

Form #3

OFFICE OF THE VIRGINIA
SECRETARY OF STATE

54.00

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 31, 2000

TO: **LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

FROM: **WEST VIRGINIA CONSOLIDATED PUBLIC RETIREMENT BOARD**
Building 5, Room 1000, Capitol Complex
Charleston, West Virginia 25303

LEGISLATIVE RULE TITLE: Title 162, Series 2: Consolidated Public Retirement Board Benefit Determination and Appeal

1. Authorizing statute(s) citation: W Va Code §5-10D-1
2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 11, 2000
 - b. What other notice, including advertising, did you give of the hearing? Written notice, along with a copy of the proposed rule amendments, was forwarded to the President of the WV Federation of Teachers, the Director of the WV Education Association, the President of the WV School Service Personnel Association, the President of the WV Deputy Sheriffs Association, the Director of the WV Municipal League, the Director of the WV Association of Counties and the Secretary of the WV Troopers Association for review and circulation to their potentially interested members. Copies were also provided to the chairs of the House and Senate Committees on Pensions and Retirements.
 - c. Date of Public Hearing(s) or Public Comment Period ended: August 14, 2000
 - d. Attach list of persons, who appeared at hearing, comments received, amendments, reasons for amendments.

Attached ☐ No comments received ☒
 - e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact): August 31, 2000
 - f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all

written correspondence regarding this rule: (Please type):

Betty S. Ireland, Executive Secretary
WV Consolidated Public Retirement Board
Building 5, Room 1000, Capitol complex
Charleston, West Virginia 25303
304-558-3570 Extension 203
304-558-6337 (FAX)
Bireland@gwmail.state.wv.us

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)
3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:
- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.
 - b. Date of hearing or comment period:
 - c. On what date did you file in the State Register the finding and determinations required together with the reasons therefore?
 - d. Attach finding and determinations and reasons:

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

BRIEF SUMMARY OF PROPOSED AMENDMENT TO TITLE 162, SERIES 2

The West Virginia Consolidated Public Retirement Board ("Board"), as administrator of the several state pension plans, proposes a minor amendatory change to WVCSR §162-2-8 to correct an erroneous statutory citation reference. Instead of reference to W.Va. Code §5-10D-1 which is the statute pertaining to the creation of the Board and its powers, duties and obligations, the citation therein should be to W.Va. Code §29A-5-4, which is the statute pertaining to judicial appeals for contested administrative cases under the Administrative Procedures Act. No other changes are proposed.

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STATEMENT OF CIRCUMSTANCES REQUIRING
PROPOSAL AND PROMULGATION OF PROPOSED RULE CHANGES TO SERIES 4
OF TITLE 162 OF THE WV CODE OF STATE REGULATIONS

An erroneous statutory reference to W.Va. Code §5-10D-1 is currently contained in WVCSR §162-2-8. That section of the Series 2 Rules pertains to judicial appeals from contested administrative decisions of the Consolidated Public Retirement Board. The statutory reference within WVCSR §162-2-8 should be to that portion of the Administrative Procedures Act which applies to judicial appeals of contested administrative matters. The proposed amendment would omit reference to §5-10D-1, and replace the deletion with reference to the relevant portion of the Administrative Procedures Act, W.Va. Code §29A-5-4.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 162 (Series 2)

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	None		None		
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

This rule change has no fiscal impact.

3. Objectives of These Rules:

This rule corrects an incorrect cite of statute in the existing rules.

Rule Title: Title 162 (Series 2)

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

This rule change is an erratum. There is no economic impact.

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

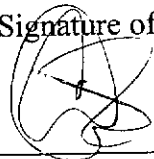
This rule change is an erratum. There is no economic impact.

C. Economic Impact on Citizens/Public at Large:

This rule change is an erratum. There is no economic impact.

Date: July 10, 2000

Signature of Agency Head or Authorized Representative:



Dreighton H. Rosier, FSA
Director of Actuarial Services

FILED

TITLE 162
LEGISLATIVE RULES

SEP 1 9 02 AM '00

SERIES 2
CONSOLIDATED PUBLIC RETIREMENT BOARD
BENEFIT DETERMINATION AND APPEAL
OFFICE OF THE ATTORNEY GENERAL
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 3, 1995.

1.4. Effective Date. -- May 3, 1995.

§162-2-2. 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.

§162-2-3. 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 is 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 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.

§162-2-4. Initial Determination.

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 will inform the applicant in writing the reason why benefits were denied as well as what additional action may be taken by the applicant.

§162-2-5. 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 there after 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.

If additional medical information is obtained, the Staff Review Committee will 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.

If the Board rejects the application on two (2) occasions, the Board will 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.

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 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 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. 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 will notify the applicant of the date, time, and place that the appeal will be acted up 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 finding or the finding is contrary to law. The applicant also has the right to propose a final order.

§162-2-7. Other Appeals.

Any other type of appeal other than for disability retirement benefits will 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 will 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 will 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 docu-

ments 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 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 will be presented at the next regularly scheduled meeting of the Consolidated Public Retirement Board. The Board's 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 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.

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 ~~§5-10D-1~~ §29A-5-4.

§162-2-9. 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.