

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

Form #2 ■

Do Not Mark In This Box

FILED

2001 JUN 19 P 4: 36

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE OFFICE WEST VIRGINIA
SECRETARY OF STATE

AGENCY: West Virginia Consolidated Public Retirement Board TITLE NUMBER: 162

RULE TYPE: Legislative CITE AUTHORITY: _____

AMENDMENT TO AN EXISTING RULE: YES X NO _____

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

TITLE OF RULE BEING AMENDED: Benefit Determination and Appeal

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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 July 21, 2001 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Betty S. Ireland, Executive Director
West Virginia Consolidated Public
Retirement Board
Building 5, Room 1000
1900 Kanawha Boulevard, East
Charleston, West Virginia 25303

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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 §162-2-3 in order to set forth definitions of the terms "totally and permanently incapacitated for employment" as referenced in the disability provisions of the Public Employees Retirement System, and "mentally and physically incapacitated for service" as referenced in the disability provisions of the Teachers Retirement System. The definitions proposed are analogous to the disability standards utilized in federal Social Security law, and to the definitions of similar terms in other state retirement systems administered by the Board.

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 (within WV) Fax: 304-558-6337

STATEMENT OF CIRCUMSTANCES REQUIRING
PROPOSAL AND PROMULGATION OF PROPOSED RULE 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. Under the PERS system, the member must be found to be "totally and permanently incapacitated for employment." Under the TRS system, the member must be found to be "mentally or physically incapacitated for service." Currently, however, neither the statutory provisions of the two plans, nor the current legislative rules which govern disability determinations by the Board and appeals thereof, contain definitions of these terms. The proposed rule would provide definitions of the relevant statutory terms as found in each plan, with such definitions being analogous to the disability standards found in federal Social Security law and to the definitions of similar terms in other state retirement systems administered 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

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	NM*				
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

* Not Measurable. These changes have no direct impact on cost of either the Public Employees Retirement System or the Teachers Retirement System. The rule changes will help protect the assets of each system.

3. Objectives of These Rules:

The new rules set forth clear criteria to apply in medical determination of disability.

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:

By establishing clear guidelines for the medical determination of disability plan, assets are safer from paying inappropriate claims.

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

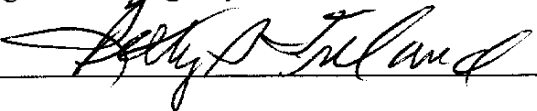
None.

C. Economic Impact on Citizens/Public at Large:

None.

Date: JUNE 19, 2001

Signature of Agency Head or Authorized Representative:



TITLE 162
LEGISLATIVE RULES

FILED

SERIES 2

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CONSOLIDATED PUBLIC RETIREMENT BOARD

BENEFIT DETERMINATION AND APPEAL

OFFICE 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. -- May 17, 2001.

1.4. Effective Date. -- July 1, 2001.

§162-2-2. Disability Application.

2.1. An individual seeking Disability Retirement Benefits shall 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.

§162-2-3. 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 such incapacity, the evidence must demonstrate that the member's incapacity is so severe that 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 such 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 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 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 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 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. 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 application 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 upon 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.



Board Members

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

Executive Director

Betty S. Ireland

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

Capitol Complex, Building 5, Suite 1000
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0720
Telephone: 304-558-3570 or 800-654-4406 (within WV)
Fax: 304-558-6337
email: CPRB@wvretirement.com
www.state.wv.us/admin/cprb

June 19, 2001

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

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

Attention: Judy Cooper

Re: Proposed Amendments to Title 162, Series 2 Rules:
(WV Consolidated Public Retirement Board)

Dear Ms. Cooper:

Enclosed please find an original and three copies of a proposed amendment to the Title 162, Series 2 Rules governing benefit determinations and appeals before the West Virginia Consolidated Public Retirement Board, along with the "Notice of a Comment Period on a Proposed Rule" and the other forms and documents which we understand are required for the filing of proposed rules.

It is my understanding that three copies of this rule will be forwarded, by your office, with the Legislative Rule Making Committee.

Thank you for your assistance and cooperation. Please let me know if you have any questions.

Sincerely,

Susan B. Saxe
Attorney at Law

cc: Betty S. Ireland

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OFFICE WEST VIRGINIA
SECRETARY OF STATE