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 5-10D-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 8

TITLE OF RULE BEING PROPOSED: Benefit Determination and Appeal

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
Chuck Polan, Secretary
Department of Administration

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

3-10

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	Decrease	FISCAL YEAR Current	Next	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 Pol

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 8

CONSOLIDATED PUBLIC RETIREMENT BOARD

BENEFIT DETERMINATION AND APPEAL

§ 162-8.1. GENERAL

8-1.1. Scope. The scope of this Series of Rules involves the determination of eligibility, benefits, and appeal rights to the Board not heretofore adopted by the Board as they relate to the several Retirement Systems.

8-1.2. Authority. -- West Virginia Code Section 5-10D-1, et seq.

8-1.3. Filing Date. -- ____________________

8-1.4. Effective Date. -- ____________________

§ 162-8-2.1 APPEAL

8-2.1 Upon the determination by this Board of a matter with which a member, retirant, or beneficiary disagrees, that member, retirant, or beneficiary shall have the right to appeal to this Board, in writing, such disagreement and the Board shall reconsider its decision at the next regularly scheduled meeting of the Board.

The member, retirant, or beneficiary shall have the right to be present in person, with or without a representative, to advance and explain his or her disagreement. The Board shall caused to be made a tape recording of the matters discussed which, if requested, shall be reduced to a transcript form, with expenses to be paid by the person requesting the transcript. If both the Board and the appellant desire a transcript be made, such costs thereof shall be borne by each party.

8-2.2 If the member, retirant, or beneficiary seeks further redress of the decision by the Board, he or she may seek judicial review as provided hereafter.

§ 162-8-3. <u>JUDICIAL REVIEW</u>

8-3.1 The member, retirant, or beneficiary may seek judicial review of the proceedings before the Board by filing a petition in the Circuit Court of Kanawha County, West Virginia, or with the Judge thereof in vacation, within thirty (30) days after the date upon which the member, retirant, or beneficiary has received notice of the final determination of the Board. A copy of the petition shall be served upon the Board by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond shall be required to effect any such appeal.

8-3.2 All other statutory provisions with regard to judicial review of contested cases contained in § 29A-5-4(c), et seq. of the West Virginia Code, 1931, as amended, shall apply to cases seeking judicial review pursuant to these Rules.

§ 162-8-4. (RESERVED)

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

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