WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Consolidated Public Retirement Board TITLE NUMBER: 162

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §5-10D-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 14, 2000 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Betty S. Ireland, Executive Secretary
WV Consolidated Public Retirement Bd.
Building 5, Room 1000
1900 Kanawha Boulevard East
Charleston, WV 25305-0720

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

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

$4.00

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 (within WV) Fax: 304-558-6337

BRIEF SUMMARY OF PROPOSED AMENDMENT TO TITLE 162, SERIES 1

The West Virginia Consolidated Public Retirement Board proposes to add to the current provisions of the Title 162, Series 1 rules regarding Qualified Domestic Relations Orders ("QDROs"), the specific factual information which must be contained in any QDRO presented to the Board for acceptance. The proposed amendatory additions, which are set forth in WVCSR 162-1-6.2 clarify the method and formula by which the marital portion of a member's retirement benefit or account is determined, and the manner in which parties may divide the marital share of such benefit or account between the member and his/her ex-spouse (alternate payee). The proposed amendments also clarify the definition of the term "beneficiary" as such term pertains to death benefits under the plans administered by the Board.

State of West Virginia
Consolidated Public Retirement Board
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STATEMENT OF CIRCUMSTANCES REQUIRING PROPOSAL AND PROMULGATION OF PROPOSED RULE CHANGES TO SERIES 1 OF TITLE § 162

The West Virginia Consolidated Public Retirement Board ("Board"), as administrator of the State's several pension plans, proposes certain amendatory additions to Title 162, Series 1, of the WV Code of State Regulations . Specifically, the Board has, in its administration of the provisions of the current provisions of the Series 1 Rule, identified certain areas of ambiguity regarding the content and format of court orders (Qualified Domestic Relations Orders or "QDROs") which are sufficient to permit the division of plan benefits between a member and ex-spouse/alternate payee. The proposed additions to this rule undertake to clarify the requirements of QDROs presented to the Board by members, alternate payees an/or their counsel for division of plan benefits as marital property.

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. -- April 7, 2000.

1.4. Effective Date. -- July 1, 2000.

§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. ~~Miscellaneous.~~ <u>Administrative Miscellany.</u>

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, retirant and beneficiary receiving benefits.

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 5.4 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 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~~ the Board shall not honor any Qualified Domestic Relations Order ~~except as provided by State law or as entered as a matter of record by the West Virginia Child's Advocate Office.~~ 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 whereby 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 ~~is to be~~ constitutes marital property and which is subject to division by a ~~the Court~~ 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 or retirement: ~~a former spouses's interest~~ 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 ~~actual value of the retirement account~~ vested accrued benefit 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.

6.2.2 In any Qualified Domestic Relations Order under this Rule which seeks to divide a member's or retirant's 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 calculation required by sub-paragraph 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 Qualified Domestic Relations Order under 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, 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 to the benefit of the member or retirant.

6.2.5. Qualified Domestic Relations Orders under this Rule must contain all of the following:

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.

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

6.2.6 For a Qualified Domestic 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 Relation 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.~~5~~7. In cases of divorce or legal separation wherein the Court of record enters a division order in accordance with the formula and requirements of this Rule in ~~this subsection~~, the ~~Retirement System affected~~ Board shall make separate payments to the member or retirant and the former spouse in accordance with that order. ~~based upon the formula set forth in this subsection.~~

~~6.3. 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.~~

~~6.4. 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.~~

§162-1-7. Death Benefits.

7.1. The several Retirement Systems to be administered by the Board have varying and different ~~denominations~~ 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 ~~terms "spouse", "widow", "sole refund beneficiary", and~~ "beneficiary ~~with an insurable interest" all~~ means the person who the member has designated as beneficiary in writing as of the date of his or her death. ~~Notwithstanding any other term to the contrary contained in the statutes of the several Retirement Systems, that person is the "designated beneficiary" and is entitled to the benefits as specified by the option selected under each Retirement System.~~ To the extent that plan provisions require the existence of insurable interest between the named beneficiary and the member, the Board shall have the discretion to decide the question.

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. ~~Travel Expense Rules.~~ 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.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 162 (Series 1)

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	Nil		Nil		
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

There will be no material change in the total amount of benefits paid as a result of these rules, hence no fiscal impact.

3. Objectives of These Rules:

The purpose of this bill is to codify rules adopted and implemented by the Agency (the Consolidated Public Retirement Board) with respect to the requirements for a court order to be recognized as a "QDRO", a "qualified domestic relations order" for the purposes of dividing benefits from state retirement systems between a member and the former spouse of a member. These rules parallel similar rules that were enacted by the Federal government for retirement plans sponsored by private sector employers. Retirement plans sponsored by state governments are not required to comply with the Federal rules. The QDRO rules adopted by the Agency have been made simpler than the Federal rules in the interest of better, more cost effective administration of the retirement systems sponsored by the State of West Virginia.

Rule Title: Title 162 (Series 1)

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Rule change is procedural. There is no economic impact.

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

Rule change is procedural. There is no economic impact.

C. Economic Impact on Citizens/Public at Large:

Rule change is procedural. There is no economic impact.

Date: July 10, 2000

Signature of Agency Head or Authorized Representative:

Dreighton H. Rosier, FSA
Director of Actuarial Services