WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
Form #7

FILED
1991 JUL -1 AM 10: 12
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date:
July 3, 1991 Jr

NOTICE OF AN EMERGENCY RULE

AGENCY: Consolidated Public Retirement Board TITLE NUMBER: 162

CITE AUTHORITY: W.Va. Code Sections 5-10D-1; et seq; 18-7B-1 et seq., 29A-3-1 et seq

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: Series 8

TITLE OF RULE BEING FILED AS AN EMERGENCY: Benefit Determination and Appeal

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON [redacted] ERD APPROVAL.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

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.

Use Additional Sheets If Necessary.

3.10

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1991 JUL -1 AM 10: 12

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

APPENDIX B

FILED

1991 JUL -1 AM 10:12

OFFICE [illegible]
SECRETARY OF STATE

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	ANNUAL Decrease	FISCAL YEAR Current	FISCAL YEAR Next	FISCAL YEAR 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 Pole

FILED

1991 JUL -1 AM 10:12

SECRETARY OF STATE

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.

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. JUDICIAL REVIEW

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

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
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Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer help we can get)

July 3, 1991

FILED IN THE OFFICE OF THE SECRETARY OF STATE
THIS DATE July 3, 1991
ADMINISTRATIVE LAW

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Consolidated Public Retirement Board

RULE: New Rule, Series 8, Benefit Determination & Appeal

DATE RULE FILED AS AN EMERGENCY RULE: July 1, 1991

DECISION NO. 50-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

Ken Hechler
KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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help we can get)

DECISION EMERGENCY RULE DECISION
(ERD 50-91)

AGENCY: Consolidated Public Retirement Board
RULE: New Rule, Series 8, Benefit Determination and Appeal
FILED AS EMERGENCY RULE: July 3, 1991

par. 1 The Consolidated Public Retirement Board (Board) has filed the above new rule as an emergency.

par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.

par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a)].

par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Board filed this emergency rule with supporting documents with the Secretary of State July 1, 1991 and with the LRMRC July 1, 1991.

par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §5-10D-1(e) reads:

(e) The consolidated public retirement board shall have all the powers, duties, responsibilities and liabilities of the public employees retirement system established pursuant to article ten, chapter five of this code; the teachers retirement system established pursuant to article seven-a, chapter eighteen of this code; the teachers' defined contribution system established pursuant to article seven-b, chapter eighteen of this code; the death, disability and retirement fund of the department of public safety created pursuant to article two, chapter fifteen of this code, and the judges' retirement system created pursuant to article nine, chapter fifty-one of this code and their appropriate governing boards. The consolidated public retirement board may promulgate all rules necessary to effectuate its powers, duties and responsibilities: Provided, That the board may adopt any or all of the rules and regulations, previously promulgated, of a retirement system which it administers.

par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Board are as follows:

The statutes require 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.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation"

par. 14 This decision shall be cited as Emergency Rule Decision 50-91 or ERD 50-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV Economic Development Authority, the Attorney General and the Legislative Rule Making Review Commission.

Ken Hechler

KEN HECHLER
Secretary of State

Entered

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 3, 1991
ADMINISTRATIVE LAW DIVISION