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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 3

TITLE OF RULE BEING PROPOSED: Teachers' Defined Contribution System

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

4.40

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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

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

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 3

CONSOLIDATED PUBLIC RETIREMENT BOARD

TEACHERS' DEFINED CONTRIBUTION SYSTEM

§ 162-3-1. GENERAL

3-1.1 Scope. The scope of this Series of Rules involves the interpretation, administration, and application of the Teachers' Defined Contribution System by the Board.

3-1.2 Authority. -- West Virginia Code Section 18-7B-1, *et seq*.

3-1.3 Filing Date. -- ________________

3-1.4 Effective Date. -- ____________

§ 162-3-2. STATUTORY INCORPORATION

All of the statutory provisions of Article 7B, Chapter 18 of the West Virginia Code, 1931, as amended, are hereby incorporated and are to be deemed as Regulations of the Teachers' Defined Contribution Retirement System by the Board. Further, all court decisions, opinions of the Attorney General, and amendments to the Code are hereby incorporated by reference.

§ 162-3-3. LEGAL STATUS

The Teachers' Defined Contribution Retirement System is a body corporate and all business of the System shall be transacted in the name of the Teachers' Defined Contribution Retirement System through the Board pursuant to W. Va. Code § 18-7B-3.

§ 162-3-4. PURPOSE.

3-4.1 General. The purpose of the Teachers' Defined Contribution System is to provide a defined contribution retirement program which is fully funded on a current basis from Employer and Member Contributions.

3-4.2 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 System shall be interpreted 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.

§ 162-3-5. DEFINITIONS

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

3-5.1 "Accrued Benefit" is the amount credited to the Member's Annuity Account.

3-5.2 "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 thereon to the Account on behalf of the Member (the "Member Account"); and (2) Employer Contributions and interest, dividends or other accumulations credited thereon to the Account on behalf of the Member (the "Employer Account")>

3-5.3 "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 Section 162-1-8 of these Rules, except that it shall not include any person who becomes a beneficiary by virtue of the law of inheritance or intestate succession.

3-5.4 "Cash-Out" may be voluntary or involuntary. An involuntary Cash-Out is a distribution of an Accrued Benefit to a former Member which meets the following requirements: (i) the former Member's entire non-forfeitable Accrued Benefit is distributed to him or her, (ii) the present value of the non-forfeitable Accrued Benefit of the Member does not exceed $3,500, and (iii) the distribution is made on account of the Employee's termination of participation in the System and no later than thirty (30) days after the end of the Calendar Quarter following such termination. A voluntary Cash-Out is a distribution of Accrued Benefit to a former Member which meets the following requirements: (i) the former Member has voluntarily elected to receive the distribution, and (ii) the distribution is made on account of the Employee's termination of participation in the System and no later than thirty (30) days after the end of the Calendar Quarter following such termination.

3-5.5 "Code" means the West Virginia Code of 1931, as amended.

3-5.6 "Compensation" means the full compensation actually received by a Member for service from an Employer whether or not a part of such compensation is received from other funds, federal or otherwise, than those provided by the State or its political subdivisions. However, compensation shall not include the value of accrued but unused sick leave or vacation leave.

3-5.7 "Consolidated Board" or "Board" means the West Virginia Consolidated Public Retirement Board created and established pursuant to W. Va. Code § 5-10D-1 et seq.

3-5.8 "Employer" means the public agency of and within the

State which employed or employs a Member of the Teachers' Defined Contribution System.

3-5.9 "Employer" Contribution" means an amount deposited into the Member's Annuity Account on a periodic basis coinciding with the Member's regular pay period by or on behalf of an Employer.

3-5.10 "Existing Employer" means any Employer who employed or employs a Member of the Teachers' Defined Benefit Retirement System.

3-5.11 "Forfeiture" means the Employer contributions and investment income thereon 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.

3-5.12 "I.R.C." refers to the Internal Revenue Code of 1986, as amended.

3-5.13 "Leave of Absence" shall refer to that period during which the Member is absent without Compensation and for which the Board has determined the Member to be on a "Leave of Absence" instead of having terminated his or her employment.

3-5.14 "Member" or "employee" means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed a non-teaching capacity by the state board of education, any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principles and educational administrator in schools under the supervision of the department of corrections, the department of health or the department of human services; (l) any person who is regularly employed for full-time service by any county board of education, the state board of education of the teachers retirement board; and (m) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries.

3-5.15 "Member contribution" means an amount reduced from the employee's regular pay, and deposited into the Member's individual Annuity Account within the Teachers' Defined Contribution Retirement System.

3-5.16 "Permanent and Total Disability" means a mental or physical incapacity requiring the absence from employment service for at least six months. Provided, that such incapacity is shown by a physician or physicians selected by the Board in accordance with Section 162-1-10 of these Rules.

3-5.17 "Plan Year" means the period commencing on the 1st day of July and ending on the 30th day of June, the following year.

3-5.18 "Public schools" means all publicly supported schools, including normal schools, colleges and universities in the State.

3-5.19 "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

3-5.20 "Retirement" means a Member's withdrawal from the active employment of a participating Employer and completion of all conditions precedent to retirement.

3-5.21 "Retirement Age" means a Member who has attained at least 55 years of age.

3-5.22 "State" means the State of West Virginia, its political subdivisions and state agencies.

3-5.23 "Termination Date" means the date on which the earliest of the following events occurs: (a) a Member's Retirement, (b) a Member's termination of employment as a result of Permanent Total Disability, (c) a Member's death, or (d) a Member's termination of employment for any other reason.

3-5.24 "Trust" means the Trust created by State law pursuant to Code § 18-7B-1 <u>et</u> <u>seq</u>.

3-5.25 "Trust Fund" consists of the Employer and Member Contributions held by the System and invested in the various investment options and any income or appreciation thereon.

3-5.26 "Years of Employment Service" means employment for at least ten months, a month defined as twenty employment days. Provided, that no more than one year of service may be accumulated during any one Plan Year.

§ 162-3.6 <u>ELIGIBILITY FOR MEMBERSHIP</u>

Membership in the Teachers' Defined Contribution Retirement System shall be available to any "member" or "employee" who is regularly employed for full-time service as defined and designated in W. Va. Code § 18-7B-2(5) as follows:

3-6.1 All new employees whose employment commences on or after July 1, 1991; and

3-6.2 Any existing member of the Teachers' Defined Benefit Retirement System whose employment continues beyond July 1, 1991 may freeze their status in the Defined Benefit Retirement System. The Member may join the Defined Contribution Retirement System after July 1, 1991 pursuant to W. Va. Code § 18-7B-8.

3-6.3 Any employee who terminates his or her employment without withdrawal of contributions, and who was a member of the Teachers' Defined Benefit Retirement System may re-join that Defined Benefit Retirement System if he or she is re-employed within six (6) months with a participating Employer after the employee's previous termination. Otherwise, an employee who terminates employment without withdrawal of contributions, and is re-employed with a participating Employer beyond six (6) months from the date of termination, must join the Teachers' Defined Contribution Retirement System, and all contributions to the Teachers' Defined Benefit System shall be frozen.

3-6.4 The restrictions, qualifications, and allowances set forth in W. Va. Code § 18-7B-7 with regard to membership are incorporated herein.

§ 162-3.7 CONTRIBUTIONS TO THE TRUST

3-7.1 Member Contributions. Each employee who is a Member of the Teachers' Defined Contribution System shall contribute four and one-half percent (4 1/2%) of his or her gross compensation by salary reduction. Such 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 shall be subject to I.R.C. § 414(h(2)) [26 U.S.C. § 414(h)(2)].

3-7.2 Employer Contributions. Each participating Employer shall annually make a contribution equal to seven and one-half percent (7 1/2%) of each Members' 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 shall be a State debt, contracted as a deficit in State revenues, to be accorded preferred status over other expenditures.

§ 162-3.8 ADMINISTRATION OF ANNUITY ACCOUNTS

3-8.1 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, in writing, at least fifteen (15) days before the beginning of each calendar quarter, 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. Such investment options may include: (a) a money market fund; (b) a bond fund; (c) a stock fund; and (d) other investment options offered by the Board. If the Member elects more than one investment option, such Member's and Employer's Contributions shall be allocated to each investment option in increments of twenty percent of the total contribution.

3-8.2 Investment in a Single Fund. The Board may cause all contributions paid to it by the Employer and Participant, and any income earned thereon, without distinction between principal and income, to be held and administered in a single fund. The Board may adopt reasonable rules for the administration of such common fund and for the determination of the proportionate interest of each Member in the fund.

3-8.3 Evaluation of Assets and Allocation of Changes. The assets of each investment Fund shall be evaluated at the close of the last day of each Calendar Quarter of the Plan Year at their fair market value and the Member Account and Employer Account, including any Employer Account held in suspense, of each Member's Annuity Account, shall be adjusted for any net appreciation or net depreciation in the assets of such Fund and any net income or net loss of each Fund for such Calendar Quarter, with each individual Annuity Account of each Member participating in such investment being credited or charged in a proportionate ratio with each other Annuity Account with the earnings or losses of such Fund.

3-8.4 Limitations on Allocations to Each Member. Notwithstanding any other provision of the Teachers' Defined Contribution Retirement System, the maximum annual addition for any Plan Year which can be made to an Annuity Account of an individual Member is the lesser of $30,000 (or, if greater, one-fourth of the defined benefit dollar limitation set forth in I.R.C. § 415(b)(1) as in effect for the Plan Year) or 25 percent of the Member's Compensation. The annual addition is the sum of the following of the Plan Year (which shall be the limitation year for purpose of I.R.C. § 415) under this and any other defined contribution type plans maintained by the State or the Employer:

(a) Employer Contributions;

(b) Forfeitures (if applicable); and

(c) Member Contributions.

3-8.5 Designation of Beneficiary. Each Member may designate from time to time in writing one or more Beneficiaries, who will receive the Member's vested Accrued Benefit in the event of the Member's Death. If the Member dies without having made a Beneficiary designation, the Board shall distribute such benefits in accordance with Section 162-1-8 of these Rules.

S 162-3-9. VESTING.

3-9.1 Member Contributions 100 Percent Vested. The Accrued Benefit in a Member's Annuity Account comprised of Member Contributions and Rollover Contributions and earnings thereon of a Member shall be 100 percent vested at all times.

3-9.2 Vesting Employer Contributions on Death or Permanent, Total Disability. If a Member's employment with a Participating Employer is terminated on account of death or for Permanent and Total Disability, 100 percent of the Employer Contributions, with earnings thereon, in the Member's Annuity Account, shall immediately vest in the Member, or his or her Beneficiary as the case may be, and shall be distributed or set aside in accordance with the provisions of Section 10 of these Rules.

3-9.3 Employer Account Vesting on Termination. If a Member's employment is terminated, except for death or Permanent and Total Disability, the following percentages of the Members Accrued Benefit in the Employer Account of the Member's Annuity

Account shall vest in the Member and shall be distributed to or set aside for the Member in accordance with Section 10 of these Rules:

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

The Accrued Benefit of a Member which is not vested as above provided shall be retained by the Board in a suspension account in accordance with Section 18-7B-11 of the West Virginia Code.

3-9.4 Partial Vesting. A member who has less than 200 employment days during a Plan Year shall be entitled to partial vesting credit for purposes of computing Years of Employment Service based upon the actual number of employment days worked during a Plan Year. For example, if a Member was a regular employee of a participating Employer, but only had 100 employment days during the Plan Year, that individual would be given 1/2 Year of Employment Service (100/200 = 1/2).

3-9.5 Leave of Absence. The Board shall consider as an approved Leave of Absence any such leave approved by each participating Employer, pursuant to a written policy of such Employer, provided that such 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.

3-9.6 Reemployment with Participating Employer. A Member of the Teachers' Defined Contribution System who terminates employment with a participating Employer and does not withdraw any funds from or his her Annuity Account and becomes reemployed with a participating Employer within five years from the date of termination shall retain his or her previous Years of Employment Service for purposes of vesting.

3-9.7 Workers Compensation. Members who are receiving workers compensation benefits and who are not actively employed and 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 will consider a participant on workers compensation as being on an approved leave of absence therefore allowing reentry into the defined benefit plan.

§ 162-3-10. DISTRIBUTION OF BENEFITS

3-10.1 Method of Distribution of Vested Member Annuity

Account. The 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 I.R.C., (a) a lump-sum distribution, (b) a joint and survivor annuity, (c) an increasing annuity which provides for the gradual increase in monthly retirement payments funded solely by the existing current value of the Member's Annuity Account at the time that the Member's retirement payments commence, (d) a Cash-Out, and (e) other annuity forms approved by the Board. Notwithstanding the preceding, if a Member's vested Accrued Benefit in his or her Annuity Account at the time such Member terminates employment (on account of severance, death, or Permanent and Total Disability) does not exceed $3,500, the entire amount of such Accrued Benefit shall be distributed in the form of a Cash-Out within thirty (30) days following the end of the Calendar Quarter after such termination of employment.

3-10.2 Time of Distribution. (a) After the Member has attained Retirement Age, he or she may elect to take Retirement by notifying the Board or its designee in writing, on a form approved by the Board, of such intention not less than sixty (60) days prior to the effective date of Retirement. If the preceding requirements are met, retirement payments shall commence within thirty (30) days of the retirement date under such retirement payment option or options provided by the Board and elected by the Member.

(b) 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 first installment, the lump-sum payment or cash-out, as the case may be, shall be made no more than thirty (30) days following the end of the Calendar Quarter after the Member or the beneficiary, as the case may be, files a written election, on a form approved by the Board, of such intention to receive a distribution of benefits.

(c) Distribution shall commence no later than April 1 of the calendar year following the calendar year in which the Member attains age 70 1/2.

§ 162-3-11, <u>et</u> <u>seq</u>. <u>RESERVED</u>