# WEST VIRGINIA
# SECRETARY OF STATE
**KEN HECHLER**
# ADMINISTRATIVE LAW DIVISION

Form #4

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## NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Consolidated Public Retirement Bd. TITLE NUMBER: 162

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 NEW RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

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THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Betty S. Ireland

Authorized Signature

$2.80

# TITLE 162
# LEGISLATIVE RULES
# CONSOLIDATED PUBLIC RETIREMENT BOARD



## SERIES 1
## GENERAL PROVISIONS

**§162-1-1. General.**

1.1. Scope. -- The scope of this ~~Series of Rules~~ rule involves the enabling legislation and general administrative criteria of the Consolidated Public Retirement Board.~~, hereinafter referred to as "Board".~~

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

1.3. Filing Date. -- ~~August 4, 1993.~~

1.4. Effective Date. -- ~~August 4, 1993.~~

**§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.); ~~and~~ 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.)

~~2.2. The Public Employees Retirement Act as it relates to the Teachers Defined Benefit Retirement Act contained in W. Va. Code §5-13-1 et seq., applicable to reciprocal service is incorporated in this Rule by reference.~~

~~**§162-1-3. Adoption and Ratification.**~~

~~3.1. The Board hereby adopts and assumes all of the outstanding business pending before the previous Boards of the Teachers Defined Benefit Retirement System, the Public Employees Retirement System, and the Public Safety Death, Disability, and Retirement Fund as of July 1, 1991. The Board adopts and assumes all the business pending with the State Auditor as it relates to the Judges' Retirement System.~~

**§162-1-~~4~~3. Amendments.**

3~~4~~.1. The Board ~~has the power to~~ 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 ~~has the power to~~ 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 ~~shall be~~ 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-~~5~~4. Miscellaneous.**

4~~5~~.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~~5~~.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 ~~any~~ the Freedom of Information Act (W. Va. Code §29B-1-1). ~~All final actions of the~~ The Board shall ~~be kept~~ 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~~5~~.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~~5~~.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 ~~forgoing~~ 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~~.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~~5~~.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-~~6~~5. Administrative Expenses.**

5~~6~~.1. ~~The Board authorizes and shall create a~~ 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, ~~and~~ 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~~6~~.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~~6~~.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-~~7~~6. Non-alienation of Benefits: Divorce and Separation.**

6~~7~~.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~~7~~.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. 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.

6~~7~~.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 pursuant to domestic relation law, that portion of the member's or retirant's retirement account which is subject to division by the Court shall be determined by the Board by using the following formula, but only after the benefits are available to the member or retirant: a former spouse's interest shall be computed by the Board by multiplying the actual value of the retirement account 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~~7~~.2.2 In cases of divorce or legal separation wherein the Court of record enters a division order in accordance with the formula in this subsection, the Retirement System affected shall make separate payments to the retirant and the former spouse in accordance with that order based upon the formula set forth in this subsection.

6~~7~~.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~~7~~.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-~~8~~7. Death Benefits.**

7~~8~~.1. The several Retirement Systems to be administered by the Board have varying and different denominations 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~~8~~.1.1. The terms "spouse", "widow", "sole refund beneficiary", and "beneficiary with an insurable interest" all mean 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.

7~~8~~.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 ~~will~~ shall accept the Last Will and Testament of the deceased member or retirant for the purposes of payment to the estate under this sub~~section~~division.

7~~8~~.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~~8~~.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-~~9~~8. Travel Expense Rules.**

8~~9~~.1. The members of the Board and any employee or agent of the Board are subject to the Governor's Travel Rules and Regulations.