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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

STATE OF WEST VIRGINIA
CLERK OF STATE

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October 21, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: J. Michael Adkins
Consolidated Public Retirement Board
Capitol Complex
Building 5, Room 1000

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Benefit Determination and Appeal, 162CSR2**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Consolidated Public Retirement Board

Subject: Consolidated Public Retirement Board Benefit
Determination and Appeal, 162CSR2

PERTINENT DATES

Filed for public comment: April 19, 2002

Public comment period ended: June 14, 2002

Filed following public comment period: July 23, 2002

Filed LRMRC: July 23, 2002

Filed as emergency:

Fiscal Impact: None

OFFICE OF THE
SECRETARY OF STATE

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ABSTRACT

The proposed rule amends a current legislative rule. It has been amended to clarify the definition of "totally and permanently incapacitated for employment" as it applies to the members of the Public Employees Retirement System. It has also been amended to allow an applicant 60 days from the receipt of notice of denial on the Board's initial review to request an additional medical examination and 90 days upon receiving the Board's second rejection to file a written request for an administrative appeal before an independent hearing officer appointed by the Board. The current rule contains no time frames for the applicant.

AUTHORITY

Statutory authority: W.Va. Code, §5-10D-1, which provides, in part, as follows:

...The consolidated public retirement board
may propose for promulgation all rules

necessary to effectuate its powers, duties and responsibilities pursuant to article three, chapter twenty-nine-a of this code: *Provided*, That the board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.