E. Tennant, Secretary of State
Legislative Rule-Making Review Committee

From: Blair M. Taylor
Executive Director

A handwritten signature in black ink, appearing to read "Blair M. Taylor", is written over the printed name and title.

Date: July 25, 2013

Re: Comments and Response to Proposed Legislative Rule Title 211 Series 1

The Municipal Pensions Oversight Board filed Proposed Legislative Rule Title 211, Series 1 with the Secretary of State's Administrative Law Division and the Legislative Rule-Making Review Committee on June 3, 2013. In lieu of a public hearing, a public comment period was established for the period June 3, 2013 through July 8, 2013 at 5:00 p.m.

During the public comment period, the Municipal Pensions Oversight Board did not receive any written comments from any of the municipal policemen's or municipal firemen's pension and relief funds nor were any comments received from any member of the public. Therefore, the submission of the Agency Approved Proposed Legislative Rule Title 211, Series 1 does not contain any public comments or response to the proposed rule.

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

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

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

SECRETARY OF STATE
STATE OF WEST VIRGINIA

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§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. -- _____.

1.4. Effective Date. -- _____.

§211-1-2. Definitions.

2.1. "Member" means any paid police officer or firefighter who at the time of appointment to a paid police or fire department met the medical requirements of chapter 2-2 of the National Fire Protection Association Standards Number 1001 – Firefighters Professional Qualifications '74 as updated from year to year: Provided, That any police officer or firefighter who was a member of the fund prior to July 1, 1981, shall be considered a member after June 30, 1981.

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. "average adjusted salary" means the arithmetic average of each year's adjusted salary, the adjustment made to reflect current salary rate and shall be determined by calculating year-one total remuneration multiplied by the ratio of year- three base salary, exclusive of all overtime and other remuneration, to year-one base salary, exclusive of all overtime and other remuneration, such product shall equal "year-one adjusted salary", year-two total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-two base salary, exclusive of all overtime and other remuneration, such product shall equal "year-two adjusted salary"; and the arithmetic average of year-one adjusted salary and year-two adjusted salary shall equal the average adjusted salary.

2.4. "year-one" means the second twelve-consecutive-month period preceding such twelve-consecutive-month period used in determining benefits.

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

2.6. "year-three" means the twelve-consecutive-month period used in determining benefits.

2.7. "active military duty" means those members hired after 1985 and before November 19, 2009 who had a continuous, chronological year of military service. (Mullett v. City of Huntington Police Pension Board, 186 W. Va. 488, 413 S.E.2d 143, 1991 W. Va. Lexis 264 (1991))

2.8. "qualified military service" means those members hired after November 19, 2009 who received an honorable discharged from the United States armed forces and has presented himself or herself for resumption of duty to his or her appointing municipal officer with six months from his or her date of discharge and is 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, shall be given credit for continuous service in the paid police or fire department. The six-month period in which a member has to resume employment and receive credit for continuous service is extended to a period not to exceed two years if the member has been hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during military service.

2.9. "pension secretary" means the individual 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.

2.10. "municipal treasurer" means the treasurer or other municipal officer, by whatever name called, 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.

§211-1-3. Total and Temporary Disability and Total and Permanent Disability Calculations

3.1. The pension secretary and the municipal treasurer independently determine the monthly amount paid to a member awarded a total and temporary or total and permanent disability by following the provisions of W.Va. Code §8-22-24. 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 section twenty-three-a of this article shall be equal to sixty percent of the monthly salary being received by such member, at the time he is so disabled, or the sum of five hundred dollars per month, whichever shall be greater." In order to determine the monthly salary, W.Va. Code §8-22-16(d) is used to calculate the member's salary or compensation. The pension secretary and the municipal treasurer shall compare their independently arrived at calculations to ensure accuracy of the calculations.

3.2. The following formulas shall be used to calculate the "year one adjusted salary", the "year two adjusted salary", the "average adjusted salary", and the "average adjusted salary times one hundred and twenty percent". The lesser of the "average adjusted salary times one hundred

and twenty percent” and the “year three total salary” becomes the “annual salary” used to determine the monthly salary for a disability calculation.

Table 211-1-3 A provides a disability calculation scenario for use in sections 3.2.1 through 3.2.5.

3.2.1 year one adjusted salary = year three base salary¹ / year one base salary² * year 1 total salary³

3.2.2 year two adjusted salary = year three base salary¹ / year two base salary⁵ * year 2 total salary⁴

3.2.3 average adjusted salary = (year one adjusted salary + year two adjusted salary) * 0.5

3.2.4 one hundred twenty percent of average adjusted salary = average adjusted salary * 1.20%

3.2.5 annual salary = the lesser of one hundred twenty percent of average adjusted salary or year three total salary⁶

3.2.6 monthly salary = annual salary / 12

3.2.7 Any member who has served in active military duty or has qualified military service prior to or subsequent to becoming a member of a paid police or fire department shall receive in addition to the sixty percent or minimum five hundred dollars, one additional percent for each year served up to a maximum of four additional percent, i.e. one year of service would equal sixty one percent, two years of service would equal sixty two percent, etc.

3.2.8 monthly disability salary = monthly salary * (60% + the equivalent years of military service described in 3.2.7)

Table §211-1-3 A

Disability Calculation Sample Scenario					
Year Designation	12 Consecutive Month Period	Base Salary (No Overtime)		Total Salary Inclusive of Overtime	
3	5-1-2012 through 4-30-2013	\$y3 base	¹	\$y3 total salary	⁶
2	5-1-2011 through 4-30-2012	\$y2 base	⁵	\$y2 total salary	⁴
1	5-1-2010 through 4-30-2011	\$y1 base	²	\$y1 total salary	³