

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

Form #3 ■

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2002 JUL 23 A 10: 22

OFF OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Consolidated Public Retirement Board TITLE NUMBER: 162

CITE AUTHORITY: W Va Code § 5-10D-1

AMENDMENT TO AN EXISTING RULE: YES X NO     

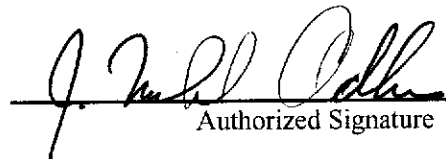
IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 2

TITLE OF RULE BEING AMENDED: Consolidated Public Retirement Board Benefit  
Determination and Appeal

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:                     

TITLE OF RULE BEING PROPOSED:                                             

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

**SCANNED**



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

**Board Members**

Governor Bob Wise  
Auditor Glen B. Gainer III, Vice Chairman  
Treasurer John D. Perdue  
Cabinet Secretary Gregory A. Burton

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

**Board Members**

David L. Wyant, Chairman  
F. Douglas Beasley  
E. Gene Davis  
Carl A. Guthrie  
Rebecca A. Jones  
William B. McGinley  
Rodney A. Miller  
Mary Lou Munoz  
Jerry A. Weaver  
Janet F. Wilson

July 23, 2002

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

Attention: Judy Cooper

Re: Proposed Rule Amendments  
Title 162, Series 2, 4, 5, and Proposed New Series 9  
WV Consolidated Public Retirement Board

Dear Ms. Cooper:

I am enclosing herewith one set of the documents which I understand must be filed with the Secretary of State by the West Virginia Consolidated Public Retirement Board in conjunction with the Board's proposal of amendments to the Title 162, Series 2, 4, and 5, and its proposal of a new Series 9 set of legislative rules. I am also enclosing fifteen (15) copies of the same for the Legislative Rule Making Review Committee.

Thank you for your assistance and cooperation in this matter. Should you have any questions, please let me know.

Sincerely,

Karen S. Copeland  
Asst. Benefits Manager

Enclosures

c: J. Michael Adkins  
Teresa Robertson  
Susan B. Saxe

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

2002 JUL 23 A 10:22

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## 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 23, 2002

TO: **LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

FROM: **West Virginia Consolidated Public Retirement Board  
State Capitol Complex  
Building 5, Room 1000  
1900 Kanawha Boulevard, East  
Charleston, WV 25305**

LEGISLATIVE RULE TITLE: Title 162, Series 2; Consolidated Public Retirement Board Benefit Determination and Appeal

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:  
April 19, 2002

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- b. What other notice, including advertising, did you give of the hearing?

Written notice, along with a copy of the proposed rule amendments, was forwarded to the President of the WV Deputy Sheriffs Association, the Director of the WV Association of Counties, the Director of the WV Municipal League, the President of the WV Federation of Teachers, the Executive Director of the WV Education Association, to Board Physician Dr. John Walden, and to the President of the PERSA for review and circulation to their potentially interested members. Copies were also provided to the Chairs of the House and Senate Committees on Pension and Retirements.

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- c. Date of Public Hearing(s) *or* Public Comment Period ended: June 14, 2002
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached   X   No comments received                   

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

July 23, 2002

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

J. Michael Adkins, Interim Co-Executive Director  
WV Consolidated Public Retirement Board  
State Capitol Complex  
Building 5, Room 1000  
1900 Kanawha Boulevard, East  
Charleston, WV 25305  
(304) 558-3570  
(304) 558-1395 (fax)  
madkins@gwmail.state.wv.us

- 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)

Karen S. Copeland, Asst. Benefits Manager  
WV Consolidated Public Retirement Board  
State Capitol Complex  
Building 5, Room 1000  
1900 Kanawha Boulevard, East  
Charleston, WV 25305  
(304) 558-3570  
(304) 558-1395 (fax)  
kcopeland@gwmail.state.wv.us

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:
- 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.
  - Date of hearing or comment period:
  - On what date did you file in the State Register the findings and determinations required together with the reasons therefor?
  - Attach findings and determinations and reasons:

**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

**COMMENTS RECEIVED**  
**TITLE 162, SERIES 2**

The West Virginia Consolidated Public Retirement Board ("Board") did not receive any written public comment regarding the proposed changes to this Rule. Verbal comments were, however, received from Dr. John Walden, a physician who routinely performs disability retirement examinations for the Board. Dr. Walden suggested clarification of 3.2.a of the rule to comport with the statutory disability standard set forth in W. Va. Code 5-10-25, and his comment, along with a non-substantive technical correction to 162.2.2, have been incorporated into the final proposed rule.

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

**BRIEF SUMMARY OF PROPOSED AMENDMENT TO TITLE 162, SERIES 2**

The West Virginia Consolidated Public Retirement Board ("Board"), as administrator of the State's several pension plans, proposes an amendatory addition to WVCSR § 162-2-5 in order to set forth time limitations for a disability applicant to request a second review examination by a Board appointed physician; and to WVCSR § 162-2-6 in order to set forth time limitations for a disability applicant to request an administrative appeal before an independent hearing officer appointed by the Board.

Other non-substantial changes are also sought to ensure clarity of the disability process.

**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

**STATEMENT OF CIRCUMSTANCES REQUIRING  
PROPOSAL AND PROMULGATION OF PROPOSED RULES CHANGES TO SERIES 2  
OF TITLE 162 OF THE WV CODE OF STATE REGULATIONS**

Both the Public Employees Retirement System ("PERS") and the Teachers Retirement System ("TRS") contain provisions which entitle members to retire on the basis of disability when certain statutory standards are satisfied. Currently, however, neither of the statutory provisions of the two plans, nor the current legislative rules which govern disability determinations by the Board and appeals thereof, contain provisions for the timely request of a disability applicant for a second review or an administrative appeal. The proposed rule would provide a sixty (60) day time limitation wherein an applicant must request a second review by a Board appointed physician, as well as a ninety (90) day time limitation for an applicant to request an administrative appeal before an independent hearing officer appointed by the Board.

**APPENDIX B**  
**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Title 162 (Series 2 ) Benefit Determination and Appeal

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  |          | Negligible |             |      |            |
| PERSONAL SERVICES     |          |            |             |      |            |
| CURRENT EXPENSE       |          |            |             |      |            |
| REPAIRS & ALTERATIONS |          |            |             |      |            |
| EQUIPMENT             |          |            |             |      |            |
| OTHER                 |          |            |             |      |            |

2. Explanation of Above Estimates:

The rule changes will simplify and speed administration of disability retirement applications which will result in a slight improvement in efficiency. There are no benefit related costs associated with the rule changes impacting either the Public Employees Retirement System nor the Teachers Retirement System.

3. Objectives of These Rules:

To implement set deadlines which will simplify and speed the administrative appeals processes for disability retirement claims.

Rule Title: Title 162 (Series 2 ) Benefit Determination and Appeal

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None. Improvement in processing efficiency.

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

None.

C. Economic Impact on Citizens/Public at Large:

None.

Date: April 12, 2002

Signature of Agency Head and/or Authorized Representative:

J. Adkins  
Michael Adkins, Acting Executive Director

Harry W. Mandel  
Harry W. Mandel, MAAA

TITLE 162  
LEGISLATIVE RULES

SERIES 2  
CONSOLIDATED PUBLIC RETIREMENT BOARD  
BENEFIT DETERMINATION AND APPEAL

FILED

2002 JUL 23 A 10: 22

WEST VIRGINIA  
SECRETARY OF STATE

**§162-2-1. General.**

1.1. Scope. -- The scope of this Rule involves the determination of eligibility, benefits, and appeal rights to the Board not previously adopted by the Board as they relate to the several Retirement Systems.

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

1.3. Filing Date. --

1.4. Effective Date. --

**§162-2-2. Disability Application.**

2.1. An individual seeking ~~D~~disability ~~R~~retirement ~~B~~enefits shall apply to the Consolidated Public Retirement Board and, unless ~~D~~disability ~~R~~retirement is decided by the Governor of the State of West Virginia pursuant to statutory authority, the Board shall decide the applicant's eligibility for disability retirement. The application shall be upon a form adopted by the Board. The employing agency shall, upon a form adopted by the Board, state the agency's position as to whether or not the disability is work related.

**§162-2-3. Disability Medical Reports.**

3.1. The applicant and the employing agency shall furnish all current and relevant medical reports in their possession, including the report of the treating physician and/or other professional to the Board. The applicant shall obtain any additional information requested by the Board and shall complete any other forms and answer any other questions from the Board as may be appropriate. The Board shall only consider a medical report if the author of the report is a licensed practitioner of his or her profession in West

Virginia or the jurisdiction in which he or she is located. At the request of the Board the applicant may be examined by an independent professional appropriate to the nature of the claimed disability. The cost of this examination shall be paid by the Board. These reports shall state a clear and understandable opinion as to whether or not the applicant is disabled as defined by then current applicable West Virginia law. The Board shall employ the faculty and staff of the Marshall University School of Medicine, the West Virginia University School of Medicine, or the West Virginia School of Osteopathic Medicine, whenever appropriate.

**3.2. Disability Definitions**

3.2.a. For members of the Public Employees Retirement System, "totally and permanently incapacitated for employment" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death, or has lasted and can be expected to last for a continuous period of not less than twelve months. In order for a member of the Public Employees Retirement System to be eligible to be retired by the Board on account of the incapacity, the evidence must demonstrate that as a result of such impairment, the member's incapacity is so severe that on a probably permanent basis, he or she is not only unable to perform his or her previous state employment, but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state, regardless of whether: (A) the work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

3.2.b. For members of the Teachers

Retirement System "mentally or physically incapacitated for service" means a member's inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted and can be expected to last for a continuous period of not less than twelve months. In order for a member of the Teachers Retirement System to be eligible to be retired by the Board on account of the incapacity, the evidence must demonstrate that the member's incapacity is so severe that he or she is likely to be permanently unable to perform the duties of the position which the member occupied immediately prior to his or her disabling illness or injury.

#### **§162-2-4. Initial Determination.**

4.1. The Executive ~~Secretary~~ Director and two staff members appointed by him or her constitute the Staff Review Committee. The Staff Review Committee shall review all reports and other evidence from all sources and shall make a recommendation consistent with the evidence, the applicable Laws and Rules and the purpose of the individual retirement system to the Board Review Committee, comprised of at least three Board members and appointed by the Board. Based on information submitted by the Board Review Committee, the full Board shall then consider the recommendations of the Board Review Committee and is free to make any finding consistent with the facts. If the applicant is not granted disability ~~R~~retirement benefits, the Board shall inform the applicant in writing the reason why benefits were denied as well as what additional action may be taken by the applicant.

#### **§162-2-5. Second Review.**

5.1. If the Board does not grant disability ~~R~~retirement benefits upon the Board's initial review of the applicant's disability retirement application, the applicant has two options. The applicant may, within sixty (60) days of receipt of the notice of denial from the Board, request an additional examination by another appropriate medical professional chosen by the Board at the applicant's expense and thereafter submit additional medical information, or the applicant may appeal the Board's decision to a hearing officer appointed by the Board as stated in Section 162-2-6 of this rule.

5.2. If additional medical information is obtained, the Staff Review Committee shall review the new information concerning disability retirement benefits. The application should include all reports and other evidence, as well as any new information. The Staff Review Committee shall make a second recommendation to the Board Review Committee either to grant or not to grant disability retirement benefits. The Board Review Committee may adopt the new recommendation of the Staff Review Committee, remand the application for further study, or make any other recommendation consistent with the facts. Based on information submitted by the Board Review Committee, the full Board shall then consider the current recommendations and shall make any finding consistent with the facts.

#### **§162-2-6. Appeal of the Decision.**

6.1. If the Board rejects the application on two (2) occasions, the Board shall notify the applicant in writing within ten (10) days from the date of rejection of the opportunity for a hearing before an independent hearing officer appointed by the Board.

6.2 Upon receipt of the Board's second rejection of the applicant's disability retirement application, the applicant has ninety (90) days within which to file a written request for an administrative appeal before an independent hearing officer appointed by the Board. Failure to request a timely appeal will result in a waiver of any further administrative appeal rights.

~~6.2:~~ 6.3. The Board shall not hear appeals directly, but shall appoint a hearing officer who will make a complete and independent review of the disability application and then make recommendations to the Board. The hearing officer hired by the Board shall be an attorney who has a license to practice law in the State of West Virginia. The hearing officer shall conduct the hearing. Within sixty (60) days of the notice from the applicant of the desire to appeal the decision, the hearing officer shall schedule a time and place to hear the appeal and give the applicant ten (10) days written notice of the hearing. At the hearing, the applicant may represent himself or herself or may be represented by counsel or a representative and

witnesses or written evidence may be submitted by both parties. The rules of evidence shall not strictly apply, and the applicant has the right to any and all relevant documents in the possession of the Consolidated Public Retirement Board. The hearing officer may subpoena documents and witnesses if the information is relevant and reasonable in order for the hearing officer to make a recommendation on the appeal. The interests of justice and fair play shall guide procedure before the hearing officer. The Board shall retain but not transcribe a stenographic recording of the hearing which is the official record of the hearing. The hearing officer shall, within sixty (60) days of receiving all documents, prepare formal findings, stating the reasons for the findings, in clear language, and noting all medical and other evidence considered. After proper notice the hearing officer shall present the information at the next regular meeting of the Consolidated Public Retirement Board. The staff on behalf of the Board shall notify the applicant of the date, time, and place that the appeal will be acted up by the Board. The Board in open session shall then make a decision based on the recommendation of the hearing officer and accept the recommendation unless there is an abuse of discretion in finding or the finding is contrary to law. The applicant also has the right to propose a final order.

#### **§162-2-7. Other Appeals.**

7.1. Any other type of appeal other than for disability retirement benefits shall be considered by the Board's staff of the Consolidated Public Retirement Board. If the Board's staff does not believe that the request should be granted, the staff shall notify the applicant in writing stating the reasons for the denial and informing him or her of his or her right to appeal to the Board. If the applicant appeals the decision of the staff, the staff shall refer the appeal to the hearing officer hired by the Board. Within sixty (60) days of the notice from the applicant of the desire to appeal the denial, the hearing officer shall schedule a time and place to hear the appeal and give the applicant ten (10) days written notice of the hearing. The applicant may represent himself or herself or may be represented by counsel or another representative and witnesses or written evidence may be submitted by both parties at this hearing. The rules of evidence shall not strictly apply and the applicant has the right to any and all

relevant documents in the possession of the Consolidated Public Retirement Board. The hearing officer may subpoena documents and witnesses if the information is relevant and reasonable in order for the hearing officer to arrive at a finding of fact and to make a recommendation on the appeal. The interest of justice and fair play shall guide proceedings before the hearing officer. The Board shall retain but not transcribe a stenographic recording of the hearing which is the official record of the hearing. The hearing officer shall within sixty (60) days of receiving all documents prepare formal finding stating the reasons for the findings. The hearing officer shall prepare a final recommendation in clear language, and noting all evidence considered. Thereafter the finding and recommendation of the hearing officer shall be presented at the next regularly scheduled meeting of the Consolidated Public Retirement Board. The Board's staff shall notify the applicant of the date, time, and place that the appeal will be acted upon by the Board. The applicant also has the right to propose and submit a final order for consideration by the Board. The Board, in open session, shall then make a decision on the findings and recommendation of the hearing officer and accept the recommendation unless the Board finds that the hearing officer has abused his or her discretion in the findings, or the findings are contrary to law.

#### **§162-2-8. Appeal Denied.**

8.1. If an appeal is denied in whole or in part by the Board pursuant to Sections 162-2-6 and 162-2-7 of this rule (a final decision), an applicant may request a transcript of the appeal hearing, with the cost to be paid by the applicant. An individual aggrieved by a final decision of the Board has a right of appeal to the Circuit Court of Kanawha County pursuant to W. Va. Code §29A-5-4.

#### **§162-2-9. Errors.**

9.1. Each level of review is presumed to cure all errors in procedure of any prior level, and no right to remand to cure procedural errors exists, but each level of review shall make an independent determination upon the facts.