WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Consolidated Public Retirement Board TITLE NUMBER: 162

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code § 5-10-D-1

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 1

TITLE OF RULE BEING AMENDED: General Provisions

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 2, 2004 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Joseph J. Jankowski, Executive Director
WV Consolidated Public Retirement Board
State Capitol Complex
Building 5, Room 1000
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

State of West Virginia
Consolidated Public Retirement Board
Capitol Complex, Building 5, Suite 1000
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0720
Telephone: 304-558-3570 or 800-654-4406
Fax: 304-558-6337
email: CPRB@wvretirement.com
www.state.wv.us/admin/cprb

July 1, 2004

Administrative Law Division
WV Secretary of State
Building 1, Suite 157K
State Capitol Complex
Charleston, West Virginia 25305-0771

Attention: Judy Cooper

Re: West Virginia Consolidated Public Retirement Board
2005 Proposed Amendments to Title 162
-Series 1 General Provisions
-Series 2 Benefit Determination and Appeal
-Series 3 Teachers' Defined Contribution System
-Series 4 Teachers Defined Benefit Plan
-Series 5 Public Employees Retirement System
-Series 6 Procedural Rules of the WVCPRB of Representatives to the WVIMB
-Series 9 West Virginia State Police Disability Determination & Appeal Process
-Series 10 Deputy Sheriff Retirement System

Dear Ms. Cooper:

Enclosed please find an original and two copies of proposed amendments to Title 162, along with the "Notice of a Comment Period on a Proposed Rule" and the other forms and documents which we understand are required for the filing of proposed rules.

It is my understanding that one copy of the rule will be forwarded, by your office, to the Legislative Rule Making Committee. Please date stamp the remaining copy and return to CPRB.

Thank you for your assistance and cooperation in this matter. Should you have any questions, please feel free to contact me.

Sincerely,

Karen S. Copeland

Karen S. Copeland
Membership Manager

Enclosures
C: John Poffenburger
Joseph J. Jankowski
Terasa Robertson
Harry Mandel
Donna Lipscomb

State of West Virginia
Consolidated Public Retirement Board
Capitol Complex, Building 5, Room 1000, Charleston, West Virginia 25305-0720
Telephone: 304-558-3570 or 800-654-4406 Fax: 304-558-6337
CPRB@wvretirement.com www.wvretirement.com

BRIEF SUMMARY OF PROPOSED AMENDMENT TO TITLE 162, SERIES 1

The West Virginia Consolidated Public Retirement Board (Board) proposes amendatory changes and additions to the current provisions of the Title 162, Series 1 rule relating to Administrative Expenses and Qualified Domestic Relations Orders (QDRO). The proposed amendatory change set forth in WVCRS § 162-1-3 is to delete conflicting language in that section. The amendatory addition set forth in § 5 allows for the assessment of administrative expenses to both terminated members of the Teachers Defined Contribution Plan who are not vested in any employer contributions and alternate payees.

The Board also proposes amendatory additions that are set forth in WVCSR § 162-1-6 to provide definitions for the administration of Qualified Domestic Relations Orders (QDRO), as well as to provide for the prohibition of a member who has a QDRO on file with the Board from obtaining a loan. Other non-substantial changes are also proposed.

State of West Virginia
Consolidated Public Retirement Board
Capitol Complex, Building 5, Room 1000, Charleston, West Virginia 25305-0720
Telephone: 304-558-3570 or 800-654-4406 Fax: 304-558-6337
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STATEMENT OF CIRCUMSTANCES REQUIRING PROPOSAL AND PROMULGATION OF PROPOSED RULE CHANGES TO SERIES 1 OF TITLE 162 OF THE WV CODE OF STATE REGULATIONS

As statutory administrator of the State's several pension plans, the West Virginia Consolidated Public Retirement Board proposes certain amendatory changes and additions to Title 162, Series 1 of the West Virginia Code of State Regulations. Specifically, the Board has identified in its administration of the current provisions of Series 1 that the rule does not provide for the assessment of administrative expenses for terminated members of the Teachers Defined Contribution Plan who are not vested in any employer contributions or alternate payees.

Additionally, the Board has determined that the additions and amendments set forth in § 6 are necessary for the equitable distribution of plan benefits as marital property under a Qualified Domestic Relations Order (QDRO) for members or retirants of its pension plans. The proposed amendments to this rule clarify terms used in the rule as well as what service shall be exempt in a QDRO calculation. The proposed amendment set forth in 6.2.8. requires that the QDRO contain a prohibition of a member who has a QDRO on file from obtaining a loan under the Teachers Retirement System (TRS) or the Deputy Sheriff Retirement System (DSRS). This amendment goes on to state that a QDRO will not be honored by the Board while a loan under the TRS or the DSRS is outstanding.

The Board also proposes a minor amendatory change to WVCSR § 162-1-3 to delete conflicting language in that section.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 162 (Series 1) General Provisions

Type of Rule: __X__ Legislative ______ Interpretive _____ Procedural

Agency: The State of West Virginia Consolidated Public Retirement Board

Address: 1900 Kanawha Boulevard, East, Building 5, Room 1000, Capitol Complex

Charleston, West Virginia 25305

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1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$0				
PERSONAL SERVICES	$0				
CURRENT EXPENSE	$0				
REPAIRS & ALTERATIONS	$0				
EQUIPMENT	$0				
OTHER	$0				

2. Explanation of Above Estimates:

   The rule provides for certain technical modifications and clarifications and does not increase or decrease any benefits currently provided by impacted plans.

3. Objectives of These Rules:

   Clarify Board authority regarding amending rules during any emergency meeting. Clarify and modify the collection of annual administrative expenses from individual accounts under the Teachers Defined Contribution Plan. Provide certain definitions. Clarify certain procedures regarding Qualified Domestic Relations Orders (QDRO) in regards to the benefit for alternate payees and restrictions due to existing or new loans due to a QDRO.

Rule Title: Title 162 (Series 1) General Provisions

4. Explanation of Overall Economic Impact of Proposed Rule:

   A. Economic Impact on State Government:

      Allows annual administration fees to be collected for certain terminated Teachers Defined Contribution Plan members who are only vested in their member contribution account.

   B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

      Allows annual administration fees to be collected for certain terminated Teachers Defined Contribution Plan members who are only vested in their member contribution account.

   C. Economic Impact on Citizens/Public at Large:

      None.

Date: June 30, 2004

Signature of Agency Head and/or Authorized Representative:

Harry W. Mandel

Harry W. Mandel
Member, American Academy of Actuaries
Board Actuary, WVCPRB

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 162
LEGISLATIVE RULE
CONSOLIDATED PUBLIC RETIREMENT BOARD

SERIES 1
GENERAL PROVISIONS

§162-1-1. General.

1.1. Scope. -- The scope of this rule involves the enabling legislation and general administrative criteria of the Consolidated Public Retirement Board.

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

1.3. Filing Date. --

1.4. Effective Date. --

§162-1-2. Consolidated Public Retirement Board.

2.1. The Board shall determine all other rules that are necessary for its administration and the administration of the Teachers Defined Contribution Retirement System (W. Va. Code §18-7B-1, et seq.); the Teachers Defined Benefit Retirement System (W. Va. Code §18-7A-1, et seq.); the Public Employees Retirement System (W. Va. Code §5-10-1, et seq.); the Judges' Retirement System (W. Va. Code §51-9-1, et seq.); the Department of Public Safety, Death, Disability and Retirement Fund (W. Va. Code §15-2 -2 6, et seq.); the West Virginia State Police Retirement System (W. Va. Code §15-2A-1, et seq.); the West Virginia Deputy Sheriff Retirement System (W. Va. Code §7-14D-1, et seq.); and the Deferred Compensation Plan (W. Va. Code §5-10B-1, et seq.)

§162-1-3. Amendments.

3.1. The Board may make, alter, amend, suspend and repeal the Rules of the Board by a vote of not less than a majority of a quorum of its members at any regular meeting of the Board provided at least ten (10) days notice of such purpose is given. A quorum of the Board may make, alter, amend, suspend or repeal the Rules of the Board at any emergency meeting of the Board, provided at least ten (10) days notice of the purpose to make, amend, alter, suspend or repeal the Rules in whole or part at the meeting is given, and of the substance of the proposed action is announced. ~~The Board may not amend a rule at any emergency meeting.~~ However, any action to promulgate, amend, suspend or repeal the Rules of the Board are subject to the rule-making provisions of W. Va. Code §29A-3 -1 et seq.

§162-1-4. General Administrative.

4.1. Fiscal year. The fiscal year of the Board commences on the 1st day of July and ends on the 30th day of June the following year.

4.2. Books, records and minutes. The records of the Board are covered by the laws of the State of West Virginia and are subject to any applicable privilege and/or limitation under the Freedom of Information Act (W. Va. Code §29B-1-1). The Board shall keep all final actions of the Board in the form of minutes, and the minutes shall be open for inspection by the public at all reasonable times.

4.3. Contracts. All contracts and obligations of the Board shall be signed by the chairman or other officers or employees of the Board authorized to execute contracts or other obligations of the Board.

4.4. Indemnification. The Board shall, to the fullest extent allowed by law, indemnify and reimburse its present and future members, officers, employees or agents against loss for all expenses, including without limitation attorney fees, judgments, fines, taxes and penalties and interest thereon, for their official acts as Board members, officers, employees or agents. If the Board determines that a settlement of any action, suit or proceeding is in the best interest of the Board, all amounts paid in effecting the settlement, other than amounts paid by the Board itself, reasonably incurred by a member, officer, employee or agent in connection with or arising out of any action, suit or proceeding in which he or she may be involved by reason or his or her being or having been a member, officer, employee or agent of the Board shall be paid by the Board. Provided, that the indemnity shall not include any expenses incurred by any member, officer, employee or agent with respect to matters as to which he or she is finally adjudged in any action, suit or proceeding to have been guilty of or liable for gross negligence, willful misconduct or criminal acts in the performance of his or her duties of the Board. The right of indemnification provided in this subsection inures to the benefit of the heirs, executors or administrators of each member, officer, employee or agent and is in addition to all other rights to which the member, officer, employee or agent may be entitled as a matter of law.

4.5. Insurance. To the extent possible, the Board shall obtain necessary liability insurance coverage from the West Virginia Board of Risk and Insurance Management to cover itself, its members, officers, employees and agents in the performance of their duties as trustees for the Retirement Systems set forth in this Rule.

4.6. Conflict of interest. The Board shall maintain constant vigilance against conflicts of interest, or the mere appearance of conflicts of interest. No officers, member, agent or employee of the Board shall be financially interested, directly or indirectly, in any contract with the Board, or in the sale of any property, real or personal, to or from the Board. Provided, that this section shall not apply to contracts or purchases of property, either real or personal, commodities or services between the Board and any governmental agency.

§162-1-5. Administrative Expenses.

5.1. The Consolidated Public Retirement Board shall create an Expense Fund which shall be funded by an assessment against the Teachers Defined Benefit Retirement System, the Public Employees Retirement System, the Judges' Retirement System, the Public Safety Death, Disability and Retirement Fund, the West Virginia State Police Retirement System and the West Virginia Deputy Sheriff Retirement System, with payment out of earnings and the employers part of the Teachers Defined Contribution Plan in an amount determined by the Board, per year, for each ~~active employee~~ <u>member</u>, retirant<u>,</u> ~~and~~ beneficiary<u>, and alternate payee</u> receiving benefits. <u>For terminated members and alternate payees of terminated members of the Teachers Defined Contribution Plan who are not vested in any employer contributions, the fee shall be deducted from the vested employee account.</u>

5.2. All administrative costs of the Board, including, but not limited to, salaries and employee benefits, shall be paid from the expense fund. However, any indemnification required pursuant to subsection 4.4 of this Rule shall be paid from the particular Retirement System affected.

5.3. The administrative expense fund is not subject to satisfaction of any judgment or award against any of the Retirement Systems, and the judgment or award shall be satisfied from assets of the particular Retirement System against which it is levied.

§162-1-6. Non-Alienation of Benefits: Divorce and Separation.

6.1. The moneys in each of the Retirement Systems and the right of a person to receive any benefit, whether it be an annuity, return of retirement contributions, or other benefit, are not subject to execution, attachment, garnishment, the operation of bankruptcy or other insolvency laws, State or municipal taxation, or any other legal process whatsoever; and are not assignable nor transferable by any employee, retirant or beneficiary.

6.2. In case of divorce or legal separation, the annuity, ~~return of retirement~~ refund of accumulated contributions, or other provisions available to a member, retirant or beneficiary of any Retirement System may only be divisible as provided in this Rule. With the exception of orders entered as permitted by law by the West Virginia Child Advocate Office, the Board shall not honor any Qualified Domestic Relations Order seeking to divide a members pension benefit which does not meet the requirements of this rule.

6.2.1. In cases of divorce or legal separation where the member's or retirant's interest in his or her retirement account is subject to division as marital property pursuant to state domestic relation law, that portion of the member's or retirant's retirement account which constitutes marital property and which is subject to division by a Qualified Domestic Relations Order shall be determined by the Board by using the following formula, but only after the benefits are available to the member or retirant at death, ~~withdrawal~~ refund or retirement: the marital property portion of a member's or retirant's retirement benefit which is subject to division shall be computed by the Board by multiplying the ~~vested accrued benefit~~ Accrued Retirement Benefit, less all benefits due to Exempt Service, by a fraction, the numerator being the number of years of contributing service incurred during the marriage, and the denominator being the total number of years of contributing service towards the pension. In determining the marital property portion of a member's or retirant's benefit, the numerator used by the Board in the fraction shall not include the member's previously withdrawn service credit which was not repaid in full as of the date used by the parties as provided for in sub-division 6.2.2. of this Rule.

6.2.1.1. "Accrued Retirement Benefit" means the benefit due to the member at the time of his or her refund of accumulated contributions or at the commencement of his or her retirement annuity.

6.2.1.2. "Exempt Service" shall include all additional service credit due to non-contributory military service and accumulated sick and/or annual leave.

6.2.2 In any Qualified Domestic Relations Order which meets the requirements of this Rule and which seeks to divide a member's or retirant's state retirement benefit, the parties, by agreement, or the court having jurisdiction of the parties domestic relations proceeding, may utilize either the parties' date of separation or the date of the divorce as their numerator in the marital share formula required by sub-division 6.2.1. of this Rule.

6.2.3. For the division of state pension benefits between a member or retirant and his or her ex-spouse by a Qualified Domestic Relations Order which meets the requirements of this Rule, a shared payment approach shall be utilized, with the ex-spouse being paid an agreed upon or court ordered percentage of the marital property portion of the member's or retirant ~~vested accrued retirement benefit~~ Accrued Retirement Benefit at the same time and in the same form as the benefit elected by and paid to the member once he or she enters pay status.

6.2.4. Unless otherwise specifically agreed to by the parties in their Qualified Domestic Relations Order or ordered by the Court having jurisdiction of the parties' domestic relation proceeding, the tax basis and any post-retirement cost of living increases shall ~~enure only~~ be applied to the benefit of both the member or retirant and the alternate payee proportionate to the division of the Accrued Retirement Benefit.

6.2.5. Qualified Domestic Relations Orders shall contain all of the following in order to meet the requirements of this Rule:

6.2.5.1. The name and last known address of the participant and his or her ex-spouse. The ex-spouse shall be designated as the "alternate payee" within the order;

6.2.5.2. The name of the state retirement plan to which the Qualified Domestic Relation Order applies; and

6.2.5.3. The percentage of the marital property portion of the member's or retirant's ~~vested accrued retirement benefit~~ Accrued Retirement Benefit which is to be paid to the alternate payee.

6.2.6 For a Qualified Domestic Relations Order to be acceptable and honored by the Board, the order may not require the member's retirement plan to provide the alternate payee with any type or form of benefit, or any option, not otherwise provided under the plan; may not require the plan to provide for increased benefits determined on the basis of actuarial value; may not require the plan to pay benefits to an alternate payee which are required to be paid to another alternate payee under a prior Qualified Domestic Relations Order; and may not require the plan to pay benefits to an alternate payee in the form of a qualified joint and survivor annuity for the lives of the alternate payee and his or her subsequent spouse.

6.2.7. In cases of divorce or legal separation in which the Court of record enters a division order in accordance with the formula and the requirements of this Rule, the Board shall make separate payments to the member or retirant and the former spouse in accordance with that order.

6.2.8. In cases of divorce or legal separation, the qualified domestic relations order shall contain a prohibition against the member obtaining a loan under West Virginia Code § 18-7A-34 or West Virginia Code § 7-14D-23. Moreover, no qualified domestic relations order will be honored by the Board while a loan under the above two sections is outstanding.

§162-1-7. Death Benefits.

7.1. The several Retirement Systems to be administered by the Board have varying and different definitions of who a survivor beneficiary may be if the member dies prior to retirement and following retirement. The Board has adopted the procedures in this section for payment of death benefits for all systems.

7.1.1. The "beneficiary" means the person who the member has designated as beneficiary in writing as of the date of his or her death. To the extent that plan provisions require the existence of an insurable interest between the named beneficiary and the member, the Board shall have the discretion to decide whether such interest exists.

7.1.2. If, upon the death of a member or retirant, a dispute arises between two (2) or more people who claim beneficiary or survivor benefits, the Board may make payment to the duly registered legal representative of the estate of the deceased member or retirant. Payment may only be made upon submission of written proof of the representative of the estate, generally incorporated in a probate court order. The Board shall accept the Last Will and Testament of the deceased member or retirant for the purposes of payment to the estate under this subdivision.

7.1.3. If the last designated beneficiaries of a member or retirant are children under the age of majority, but who reached their majority by the time of death, the Board shall always make payment pursuant to a court order or agreement entered into by the children of the member or retirant. If the designated beneficiaries are children who have not reached their majority, the Board shall only make payment to the court appointed guardian ad litem as specified in appropriate legal proceedings.

7.1.4. Except under joint and survivor options, a member or retirant may retain the right of selecting his or her designated beneficiary at any time.

§162-1-8. Miscellaneous.

8.1. The members of the Board and any employee or agent of the Board are subject to the Governor's Travel Rules and Regulations.

8.2. If a member of a Defined Benefit System is covered by a group insurance or prepayment plan participated in by a participating public employer, and if the member is permitted to, and elects to, continue coverage as a retirant, he or she may authorize the Board to have deducted from his or her annuity the payments required of him or her to continue coverage under group insurance or prepayment plan.

8.3. A participating public employer in any Retirement System has the right of setoff for any proven claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary.