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 se

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 2

TITLE OF RULE BEING PROPOSED: Rules for Meetings

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

3.96

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

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 Pohl

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 <u>immediate</u> 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 2

CONSOLIDATED PUBLIC RETIREMENT BOARD

RULES FOR MEETINGS

§ 162-2-1. GENERAL

2-1.1 Scope. -- The scope of this Series of Rules involves the procedural functions of meetings and other procedures of the Board.

2-1.2 Authority. -- West Virginia Code Section 5-10D-3.

2-1.3 Filing Date. -- ________________

2-1.4 Effective Date. -- ______________

§ 162-2-2. OFFICE

The principal office of the Board shall be in the City of Charleston, County of Kanawha, State of West Virginia. Other offices or places of business may be established whenever deemed advisable in the judgment of the Board.

§ 162-2-3. <u>BOARD</u>

2-3.1 <u>Membership, Number, Term of Office and Compensation</u>. The Board membership shall consist of the Governor, or his or her designee; the State Auditor, or his or her designee; the Secretary of the Department of Administration, or his or her designee; and nine additional members to be appointed by the Governor, by and with the advice and consent of the Senate, as follows:

(a) four residents of the State who are not members, retirants or beneficiaries of any public retirement system;

(b) a member, annuitant or retirant of the Public Employees Retirement System who is or was a State employee;

(c) a member, annuitant or retirant of the Public Employees Retirement System who is not or was not a State Employee;

(d) a member, annuitant or retirant of the Teachers <u>Benefit</u> Retirement System;

(e) a member, annuitant or retirant of the Division of Public Safety Death, Disability and Retirement Fund; and

(f) a member, annuitant or retirant of the Teachers' Defined

Contribution Retirement System.

No more than five of the members appointed by the Governor shall be members of the same political party.

The terms of office for members appointed by the Governor shall be for five years. Of the members initially appointed, three shall be appointed for two-year terms, three shall be appointed for three-year terms, and three shall be appointed for five-year terms. Thereafter, all members shall serve full five-year terms. A member appointed because he or she is a member, annuitant or retirant of that retirement system or fund.

Members of the Board shall be paid or reimbursed for their necessary expenses actually incurred in the performance of their duties, but shall receive no compensation for their services as members or officers of the Board. No public employee member may suffer any loss of salary or wages on account of his or her service as a member of the Board.

2-3.2 Quorum and Official Action. Five members of the Board at the beginning of a meeting shall constitute a quorum, and the affirmative vote of a majority of the quorum shall be necessary for any action taken by vote of the Board.

2-3.3 Vacancies. In the case of a vacancy on the Board, such vacancy shall be filled within sixty (60) days of the vacancy from appointment by the Governor. Any member appointed to fill a vacancy occurring prior to the expiration of a term shall serve for the remainder of said term. No vacancy in the membership of the Board shall impair the rights of a quorum to exercise all the rights and perform all of the duties of the Board.

2-3.4 Designees. When the Governor, the State Auditor or Secretary of the Department of Administration must absent themselves from a meeting or other function of the Board, he or she may specify in writing a designee, who shall not be a member of the Board, to the Chairman. Designees shall have the proxy of the member they represent, and shall have the full authority to participate and vote at meetings and other actions of the Board in the stead of that member.

2-3.5 Meetings. The Board shall hold regular meetings at least each three months at the time and place established by the Board. Emergency meetings of the Board may be called at any time by the Chairman or any two members of the Board. The purpose(s) of an emergency meeting shall be specified in the notice of the emergency meeting and no other business may be considered. The Executive Secretary of the Board shall give notice to each member of the Board of each emergency meeting by mailing a notice at least two (2) days before the meeting or by delivering the same on the day before the meeting, but such notice may be waived if a Board member shall attend in person, or if each Board member shall file with the records of the meeting, either before or after the holding of the meeting, a written waiver of notice. Attendance shall not constitute a wavier of notice if a Board member attends for the express purpose of objecting to the transaction of business at a meeting because it is not lawfully called or convened.

In cases of an emergency meeting which requires immediate action of the Board, it will be deemed acceptable for a decision by the Board via telephone conferencing, provided a quorum is present during the telephone conference and consideration of the business transaction In the alternative, telephone voting is acceptable and a record thereof shall be brought before the next regularly scheduled meeting for ratification and placement in the minutes.

2-3.6 Continuation of Meetings. Any regular or emergency meeting of the Board may be continued without further notice to such date, hour and place as may be determined by the Board at such meeting, unless the notice can be given in accordance with paragraph 2-3.5 above and 2-3.10 below. In the event that a quorum is not present at such meeting and cannot be obtained within a reasonable time, such regular or emergency meeting shall be continued to such date, hour and place as shall then be determined and announced by the Chairman and notice of such continued meeting shall be given to those members not present.

2-3.7 Manner of Voting. Each member, or his or her designee, is entitled to one vote on each questions before the Board. The voting on all questions at meetings of the Board shall be by voice vote and the ayes and nayes shall be entered upon the minutes of such meeting.

2-3.8 Procedure at Meetings. At all regular meetings of the Board, the following shall be the order of business:

(a) Roll Call

(b) Approval of minutes of previous meeting

(c) Report of Chairman

(d) Report of Executive Secretary

(e) Unfinished business

(f) New Business

(g) Other Business

(h) Adjournment

In all other respects not otherwise provided for in these Rules, Robert's Rules of Order shall govern the conduct of all meetings of the Board.

2-3.9 Minutes Journal. All final action of the Board shall be journalized, in the form of minutes, and such journal shall be open to the inspection of the public at all reasonable times.

2-3.10 Open Meetings and Public Notice of Meetings. All meetings of the Board shall be open to the public, as provided in Article 9A, Chapter 6 of the West Virginia Code, 1931, as amended. Notice of the time and place of regularly scheduled meetings of the Board, and the time, place and purpose of all emergency meetings of the Board, shall be made available, in advance, to the public and news media as follows:

A. A notice shall be posted by the Executive Secretary of the Board at the front door of the place fixed for regular meetings of the Board of the time and place fixed and entered or recorded by the Board for the holding of regularly scheduled meetings. If a particular regularly scheduled meeting of the Board is cancelled or postponed, such cancellation or postponement shall be posted at the front door of the meeting place as soon as feasible after such cancellation or postponement has been determined.

B. A notice shall be posted by the Executive Secretary of the Board at the front door of the place fixed for regular meetings of the Board at least forty-eight (48) hours before an emergency meeting is to be held, stating the time, place and purpose for which such emergency meeting shall be held. If the emergency meeting is cancelled, a notice of such cancellation shall be posted at the front door of the meeting place as soon as feasible after such cancellation has been determined.

C. Notice of time, place and purpose of all regular meetings of the Board shall be filed with the Secretary of State for publication in the State Register in the manner to allow each notice to appear in the State Register at least five (5) days prior to the date of such meeting.

D. Emergency meetings -- No notice shall be required of emergency meetings which require immediate official action.

S 162-2-4. OFFICERS

2-4.1 Executive Officers. The executive officers of the Board shall be the Chairman, Vice Chairman and Executive Secretary.

2-4.2 Chairman. The Board shall elect one of its members as Chairman at the beginning of each fiscal year. The Chairman shall preside at all meetings of the Board and perform such other duties as prescribed by law or by the Board. The Chairman shall give any bond required by law.

2-4.3 Vice Chairman. The Board shall elect one of its members as Vice Chairman at the beginning of each fiscal year. In the absence or disability of the Chairman, whether temporary or otherwise, the Vice Chairman shall assume the duties of the Chairman. The Vice Chairman shall also perform such other duties as prescribed by law or by the Board. The Vice Chairman shall give any bond required by law.

2-4.4 Executive Secretary. The Board shall appoint an Executive Secretary of the Board, who shall not be a member of the Board. The Executive Secretary shall be the chief administrative and chief fiscal officer of the Board.

The Executive Secretary shall keep the minutes of all meetings of the Board; oversee the accuracy of the written records of the Board; provide copies of approved minutes to the members of the Board; give notice of meetings of the Board; certify, when necessary, the records, proceedings, documents and resolutions of the Board; and shall perform such other duties as shall be prescribed by law or by the Board.

Except where otherwise required by law, the Executive Secretary shall keep full and accurate records and accounts of all receipts, disbursements, credits, assets, liabilities and general financial transactions of the Board; shall endorse for collection or deposit to the credit of the Board all bills, notes, checks and other negotiable instruments of the Board and deposit same in such accounts in such depositories and safe deposits as may be designated by the Board; shall disburse the funds of the Board as may be ordered by the general or specific instructions of the Board; shall report all receipts and expenditures to the Board at such times as the Board may require; and shall annually prepare and submit to the Board at the close of each fiscal year a full and complete report or statement of all moneys received and expended and of the existing condition of the funds and assets of the Board for such year.

The books, accounts and records maintained by the

Executive Secretary shall be subject to inspection by the Board at any time and to audit by an independent certified public accountant or accountants when determined by the Board or by law.

The Executive Secretary shall be the personnel officer of the Board and as such, is given full responsibility for the management and direction of all employees of the Board; to promulgate and administer management policies; and to generally act at the direction of the Board.

The Executive Secretary shall have such further duties and authority as required by law or as the Board shall prescribe, and shall give any bond required by law.