

Form #2

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Benefit Determination and Appeal Series 2

Type of Rule: X Legislative Interpretive Procedural

Agency Consolidated Public Retirement Board

Address State Capitol Complex. Building 5, Room 1000
1900 Kanawha Boulevard East
Charleston, West Virginia 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	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:

Have in place rules for benefit determination and appeal for the State's retirement systems.

Rule Title: Benefit Determination and Appeal Series 2

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.

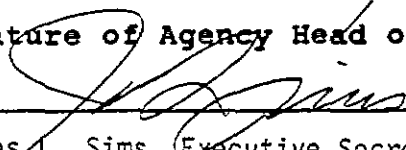
NONE.

C. Economic Impact on Citizens/Public at Large.

NONE.

Date: September 22, 1993

Signature of Agency Head or Authorized Representative


James L. Sims, Executive Secretary
Consolidated Public Retirement Board

WEST VIRGINIA CONSOLIDATED PUBLIC RETIREMENT BOARD
STATEMENT AND FACT 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. 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 and has operated under these since that time. The Board intends to file for a public hearing within thirty (30) days from the date the Emergency Rule is filed.

These new Rules were promulgated because the Attorney General's position that we did not comply with all of the procedural requirements for Benefit Determination and Appeal. These new Rules have been approved by the Attorney General's Office and by the Consolidated Public Retirement Board at its meeting held in Charleston, West Virginia on September 22, 1993. We currently have several individuals who wish to appeal decisions of the Consolidated Public Retirement Board. Accordingly this Rule cannot wait to go through the regular process before it becomes effective.



James L. Sims
Executive Secretary
Consolidated Public Retirement Board

TITLE 162
LEGISLATIVE RULES
SERIES 2

FILED
SEP 22 4 00 PM '93
OFFICE OF THE CLERK
SECRETARY OF STATE

CONSOLIDATED PUBLIC RETIREMENT BOARD

BENEFIT DETERMINATION AND APPEAL

§ 162-8.1. GENERAL

8-1.1. 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.

8-1.2. Authority. -- West Virginia Code 5-10D-1

8-1.3. Filing Date. -- _____

8-1.4. Effective Date. -- _____

§ 162-8-2.1. Disability Application. An individual seeking Disability Retirement Benefits must apply to the Consolidated Public Retirement Board unless Disability Retirement is decided by the Governor of the State of West Virginia pursuant to statutory authority. 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.

§ 162-8-2.2. Disability Medical Reports. 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 will be required to 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 jurisdictionⁿ 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.

§ 162-8-2.3. Initial Determination. The Executive Secretary and two staff members appointed by him or her shall constitute the Staff Review Committee. The Staff Review Committee shall review all reports and other evidence from all sources and shall make a recommendation to the Board Review Committee, comprised of at least 3 Board members and appointed by the Board, consistent with the evidence, the applicable Laws and Rules and the purpose of the system. Based on information submitted by the Board Review Committee, the full Board shall then consider the recommendation and is free to make any finding consistent with the facts. If the

applicant is not granted disability retirement benefits, the Board will inform the applicant in writing the reason why benefits were denied as well as what additional action may be taken by the applicant.

§ 162-8-2.4. Second Review. If the Board does not grant disability retirement benefits the applicant has two options. The applicant may request an additional examination by another appropriate medical professional chosen by the Board at the applicant's expense and submit additional medical information or may appeal this decision to a hearing officer appointed by the Board as stated in §162-8-2.5 below.

If additional medical information is obtained, the applicant may request the Staff Review Committee to review the application for disability retirement benefits. The application should include all reports and other evidence, as well as any new information. The Staff Review Committee shall re-review the application and 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 second 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.

§ 162-8-2.5. Appeal of the Decision. If the Board rejects the application on two occasions, the Board will notify the applicant in writing within 10 days from the date of rejection of the opportunity for a hearing before an independent hearing officer appointed by the Board.

The Board will not hear appeals directly, but will 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 will be an attorney who has a license to practice law in the State of West Virginia. The hearing officer will conduct the hearing. Within 60 days of the notice from the applicant of the desire to appeal the decision, the hearing officer will schedule a time and place to hear the appeal and give the applicant 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 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 has the right to 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. Stenographic recording shall be maintained which is the official record of the hearing. The hearing officer shall prepare formal findings stating the reasons for the findings, in clear language, and noting all medical and other evidence considered within 60 days of the hearing at which time this information will be presented at the next regular meeting of the Consolidated Public Retirement Board. The applicant also has the right to propose a final order. The staff will notify the applicant of the date, time, and place that the appeal will be acted upon by the Board. The Board in open session will then make a decision based on the recommendation of the hearing officer and accept the recommendation unless there is an abuse of discretion in the finding or the finding is contrary to law.

162-8-2.6. Other Appeals. Any appeal other than for disability will be considered by the Staff of the Consolidated Public Retirement Board. If the Staff does not believe that the request should be granted, the staff will notify the applicant in writing stating the reasons for the denial and informing him/her of their right to appeal to the Board. If the applicant wishes to appeal, the staff will refer the appeal to the hearing officer hired by the Board. Within 60 days of the notice from the applicant of the desire to appeal the denial, the hearing officer will schedule a time and place to hear the appeal and will give the applicant 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 has the right to 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 interests of justice and fair play shall guide proceedings before the hearing officer. Stenographic recording shall be maintained which recording shall be the official record of the hearing. Within 60 days of the hearing the hearing officer shall prepare formal findings of fact 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 will be presented at the next regularly scheduled meeting of the Consolidated Public Retirement Board. The staff will 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, will then make a decision on the finding and recommendation of the hearing officer and accept the recommendation unless the Board finds that the hearing officer has abused his/her discretion in the finding, or the finding is contrary to law.

162-8-2.7. Appeal Denied. If an appeal is denied in whole or in part by the Board pursuant to Section 162-8-2.5 and 162-8-2.6 above (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 West Virginia Code Section, §5-10D-1.

§ 162-8-2.8. Errors. 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.