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SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Consolidated Public Retirement Board TITLE NUMBER: 162

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §5-10D-1

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 3

TITLE OF RULE BEING AMENDED: Teachers' Defined Contribution System

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 11, 2007 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Anne Werum Lambright, Executive Director
WV Consolidated Public Retirement Board
State Capitol Complex, Building 5 Room 1000
1900 Kanawha Blvd. East
Charleston, WV 25305

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

Charles E. Jones

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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 Fax: 304-558-6337
CPRB@wvretirement.com www.wvretirement.com

BRIEF SUMMARY OF PROPOSED AMENDMENT TO TITLE 162, SERIES 3

The West Virginia Consolidated Public Retirement Board ("Board"), as administrator of the State's several pension plans, proposes certain amendatory changes to the provisions of Title 162, Series 3, of the West Virginia Code of State Regulations. Specifically, the Board proposes an amendment that clarifies which employees are eligible to participate in the Teachers' Defined Contribution System.

Other technical changes are also proposed to clarify when contributions are due.

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STATEMENT OF CIRCUMSTANCES REQUIRING PROPOSAL AND PROMULGATIONS OF PROPOSED RULE CHANGES TO SERIES 3 OF TITLE 162 OF THE WEST VIRGINIA CODE OF STATE REGULATIONS

As statutory administrator of the State's several pension plans, the West Virginia Consolidated Public Retirement Board ("Board") proposes amendatory changes to Title 162, Series 3 of the West Virginia Code of State Regulations. The rule is necessary to coincide with changes made in legislation which limit the eligibility to join Teachers' Defined Contribution System to employees who were first hired between July 1, 1991 and June 30, 2005 and those previous members who have voluntarily elected to transfer. To additionally codify current Teachers' Defined Contribution System contribution practices, the rule sets contribution deadlines and late payment penalties to correspond with late payment dates rather than pay periods.

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

The rule provides for : 1) Revision to TDC first hire eligibility dates to implement changes made in legislation; 2) Sets contribution deadlines and late payment penalties to correspond to payment dates versus pay periods to correspond to TDC contribution practices; and 3) Clarification that days paid are credited, including days not worked but for which pay is received (such as sick, vacation or holiday pay).

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The rule does not change the total value of any members benefit entitlement and therefore does not increase the costs to state government.

Changes are primarily administrative clarifications of current practices. Eligibility date changes are required to correspond to legislated changes in TDC Plan eligibility.

Date: June 7, 2007

Signature of Agency Head or Authorized Representative

Harry W. Mandel

Harry W. Mandel
Board Actuary, MAAA, MSPA, EA

TITLE 162
LEGISLATIVE RULE
CONSOLIDATED PUBLIC RETIREMENT BOARD

SERIES 3
TEACHERS' DEFINED CONTRIBUTION SYSTEM

§162-3-1. General.

1.1. Scope. -- The scope of this Rule is the interpretation, administration and application of the Teachers' Defined Contribution System by the Board.

1.2. Authority. -- W. Va. §5-10D-1.

1.3. Filing Date. – ~~May 1, 2007.~~

1.4. Effective Date. – ~~June 1, 2007.~~

§162-3-2. Purpose.

2.1. General. The purpose of the Teachers' Defined Contribution System is to provide a mandatory defined contribution retirement program for all employees hired ~~on or after~~ for the first time between July 1, 1991 and June 30, 2005, and for those previous members of the Teachers' Retirement System who voluntarily elected to transfer to the Teachers' Defined Contribution System, which is fully funded on a current basis from employer and member contributions.

2.2. Exclusive benefit. The System has been created for the exclusive benefit of the members and their beneficiaries subject to the limitations in W. Va. Code §18-7B-11 with respect to forfeiture. The Board shall interpret the system in a manner consistent with this intent and with the intention that the System satisfy the applicable provisions of Section 401 and Section 501 of the Internal Revenue Code of 1986, as amended, with respect to governmental plans.

§162-3-3. Definitions.

3.1. For the purposes of the Teachers' Defined Contribution System, the following definitions apply, unless the context clearly requires a different meaning:

3.1.1. "Accrued benefit" is the amount credited to the member's annuity account.

3.1.2. "Annuity account" means a two-part account established for each individual member to record the deposit of: (1) member contributions and interest, dividends or other accumulations credited on the contributions to the account on behalf of the member (the "member account"); and (2) employer contributions and interest, dividends or other accumulations credited on the contributions to the account on behalf of the member (the "employer account").

3.1.3. "Beneficiary" means any person, estate or trust who by operation of law, or under the terms of the System, or otherwise, is entitled to receive any accrued benefit of a member under the System. A "designated beneficiary" means any individual designated or determined in accordance with this Rule, except that it shall not include any person who becomes a beneficiary by virtue of the law of inheritance or intestate succession.

3.1.4. "Cash-out" is a distribution of an accrued benefit to a former member which meets the following requirements: (1) the former member has voluntarily elected to receive the distribution of contributions from the system and (2) the distribution is made on account of the employee's termination of participation in the system.

3.1.5. "Compensation" refers to all compensation paid during the plan year as wages, salary or commissions by a participating employer to a member including overtime payments and amounts contributed to any welfare benefit plans maintained by the employer or by the State through a reduction in the member's compensation which pursuant to Internal Revenue Code §125 are not included in the gross income of the member for the year in which the amounts are contributed. However, compensation does not include the value of accrued unused sick leave or vacation leave. Compensation also does not include all contributions by the employer to the plan and to any other retirement or deferred compensation plan maintained by the employer or amounts exceeding the provisions of W. Va. Code §5-10D-7.

3.1.6 "Employment day" means a day a member is paid compensation for full-time service by an existing employer.

3.1.7. "Existing employer" means any employer who employed or employs a member of the Teachers' Defined Benefit Retirement System.

3.1.8. "Forfeiture" means the employer contributions and investment income on such contributions held in the suspension account created pursuant to W. Va. Code §18-7B-11 that have been irrevocably forfeited by reason of lapse of time.

3.1.9. "I.R.C." refers to the Internal Revenue Code of 1986, as amended.

3.1.10. "Leave of absence" refers to that period during which the member is absent from his or her employment without compensation and for which the employer has determined the member to be on a "leave of absence" instead of having separated from his or her employment.

3.1.11. "Permanent and total disability" means a mental or physical incapacity from service as a teacher or current position requiring a member to be absent from employment service for at least six (6) months. Provided, that the incapacity is shown by a physician or physicians selected by the Board in accordance with this Rule.

3.1.12. "Plan year" means the period commencing on the first day of July and ending on the thirtieth day of June, the following year.

3.1.13. "Public schools" means all publicly supported schools, including normal schools, colleges and universities in the State.

3.1.14. "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the numbers of hours worked or the method of pay.

3.1.15. "Retirement age" means at least fifty-five (55) years of age for the member.

3.1.16. "State" means the State of West Virginia, its political subdivisions and state agencies.

3.1.17. "Termination date" means the date on which the earliest of the following events occurs: (1) a member's retirement, (2) a member's termination of employment as a result of permanent and total disability, (3) a member's death or (4) a member's termination of employment for any other reason.

3.1.18. "Trust" means the trust created by State law pursuant to W. Va. Code §18-7B-1 et seq.

3.1.19. "Trust fund" consists of the employer contributions, member contributions, and money in any revenue sharing account, all of which are invested in various investment options and are held by the Teachers' Defined Contribution System, with income or appreciation on the investments.

§162-3-4. Contributions to the Trust.

4.1. Member contributions. Each employee who is a member of the Teachers' Defined Contribution System shall contribute four and one-half percent (4 ½%) of his or her gross compensation. Member contributions shall be picked up by each participating employer pursuant to W. Va. Code §5-10C-1 et seq. The Teachers' Defined Contribution Retirement System is subject to U. S. Internal Revenue Code §414(h)(2) [25 U.S.C. §414(h)(2)]. Each participating employer shall cause the member contributions to be paid to the Teachers' Defined Contribution System within fifteen (15) days of the end of the pay ~~period~~ date. Any participating employer who fails to make any payment due the Teachers' Defined Contribution System by the fifteenth (15th) day following the end of the pay ~~period~~ date shall be considered delinquent and may be required to pay earnings lost on the member contributions at the actuarial rate of return determined for the Teachers' Retirement System. Accrual of the loss in earnings owed by the delinquent employer commences after the fifteenth (15th) day following the end of the pay ~~period~~ date in which the contributions are due and continues until receipt of the delinquent member contributions.

4.2. Employer contributions. Each participating employer shall annually make a contribution equal to seven and one-half percent (7 ½%) of each member's gross compensation. A pro-rata share of the employer contributions shall be paid upon each date that a member contribution is made. The employer contribution shall be immediately credited to the annuity account established in the name of the member and held in trust for the benefit of the member. Each participating employer has a fiduciary duty to its employees to insure that the employer contributions are timely made to the Board. In the event that any employer contribution is not timely made, it is a State debt, contracted as a deficit in State revenues, to be accorded preferred status over other expenditures. Each participating employer shall cause the employer contributions to be paid to the Teachers' Defined Contribution System within fifteen (15) days of the end of the pay ~~period~~ date. Any participating employer who fails to make any payment due the Teachers' Defined Contribution System by the fifteenth (15th) day following the end of the pay ~~period~~ date shall be considered delinquent and may be required to pay earnings lost on the employer contributions at the actuarial rate of return determined for the Teachers' Retirement System. Accrual of the loss in earnings owed by the delinquent employer commences after the fifteenth (15th) day following the end of the pay ~~period~~ date in which the contributions are due and continues until receipt of the delinquent employer contributions.

§162-3-5. Administration of Annuity Accounts.

5.1. Investments. The amounts allocated to the employer account and member account of each member's annuity account shall be invested by the Board in one or more investment options elected by the member. Each member may elect to have the balance accumulated in his or her annuity account invested by the Board in one or more investment options made available by the Board. The investment options may include: (1) a money market fund; (2) a bond fund; (3) a stock fund, and (4) other investment options offered by the Board. If the member elects more than one investment option, the member's and employer's contributions shall be allocated to each investment option in increments of one percent (1%) of the total contribution.

5.2. Investment in a trust fund. The Board may cause all contributions paid to it by the employer and member, and any income earned on the contributions without distinction between principal and income, to be held and administered in a trust fund. The Board may adopt reasonable rules for the administration of the common fund and for the determination of the proportionate interest of each member in the fund.

5.3. Evaluation of assets and allocation of changes. The Board shall evaluate the assets of each investment fund or other investment options at the close of the last day of each calendar quarter of the plan year at their fair market value. The Board shall adjust each member's annuity account, including any employer account held in suspense, for any net gain or net loss in the value of the assets of the fund.

5.4. Limitations on allocations to each member. Notwithstanding any other provisions of the Teachers' Defined Contribution Retirement System, except the provisions of W. Va. Code § 18-7B-13, the maximum annual addition for any plan year which can be made to an annuity account of an individual member is the amount specified and indexed in the U. S. Internal

Revenue Code §415(c)(1) as in effect for the plan year. In no event shall the annual additions to any member's annuity account exceed the limitations set forth in this subsection. The annual addition for a plan year which is the limitation year for the purpose of U. S. Internal Revenue Code §415, under this and any other defined contribution type plans maintained by the State or the employer is the sum of the following:

5.4.1. Employer contributions;

5.4.2. Forfeitures (if applicable); and

5.4.3. Member contributions.

5.5. Designation of beneficiary. Each member may designate from time to time in writing one or more beneficiaries, who will receive the member's vested account balance in the event of the member's death. If the member dies without having made a beneficiary designation, the Board shall distribute the benefits to the member's estate.

§162-3-6. Vesting.

6.1. Member contributions one-hundred percent (100%) vested. The member's portion of the annuity account is comprised of member contributions, reinstatements, rollover contributions, and earnings and is one hundred percent (100%) vested at all times.

6.2. Vesting employer contributions on death or permanent and total disability. If a member's employment with a participating employer is terminated on account of death or permanent and total disability, one hundred percent (100%) of the employer contributions, with earnings on such contributions, in the member's annuity account, is non-forfeitable and immediately vests.

6.3. Employer account vesting on termination. If a member's employment is terminated, except for death or permanent and total disability, the following percentages in the employer portion of the member's annuity account vest and the Board shall distribute to or set aside the money for the member in accordance with Section 7 of this Rule.

Total Years of Employment Service for Vesting	VESTED PERCENTAGE OF EMPLOYER CONTRIBUTIONS AND EARNINGS THEREON
At least 6 completed years, but less than 9	33 1/3%
At least 9 completed years, but less than 12	66 2/3%
At least 12 completed years	100%

6.3.1. The employer's portion of the member's annuity account of a terminated member which is not vested as provided in this subsection shall be retained by the Board in a suspension account in accordance with W. Va. Code §18-7B-11.

6.4. Partial vesting. A member who has less than two hundred (200) employment days during a plan year is entitled to partial vesting credit for purposes of computing years of employment service based upon the actual number of employment days ~~worked~~ during the plan year. For example, if a member was a regular employee of a participating employer, but only had one hundred employment days during the plan year, that individual would be given one half (½) year of employment service (100/200 = ½).

6.4.1. Maximum yearly service credit. For purposes of vesting in the Teachers' Defined Contribution Plan, no member shall receive more than one year total service credit for any fiscal year due to service being transferred from the Teachers' Defined Benefit Retirement System to the Teachers' Defined Contribution Plan which under the Rules of both systems could conceivably entitle him or her to more than one year service credit.

6.5. Leave of absence. The Board shall consider as an approved leave of absence any leave approved by the member's participating employer, pursuant to a written policy of the participating employer, provided that the employer provides the Board on an annual basis, or a more frequent basis if directed by the Board, a list of all members who are currently on an approved leave of absence.

6.6. Reemployment with participating employer. A member of the Teachers' Defined Contribution System who terminates employment with a participating employer and becomes reemployed with a participating employer retains his or her previous years of employment service for purposes of vesting.

6.7. Workers' compensation. Members who are receiving workers' compensation benefits and who are not contributing to the Teachers' Defined Contribution System shall not receive any vesting credit until such time as they return to active employment and commence contributing to the System. The Board shall consider a member receiving workers' compensation as being on approved leave of absence therefore allowing the member's reentry into the system.

§162-3-7. Distribution of Benefits.

7.1. Method of distribution of vested member annuity account. A terminated member shall elect in writing to receive a distribution of the vested portion of his or her annuity account in one of the following forms, to the extent not inconsistent with the applicable provisions of the Internal Revenue Code or W. Va. Code §18-7B-12a: (1) a lump-sum distribution; (2) periodic payments as selected by the member; (3) a rollover; or (4) any other annuity forms approved by the Board.

7.2. Time of distribution. The following provisions applicable to the timing of distributions are subject to the provisions of W. Va. Code §18-7B-12a.

7.2.1. If the member dies, terminates his or her employment with a participating employer, or has been certified to be permanently and totally disabled, in accordance with the provisions of the System, then the Board shall make the first periodic or lump-sum payment upon written election of the member or beneficiary, on a form approved by the Board, of the intention to receive a distribution of benefits.

7.2.2. Distribution shall commence by the first day of April following the later of: (1) the calendar year in which the member attains the age of seventy and one-half (70 ½), or (2) the calendar year in which the member retires or otherwise ceases employment with the participating employer.

7.2.3. If the member dies after distributions to him or her has begun but before his or her entire accrued benefit has been distributed to him or her, the Board shall distribute the remaining portion of his or her accrued benefit from the Teachers' Defined Contribution Retirement System at least as rapidly as under the method of distribution previously established for him or her, if that method is irrevocable at the time of his or her death.

7.2.4. If the member dies before full distribution of his or her interest commences, then distributions of the member's remaining accrued benefit shall be completed by the end of the fifth (5th) calendar year following the year of his or her death. However, installment distributions to a designated beneficiary which begin not later than the end of the calendar year following the death of the member comply with this five (5) year distribution requirement (even though the installment payments are not completed with five (5) year of the member's death) if the distributions are made at a rate which is not longer than that calculated (by using the rules set forth in the U. S. Internal Revenue Code Section 401(a)(9) and the corresponding Treasury Regulations §1.401(a)(9)) to provide payment of all member's accrued benefit during the anticipated life expectancy of the designated beneficiary. Provided that if the designated beneficiary is the surviving spouse of the deceased member, the distributions can begin as long after the member's death as the date on which the deceased member would have attained the age of seventy and one-half (70 ½). If the surviving spouse dies before distributions to the surviving spouse have begun, the Teachers' Defined Contribution Retirement System may make distributions to the beneficiary at the times as described in this Section as it would have if the surviving spouse had been a deceased member.

7.2.5. For purposes of this Section, any amount paid to a child of a member will be treated as if it had been paid to the surviving spouse of the member if the remaining amount becomes payable to the surviving spouse when the child reaches the age of majority.

7.3. Distribution after death of beneficiary. In the event of the death of a beneficiary (or a contingent beneficiary, if applicable) prior to the completion of payments of benefits due the beneficiary from the plan, the full amount of the unpaid benefits shall immediately vest in and become the property of the estate of the beneficiary.

7.4. Suspense account for terminated members. If a member has terminated his or her employment but his or her employer account is not one hundred percent (100%) vested, all non-vested funds in his or her employer account shall be held in suspense until the happening of the earliest of the following: (1) the member returns to employment with a participating employer; or (2) the member fails to return to employment with a participating employer within five (5) years of the date of termination. At that time the member's employer account shall cease to be held in suspense. If a member has returned to employment with a participating employer within five (5) years of the date of termination, and providing any distribution has been repaid, his or her employer account which has been held in suspense shall be restored to his or her credit. If the member does not return to employment with a participating employer within five (5) years, the non-vested portion of the employer account held in suspense shall be irrevocably forfeited and reallocated in accordance with W. Va. Code §18-7B-11 for the plan year in which the forfeiture occurs. The suspension account shall share in any appreciation, depreciation or net income or loss as if it were not in suspense.

7.5. Unable to locate member or beneficiary. If the Board is unable to locate the member or beneficiary to whom benefits are to be distributed and the Board staff has exercised due diligence to find him or her, including sending notification by certified or registered mail to his or her last known address, the Board shall allocate the member's accrued benefits to the default fund. All the funds shall be held in the default fund for distribution to the member or beneficiary when located.

7.6. Repayment of cash-out. If a member receives a cash-out distribution from the plan as a result of ceasing to be an employee, he or she may repay to the plan the cash-out distribution he or she has received from it, in full.

§162-3-8. Termination.

8.1. One hundred percent (100%) vesting on termination of plan. Upon termination or partial termination of the Teachers' Defined Contribution Retirement System and Trust by formal action of the State or for any other reason, or if employer contributions are permanently discontinued for any reason, there shall be vested one hundred percent (100%) in each member directly affected by that action the amount allocated to the annuity account of each member, and the Board shall make payment to the member in cash as soon as practicable after liquidation of the assets of the trust.

8.2. Plan merger of consolidation. In the case of any merger or consolidation with, or transfer of any assets or liability to, any other plan, each member in this plan is entitled to receive (if the surviving plan is then terminated) a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation or transfer (if this plan had terminated).

§162-3-9. Miscellaneous.

9.1. Laws of the State of West Virginia to apply. This plan shall be construed according to the laws of the State of West Virginia to the extent federal laws do not control.

9.2. Filing tax returns and reports. The Board, or its duly appointed designee, shall prepare, or cause to be prepared, all tax returns, reports and related documents, except as otherwise specifically provided.