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: Consolidated Public Retirement Board TITLE NUMBER: 162

RULE TYPE: Legislative ; CITE AUTHORITY W.Va. Code Sections S-10D-1, 18-7B-1 et seq., 29A-3-1 et s

AMENDMENT TO AN EXISTING RULE: YES___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ______

TITLE OF RULE BEING AMENDED: ______

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

TITLE OF RULE BEING PROPOSED: General Provisions

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 26, 1991 AT 3:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Consolidated Public Retirement Board
Building 5, Room 1000
Charleston, West Virginia 25305
Attn: James L. Sims, Executive Secretary

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

Chuck Polan, Secretary
Department of Administration

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.10

WEST VIRGINIA CONSOLIDATED PUBLIC RETIREMENT BOARD
STATEMENT AND FACTS CONSTITUTING THE EMERGENCY

On August 31, 1990, the Legislature created the West Virginia Consolidated Public Retirement Board (hereinafter the "Board") to administer all public retirement plans in the State. W. Va. Code § 5-10D-1 et seq. The Board begins administration of the public retirement systems on July 1, 1991, except the West Virginia Teachers Defined Contribution System which it began to administer on January 1, 1991. W. Va. Code § 5-10D-1(b). The Board was given the powers to promulgate all rules necessary to effectuate its powers, duties and responsibilities. In this regard, the Board approved and adopted for filing the attached Emergency Rules at a regular meeting of the Board held on June 18, 1991. The Board intends to file for a public hearing within thirty (30) days from the date the Emergency Rule is filed.

Also effective August 13, 1990, the Legislature enacted the Teachers' Retirement Reform Act which created and established the West Virginia Teachers' Defined Contribution Retirement System. W. Va. Code § 18-7B-1 et seq. The Board is charged with the administration of the Teachers' Defined Contribution System. W. Va. Code § 18-7B-5.

The Board was charged with promulgating rules defining the minimum requirement for the investment and retirement options by June 30, 1991. W. Va. Code § 18-7B-9. Further, the Board was given all powers necessary to effectuate the purposes of the Teachers' Retirement Reform Act. The primary purpose is to provide a tax qualified defined contribution retirement system for all participating members. W. Va. Code § 18-7B-4.

In this regard the Board has undertaken steps to obtain a determination letter from the Internal Revenue Service that the Teachers' Defined Contribution Retirement System is a qualified retirement system and subject to tax-deferred status. The Internal Revenue Service has indicated that the statutory scheme set forth in Article 7B of Chapter 18 of the West Virginia Code is not adequate for purposes of tax qualification in that it does not address allocation of benefits, Internal Revenue Code § 415 limitations on contributions, and minimum distribution rules. In this regard the Board has promulgated Rules in Series 3 (pages 25-40) with respect to obtaining a favorable determination letter from the Internal Revenue Service so that both employer and employee contributions, and investment earnings thereon, will be tax-deferred.

The new system is effective July 1, 1991, and a favorable determination by the Internal Revenue Service is needed for favorable tax treatment for members of the retirement system. Accordingly, these rules are required by both state and federal law and thus constitutes an emergency pursuant to W. Va. Code § 29A-3-15(g). Additionally, the promulgation of these rules is necessary to prevent substantial harm in that if the Teachers' Defined Contribution Retirement System is not a tax qualified plan then contributions will be currently taxable to participating in the System.

In conclusion, the relevant statutes requires certain rules to be promulgated by July 1, 1991, with respect to the operation of the Board, the adoption of the existing rules of the various retirement systems, and the minimum requirement and investment options under the Teachers' Defined Contribution Retirement System. Further, additional plan requirements must be adopted by the Board before the Internal Revenue Service will issue a favorable determination letter regarding the Teachers' Defined Contribution Retirement System. Accordingly, this Rule cannot wait to go through the regular process before it becomes effective.

Date: ____________________

CHUCK POLAN
Secretary of Administration and
Chairman, West Virginia
Consolidated Public Retirement Board

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Consolidated Public Retirement Board

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: Consolidated Public Retirement Board Address: Capitol Complex Building 5, Room 1000, Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL Increase	ANNUAL Decrease	FISCAL YEAR Current	FISCAL YEAR Next	FISCAL YEAR Thereafter
Estimated Total Cost	$ 0	$ 0	$ 0	$ 0	$ 0
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

Operation of the new Consolidated Public Retirement Board and operation of the new teachers' defined contribution retirement plan.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: June 26, 1991

Signature of Agency Head or Authorized Representative

Carl [signature]

DATE: July 1, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Consolidated Public Retirement Board

EMERGENCY RULE TITLE:

1. Date of filing: July 1, 1991

2. Statutory authority for promulgating the emergency rule: 5-10D-1

3. Date of filing of proposed legislative rule: July 1, 1991

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

   Adopt New Language

5. Has the same or similar emergency rule previously been filed and expired?

   No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

   The statutes requires certain rules to promulgated by July 1, 1991, with respect to the operation of the Board, the adoption of the existing rules of the various retirement systems, and the minimum requirement and investment options under the Teachers' Defined Contribution Retirement System. Further, additional plan requirements must be adopted by the Board before the Internal Revenue Service will issue a faborable determination letter regarding the Teachers' Defined Contribution Retirement System. Accordingly, this Rule cannot wait to go through the regular process before it becomes effective.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

5-10D-1 - IRS Section 401

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

It is important that all contributions to the new teachers' defined contribution plan be taxed deferred. These rules must be filed in order to obtain a favorable determination letter from the IRS.

TITLE 162

LEGISLATIVE RULES

SERIES 1

CONSOLIDATED PUBLIC RETIREMENT BOARD

GENERAL PROVISIONS

§ 162-1-1. GENERAL

1-1.1. Scope. The scope of this Series of Rules involves the enabling legislation and general administrative criteria of the Consolidated Public Retirement Board, hereinafter referred to as "Board".

1-1.2 Authority. -- West Virginia Code Section 5-10D-1, *et seq*.

1-1.3 Filing Date. -- ________________

1-1.4 Effective Date. -- ________________

§ 162-1-2. CONSOLIDATED PUBLIC RETIREMENT BOARD

1-2.1 All of the statutory provisions of Article 10D, Chapter 5 of the Code of West Virginia, 1931, as amended, and any court decisions, opinions of the Attorney General, and amendments thereof are hereby incorporated as Rules of the Board.

1-2.2 The Board shall determine all other Rules that are necessary for its administration and the administration of the Teachers Defined Contribution Retirement System (§18-7B-1, et seq.); Teachers Defined Benefit Retirement System (§18-7A-1, et seq.); Public Employees Retirement System (§5-10-1, et seq.); Judges' Retirement System (§51-9-1, et seq.); and the Department of Public Safety, Death, Disability and Retirement Fund (§15-2-26, et seq.).

1-2.3 The Public Employees Retirement Act as it relates to the Teachers Defined Benefit Retirement Act contained in West Virginia Code Article 13, Chapter 5, applicable to reciprocal service is incorporated herein by reference.

§ 162-1-3. ADOPTION AND RATIFICATION

1-3.1 Pursuant to West Virginia Code 5-10D-1(a) the Board hereby adopts, incorporates, and ratifies, as its own, all procedural and substantive rules, if any, of the Teachers Defined Benefit Retirement System, Public Employees Retirement System, Judges' Retirement System, and the Public Safety Death, Disability, and Retirement Fund as of July 1, 1991. These Rules shall supersede any previously adopted Rules or Regulations where applicable.

1-3.2 The Board further adopts and ratifies as its official action all of the procedural Rules, Resolutions, and decisions as applicable to the Teachers Defined Contribution System from January 1, 1991 up to and including June 30, 1991.

1-3.3 The Board hereby adopts and assumes all of the outstanding business pending before the previous Boards of the Teachers Defined Benefit Retirement System, 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. <u>AMENDMENTS</u>

1-4.1 The Board shall have the power to 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 shall have the power to 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 in part at such meeting is given, and of the substance of the proposed action shall be announced. No amendment of the Rules may be made at any emergency meeting.

1-4.2 These Rules shall be enacted as Emergency Rules. As such, these Rules may only be amended by a majority of the members of the Board as specified in Rule 1-4.1.

1-4.3 To the extent that any legislative action changes or alters any Rule contained herein, that Rule shall be deemed amended automatically by such legislative action.

1-4.4 Unless otherwise stated in the motion of the Board, any amendment to these Rules must specify the effective date of such amendment which shall be no sooner than thirty (30) days following adoption by the Board, although approval by the Secretary of the State may be at a later date.

§ 162-1-5. MISCELLANEOUS

1-5.1 Fiscal Year. The fiscal year of the Board shall commence on the 1st day of July and shall end on the 30th day of June the following year.

1-5.2 Books, Records, and Minutes. The records of the Board shall be open to public inspection at all reasonable times, subject to any applicable privilege and/or limitation under any Freedom of Information Act. All final actions of the Board shall be kept in the form of minutes, and said minutes shall be open for inspection by the public at all reasonable times.

1-5.3 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.

1-5.4 Indemnification. The Board shall, to the fullest extent allowed by law, indemnify and reimburse each present and future member, officer, employee or agent of the Board against loss for all expenses, including without limitation attorney fees, judgments, fines, taxes and penalties and interest thereon, for their official acts as a Board member, officer, employee or agent, and if the Board determines that a settlement of any action, suit of proceeding is in the best interest of the Board, all amounts paid in effecting such settlement, other than amounts paid by the Board itself, reasonably incurred by him or her in connection with or arising out of any action, suit or proceeding in which he or she may be involved by reason of his or her being or having been a member, officer, employee or agent of the Board; provided, however, that such indemnity shall not include any expenses incurred by any member, officer, employee or agent with respect to matters as to which he or she shall be finally adjudged in any such 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 for the Board. The forgoing right of indemnification shall inure to the benefit of the heirs, executors or administrators of each such member, officer, employee or agent and shall be in addition to all other rights to which such member, officer, employee or agent may be entitled as a matter of law.

1-5.5 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 its duties as trustees for the heretofore named Retirement Systems.

1-5.6 Conflict of Interest. The Board shall maintain constant vigilance against conflicts of interest, or the mere appearance of conflicts of interest. No officer, member or employee of the Board shall be financially interested, directly or indirectly, in any contract of any person or corporation with the Board, or in the sale of any property, real or personal, to or from the Board, provided, that this provision 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. ADMINISTRATIVE EXPENSES

1-6.1 The Board authorizes and shall create a Consolidated Public Retirement Board Expense Fund which shall be funded by an assessment against the Teachers Defined Benefit Retirement System, Public Employees Retirement System, Judges' Retirement System, and the Public Safety Death, Disability, and Retirement Fund for payment out of earnings in an amount determined by the Board, per year for each active employee, retirant, and beneficiary receiving benefits.

1-6.2 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 § 162-1-5.4 shall be paid from the particular Retirement System affected.

1-6.3 The administrative expense fund shall not be subject to satisfaction of any judgment or award against any of the Retirement Systems, and such judgment or award shall be satisfied from assets of that particular Retirement System against which it is levied.

§ 162-1-7. NON-ALIENATION OF BENEFITS; DIVORCE OR SEPARATION

1-7.1 The Legislature has previously expressed its intent that benefits from any Public Retirement System should be exempt from legal process when it enacted West Virginia Code § 5-10-46 (PERS), § 18-7A-30 and § 18-7B-18 (Teachers), § 51-9-14 (Judges'), and § 15-2-26 (Public Safety). Accordingly, the Board hereby adopts such provisions of Legislative intent.

1-7.2 The monies 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, shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or other insolvency laws, State or municipal tax, or any other legal process whatsoever; and shall not be assignable nor transferable by any employee, retirant, or beneficiary.

1-7.3 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 herein. 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.

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 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 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.

In cases of divorce or legal separation wherein the Court of record enters a division order in accordance with the formula above, the Retirement System affected shall make separate payments to the retirant and the former spouse in accordance with that order based upon the aforementioned formula.

1-7.4 Should a member of a Defined Benefit System be covered by a group insurance or prepayment plan participated in by a participating public employer, and should he be permitted to, and elect to, continue such coverage as a retirant, he may authorize the Board to have deducted from his annuity the payments required of him to continue coverage under such group insurance or prepayment plan.

1-7.5 A participating public employer in any Retirement System shall have the right of setoff for any proven claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary.

§ 162-1-8. DEATH BENEFITS

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. In these times of divorces and separations, it is necessary for the Board to adopt a procedure for payment of death benefits.

1-8.1 The terms "spouse", "widow", "sole refund beneficiary", and "beneficiary with an insurable interest" shall all mean the person who the member has designated 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 shall be known as the "designated beneficiary" and shall be entitled to the benefits as specified by the Option selected under each Retirement System.

1-8.2 If, upon the death of a member or retirant, a dispute arises between two 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 accept the Last Will and Testament of the deceased member or retirant for the purposes of payment to the estate under this Rule.

1-8.3 If the last designated beneficiaries of a member or retirant are children under the age of emancipation, but who have reached their majority by the time of death, payment will always be made 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, payment will be made only to the court appointed guardian ad litem as specified in appropriate legal proceedings.

1-8.4 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. <u>TRAVEL EXPENSE RULES</u>

The members of the Board and any employee or agent thereof shall be subject to the Governor's Travel Rules and Regulations.

§ 162-1-10. <u>DISABILITY DETERMINATION</u>

The different Retirement Systems may determine disability entitlement in a manner inconsistent with other Systems. Accordingly, the following Rules shall be applicable to the determination of disability entitlement to the Teachers' Defined Contribution System and any other System as determined by the Board.

1-10.1 There is hereby established a standing sub-committee of the Board, to be appointed by the Chairman, to review, consider, and recommend to the full Board applications for disability determination under any of the Systems administered by the Board.

The member may present any and all medical reports or other medical information to the sub-committee and may appear in person, or by his or her personal representative, to present the application. The sub-committee reserves the right to refer the member to a physician of its choice to determine the degree of disability, cause of disability, or any other medical questions that may arise.

1-10.2 The sub-committee may accept as prima facie evidence of total disability any award that a member may have received from the U. S. Social Security Administration, the Commissioner of the State of West Virginia Workers' Compensation Fund, or any other Federal or State agency that is empowered to declare a person permanently and totally disabled from his usual and customary employment.

1-10.3 With regard to the Teachers' Defined Contribution System, the number of years of credit in service shall not be a determining factor. A member of that System, upon the finding of permanent and total disability, shall receive all contributions to his or her annuity account that have been made since he or she joined the System. Thereafter, the member shall not be entitled to any annuity and the former employer is relieved from any future contributions on behalf of that member. A member is not precluded from re-joining the System if his or her condition improves and he or she is re-employed by a participating employer.

1-10.4 The method of disability determination set forth within this Section is not to be considered as superseding any other method of determination of disability heretofore utilized by any System administered by the Board.

1-10.5 Based upon the evidence presented to the sub-committee, the sub-committee shall make a recommendation to the Board as to whether or not a permanent and total disability determination may be made for that member.