

Jeffrey E. Fleck

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 31, 2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Consolidated Public Retirement Board (CPRB)
4101 MacCorkle Ave., SE
Charleston, WV 25304
(304) 558-3570

LEGISLATIVE RULE TITLE: _____
Title 162, Series 8
Service Credit for Accrued and Unused Sick and Annual Leave

1. Authorizing statute(s) citation _____
W. Va. Code § 5-10D-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 24, 2014 - Public Comment Period

b. What other notice, including advertising, did you give of the hearing?
The proposed rule was posted on the CPRB website from 6/24/2014 through 7-24-2014 and was mailed to the following: William G. Milam, Retired School Employees; Patricia Hamilton, Assoc. Counties; Nelson Fowler, PERSA; Ira Latimer, PERSA; Joe Lynch, Ambulance Assoc.; Connie Hall, Ambulance Assoc.; Linda Thompson, School Service Personnel; Christine Campbell, WV Federation of Teachers; Col. Smithers, State Police; Joe White, School Service Personnel; Vivian Parsons, County Commissioners Assoc.; Chris Hall, EMS Coalition; Jerry Kyle, Office EMS; Dale Lee, WVEA; David Haney, WVEA; Lisa Dooley, Municipal League; Terry Miller, Deputy Sheriffs; Joe Richards, EMS; James Lee, Troopers Assoc.; HW Richardson, Retired Troopers; Senate & House Pension Committees.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 24, 2014 at 4:00 p.m.

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

Attached _____ No comments received X

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

July 31, 2014

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

Jeffrey E. Fleck, Executive Director
Consolidated Public Retirement Board

4101 MacCorkle Ave., SE
Charleston, WV 25304
(304) 558-3570 Phone
(304) 558-6337 Fax Jeffrey.E.Fleck@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)

Terasa L. Miller, Deputy Director/Chief Operating Officer
Consolidated Public Retirement Board

4101 MacCorkle Ave., SE
Charleston, WV 25304
(304) 558-3570 Phone
(304) 558-6337 Fax Terasa.L.Miller@wv.gov

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.

N/A

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



Board Members

Governor Earl Ray Tomblin
Auditor Glen B. Gainer III, Vice Chairman
Treasurer John D. Perdue
Cabinet Secretary Ross Taylor

**State of West Virginia
Consolidated Public Retirement Board**

4101 MacCorkle Avenue, SE
Charleston, West Virginia 25304-1636
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Board Members

David L. Wyant, Chairman
Thomas Bradley
Joseph Bunn
Captain Michael G. Corsaro
Drema B. Evans
Joe Lynch
D. Todd Murray
Tony Payne
Andrew Richardson

Executive Director
Jeffrey E. Fleck

BRIEF SUMMARY OF PROPOSED AMENDMENT TO
TITLE 162, SERIES 8

The West Virginia Consolidated Public Retirement Board (Board), as administrator of the West Virginia Public Employees Retirement System (PERS), Teachers' Retirement System (TRS), West Virginia Deputy Sheriff Retirement System (DSRS), West Virginia State Police Retirement System (Plan B), and the Emergency Medical Services Retirement System (EMSRS), proposes an amendatory revision to Title 162, Series 8, of the West Virginia Code of State Regulations. The proposed Legislative Rule amends the TRS Deferred Retirement section to comply with the statutory provisions established in W. Va. Code § 5-16-13(f) applying to "employees" of the Public Employees Insurance Agency as defined in W. Va. Code § 5-16-2(3), not "participants".

Other technical changes are also proposed pertaining to reference of subsections and subdivisions.



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**STATEMENT AND CIRCUMSTANCES REQUIRING PROPOSAL AND
PROMULGATION OF PROPOSED RULE CHANGE TO SERIES 8 OF TITLE 162 OF
THE WV CODE OF STATE REGULATIONS**

The West Virginia Consolidated Public Retirement Board (Board), as administrator of the West Virginia Public Employees Retirement System (PERS), Teachers' Retirement System (TRS), West Virginia Deputy Sheriff Retirement System (DSRS), West Virginia State Police Retirement System (Plan B), and the Emergency Medical Services Retirement System (EMSRS) finds it necessary to propose changes to the Deferred Retirement section of TRS to be in compliance with the statutory provision set forth in W. Va. Code § 5-16-13(f) as it relates to "employees", and not "participants".

Additional changes are technical in nature to properly reference subsections and subdivisions.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 162 (Series 8) Service Credit for Accrued and Unused Sick and Annual Leave

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Consolidated Public Retirement Board

Address: 4101 MacCorkle Ave. S.E.
Charleston, West Virginia 25304

Phone Number: (304) 558-3570 X 52465 Email: Harry.W.Mandel@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 changes in the rule are administrative in nature and will not impact 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	2014 Increase/Decrease (use "-")	2015 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$0	\$0	\$0
Personal Services			
Current Expenses	\$0	\$0	\$0
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The rule clarifies TRS sick and annual leave retirement benefit conversion requirements for PEIA coverage in case of deferred retirement..

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.

None.

Date: June 11, 2014

Signature of Agency Head or Authorized Representative

Harry W. Mandel

Harry W. Mandel

Board Actuary, MAAA, MSPA

EA #14-2527

TITLE 162
LEGISLATIVE RULE
WEST VIRGINIA CONSOLIDATED PUBLIC RETIREMENT BOARD

FILED

2014 JUL 31 P 2:39

SERIES 8

SERVICE CREDIT FOR ACCRUED AND UNUSED SICK AND ANNUAL LEAVE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 162-8-1. General.

1.1. Scope. – This rule governs a member's eligibility to use accrued and unused sick and annual leave for additional retirement system service credit in the Public Employees Retirement System, the Teachers' Retirement System, the Deputy Sheriff Retirement System, the West Virginia State Police Retirement System and the West Virginia Emergency Medical Services Retirement System. Employees of the judicial and legislative branches of government are exempt from this rule.

1.2. Authority. – W. Va. Code § 5-10D-1.

1.3. Filing Date. – ~~June 4, 2009.~~

1.4. Effective Date. – ~~July 1, 2009.~~

§ 162-8-2. Purpose.

2.1. General – The purpose of this rule is to set forth guidelines to govern the conversion of a member's accrued and unused sick and annual leave to additional retirement system service credit in the Public Employees Retirement System, the Teachers' Retirement System, the Deputy Sheriff Retirement System, the West Virginia State Police Retirement System and the West Virginia Emergency Medical Services Retirement System.

2.2. Administrative Appeals – In all contested cases regarding service credit for accrued sick and annual leave, the Board shall follow its rules, Benefit Determination and Appeal, 162 CSR 2; West Virginia State Police, 162 CSR 9; and Deputy Sheriff Retirement System, 162 CSR 10; in reaching a decision on the appeal.

§ 162-8-3. Definitions.

3.1. The definitions of key terms used in the Public Employees Retirement System (W. Va. Code § 5-10-1 et seq.; 162 CSR 5), the Teachers' Retirement System (W. Va. Code § 18-7A-1 et seq.; 162 CSR 4), the Deputy Sheriff Retirement System (W. Va. Code § 7-14D-1 et seq.; 162 CSR 10), the West Virginia State Police Retirement System (W. Va. Code § 15-2A-1 et seq.; 162 CSR 9) and the West Virginia Emergency Medical Services Retirement System (W. Va. Code § 16-5V-1 et seq.) apply to this service credit rule as the context requires.

§ 162-8-4. Public Employees Retirement System.

4.1. Service Credit for Accrued Unused Sick and Annual Leave. – Members of the Public Employees Retirement System may elect to receive additional service credit in exchange for accrued and unused sick and annual leave at the time of retirement. Members who make this election are eligible for any additional

service credit to which the member is entitled based upon the number of the member's accrued unused sick and annual leave days which stand to the member's credit with the member's last participating public employer at the time of retirement. In calculating a member's service credit for accrued unused sick and annual leave, the Board shall not include any accrued and unused sick and annual leave days which stand to the member's credit with any participating public employer prior to the member's last participating public employer which are not transferable to or recognized by the member's last participating public employer. In interpreting, applying and administering this rule and subject to the limitations found in ~~subdivision 8.4.2 and 8.4.3~~ subsections 4.2 and 4.3 of this rule, the Board shall accept the policy of the member's last participating public employer for the accrual of unused sick and annual leave. In order for a participating public employer's annual and sick leave policy to be recognized by the Board, the policy must be a written standard that is an accepted standard by the employer.

4.2. Limitation on the Accrual of Unused Sick and Annual Leave. – Members employed by any participating public employer with a policy for the accrual of unused sick and annual leave which is more generous than that of the State of West Virginia for its state agency employees shall receive service credit only for accrued unused sick and annual leave as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel.

4.3. Calculation of Service Credit for Accrued Unused Sick and Annual Leave. – The Consolidated Public Retirement Board may request information from the member and/or the member's last or prior participating public employer in order to determine the proper amount of retirement system service credit the member is entitled to receive for his or her accrued and unused sick and annual leave. The conversion of accrued sick and annual leave to additional service shall be based upon the information received by the Board from the member's employer.

4.4. Lump Sum Payment for Accrued Leave. – If the member is paid in a lump sum for accrued unused leave, the Board shall not consider the lump sum payment as compensation or salary in computing a member's final average salary.

§ 162-8-5. Teachers' Retirement System.

5.1. Service Credit for Accrued Unused Sick and Annual Leave. – The Board shall give members of the Teachers' Retirement System who elect, under the provisions of W. Va. Code § 5-16-13(f), to convert accrued and unused sick and annual leave to additional retirement system service credit any additional credit to which the member is entitled based upon the number of accrued and unused sick and annual leave days which stand to the member's credit with the member's last employer at the time of retirement. Any unused sick and annual leave days accrued and which stand to the member's credit with any participating public employer prior to the member's last participating public employer, and which are not transferable to or recognized by the member's last participating public employer, are not used to calculate service credit. In interpreting, applying and administering this rule and subject to the limitations found in ~~subdivision 8.5.2~~ subsection 5.2, of this rule, the Board shall be deferential to the policy of the member's last participating public employer for the accrual of unused sick and annual leave. In order for a participating public employee's annual and sick leave policy to be recognized by the Board, the policy shall have been formally adopted in writing by the employer.

5.2. Calculation of Service Credit for Accrued Unused Sick and Annual Leave. – The conversion of accrued leave to service credit shall be made in a manner consistent with the provisions of Teachers'

162CSR8

Retirement System, 162 CSR 4 and W. Va. Code § 5-16-13(f). The Consolidated Public Retirement Board may request information from the member and/or the member's last or prior employers in order to determine the proper amount of retirement system service credit the member is entitled to receive for his or her accrued sick and annual leave. The conversion of accrued sick and annual leave to additional service credit shall be based upon the information received by the Board from the member's employer.

5.3. Deferred Retirement. – A member of the Teachers' Retirement System who ceases employment prior to retirement or who takes a deferred retirement may not use accumulated unused sick and annual leave for ~~enhanced retirement benefits~~ additional retirement service credit, unless the Teachers' Retirement System member continues to be a covered ~~participant in employee with~~ the West Virginia Public Employees Insurance Agency as defined in W. Va. Code § 5-16-2(3) at the time his or her retirement annuity commences, ~~either as a covered member or as a covered dependent of a member under that Agency, pursuant to W. Va. Code § 5-16-13(f).~~

5.4. Lump Sum Payment for Accrued Leave. – If the member is paid in a lump sum for accrued unused leave, the Board shall not consider the lump sum payment as compensation or salary in computing a member's final average salary.

§ 162-8-6. Deputy Sheriff Retirement System.

6.1. Service Credit for Accrued Unused Sick and Annual Leave. – Members of the Deputy Sheriff Retirement System may elect to receive additional service credit in exchange for accrued and unused sick and annual leave at the time of retirement. Members who make this election are eligible for any additional service credit to which the member is entitled based upon the number of the member's accrued unused sick and annual leave days which stand to the member's credit with the member's last covered employment employer at the time of retirement. In calculating a member's service credit for accrued unused sick and annual leave, the Board shall not include any accrued and unused sick and annual leave days which stand to the member's credit with any participating public employer prior to the member's last covered employment employer which are not transferable to or recognized by the member's last covered employment employer. In interpreting, applying and administering this rule and subject to the limitations found in ~~subdivision 8.6.2 and 8.6.3~~ subsections 6.2. and 6.3. of this rule, the Board shall accept the policy of the member's last covered employment employer for the accrual of unused sick and annual leave. In order for a covered employment employer's annual and sick leave policy to be recognized by the Board, the policy must be a written standard that is an accepted standard by the employer.

6.2. Limitation on the Accrual of Unused Sick and Annual Leave. – Members employed by any covered employment employer with a policy for the accrual of unused sick and annual leave which is more generous than that of the State of West Virginia for its state agency employees shall receive service credit only for accrued unused sick and annual leave as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel.

6.3. Calculation of Service Credit for Accrued Unused Sick and Annual Leave. – The Consolidated Public Retirement Board may request information from the member and/or the member's last covered employment or prior participating public employer in order to determine the proper amount of retirement system service credit the member is entitled to receive for his or her accrued and unused sick and annual leave. The conversion of accrued sick and annual leave to additional service shall be based upon the information received by the Board from the member's employer.

162CSR8

6.4. Lump Sum Payment for Accrued Leave. – If the member is paid in a lump sum for accrued unused leave, the Board shall not consider the lump sum payment as compensation or salary in computing a member's final average salary.

§ 162-8-7. West Virginia State Police Retirement System.

7.1. Service Credit for Accrued Unused Sick and Annual Leave. – Members of the West Virginia State Police Retirement System may elect to receive additional service credit in exchange for accrued and unused sick and annual leave at the time of retirement. Members who make this election are eligible for any additional service credit to which the member is entitled based upon the number of the member's accrued unused sick and annual leave days which stand to the member's credit at the time of retirement. In calculating a member's service credit for accrued unused sick and annual leave, the Board shall not include any accrued and unused sick and annual leave days which stand to the member's credit with any participating public employer prior to the member's employment at the West Virginia State Police which are not transferable to or recognized by the West Virginia State Police. In interpreting, applying and administering this rule and subject to the limitations found in subdivision 8-7.2 and 8-7.3 subsections 7.2. and 7.3. of this rule, the Board shall accept the policy of the West Virginia State Police for the accrual of unused sick and annual leave. In order for the West Virginia State Police's annual and sick leave policy to be recognized by the Board, the policy must be a written standard that is an accepted standard by the employer.

7.2. Limitation on the Accrual of Unused Sick and Annual Leave. - If the West Virginia State Police policy for the accrual of unused sick and annual leave is more generous than that of the State of West Virginia for its state agency employees, trooper members shall receive service credit only for unused sick and annual leave as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel, except as provided in subdivision 7.2.1.

7.2.1. Except as provided in subdivision 7.2.2. of this rule, for purposes of determining service credit that may be received by a trooper member for accrued and unused annual leave, a trooper member with up to 480 hours (60 work days) accrued and unused annual leave that was carried forward from 2005 to 2006 may carry forward accrued and unused annual leave from 2006 to 2007 in an amount not to exceed either the amount of accrued and unused annual leave actually carried over from 2005 to 2006 or the amount of accrued and unused annual leave actually remaining to the trooper member at the expiration of calendar year 2006, whichever is lesser. At the end of each calendar year thereafter, the trooper member may carry over the lesser of the amount carried over the previous year or the amount actually remaining to the trooper member at the expiration of calendar year.

7.2.2. If the amount of a trooper member's unused annual leave carried over from 2005 to 2006, or from any year to the next thereafter, is less than the amount of unused annual leave permitted to be carried over as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel, the provisions of subdivision 7.2.1. of this rule do not apply and the trooper member shall thereafter be governed by the provisions of subsection 7.2. of this rule and for purposes of determining service credit that may be received by a trooper member for accrued and unused annual leave, is permitted to carry over annual leave up to but not exceeding the amounts permitted to be carried over as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel.

7.2.3. The provisions of this rule govern the determination of service credit that may be received by a trooper member for accrued and unused annual leave, and may not be construed to supersede any West Virginia State Police policy for the accrual of unused sick and annual leave applicable to contributing trooper members before retirement.

7.3. Calculation of Service Credit for Accrued Unused Sick and Annual Leave. – The Consolidated Public Retirement Board may request information from the member and/or the West Virginia State Police or prior participating public employer in order to determine the proper amount of retirement system service credit the member is entitled to receive for his or her accrued and unused sick and annual leave. The conversion of accrued sick and annual leave to additional service shall be based upon the information received by the Board from the member's employer.

7.4. Lump Sum Payment for Accrued Leave. – If the member is paid in a lump sum for accrued unused leave, the Board shall not consider the lump sum payment as compensation or salary in computing a member's final average salary.

§ 162-8-8. Emergency Medical Services Retirement System.

8.1. Service Credit for Accrued Unused Sick and Annual Leave. – Members of the Emergency Medical Services Retirement System may elect to receive additional service credit in exchange for accrued and unused sick and annual leave at the time of retirement. Members who make this election are eligible for any additional service credit to which the member is entitled based upon the number of the member's accrued unused sick and annual leave days which stand to the member's credit with the member's last covered employment employer at the time of retirement. In calculating a member's service credit for accrued unused sick and annual leave, the Board shall not include any accrued and unused sick and annual leave days which stand to the member's credit with any participating public employer prior to the member's last covered employment employer which are not transferable to or recognized by the member's last covered employment employer. In interpreting, applying and administering this rule and subject to the limitations found in ~~subdivision 8.8.2 and 8.8.3~~ subsections 8.2. and 8.3. of this rule, the Board shall accept the policy of the member's last covered employment employer for the accrual of unused sick and annual leave. In order for a covered employment employer's annual and sick leave policy to be recognized by the Board, the policy must be a written standard that is an accepted standard by the employer.

8.2. Limitation on the Accrual of Unused Sick and Annual Leave. – Members employed by any covered employment employer with a policy for the accrual of unused sick and annual leave which is more generous than that of the State of West Virginia for its state agency employees shall receive service credit only for accrued unused sick and annual leave as provided for by the State of West Virginia for state employees who are covered by the rules of the West Virginia Division of Personnel.

8.3. Calculation of Service Credit for Accrued Unused Sick and Annual Leave. – The Consolidated Public Retirement Board may request information from the member and/or the member's last covered employment or prior participating public employer in order to determine the proper amount of retirement system service credit the member is entitled to receive for his or her accrued and unused sick and annual leave. The conversion of accrued sick and annual leave to additional service shall be based upon the information received by the Board from the member's employer.

162CSR8

8.4. Lump Sum Payment for Accrued Leave. – If the member is paid in a lump sum for accrued unused leave, the Board shall not consider the lump sum payment as compensation or salary in computing a member's final average salary.