

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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 4

The West Virginia Consolidated Public Retirement Board ("Board"), as administrator of the West Virginia Teachers Retirement System ("TRS"), proposes certain amendatory changes to the provisions of Title 162, Series 4, of the WV Code of State Regulations. Certain of these amendatory changes are required by federal law for qualified plans under of the Internal Revenue Code, and pertain specifically to the conferral of retirement system service credit to a member for the rendition of qualified military service within the meaning of §414(a) of the Internal Revenue Code. These proposed changes are reflected in §162-4-4.9. Other proposed changes to the Series 4 rules include a proposed change in §162-4-6.2 to increase, from 100 to 120, the number of days a retired teacher could perform substitute teaching in a contract year without a loss of retirement system benefits.

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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

Certain amendatory changes to the rules governing the West Virginia Teachers Retirement System ("TRS") must be made in order to clearly reflect that a member is entitled to receive retirement system service credit for the rendition of qualified military service within the meaning of §414(a) of the Internal Revenue Code, under the provisions of the Uniform Services Employment and Re-employment Rights Act ("USERRA"). Additionally, the Consolidated Public Retirement Board proposes to increase, from 100 to 120, the number of days a retired TRS participant may work during a contract year as a substitute without incurring a loss of retirement system benefits. This rule change has been determined to be necessary and appropriate because of the difficulty which county school boards have encountered in securing sufficient qualified teachers for substitute service.

FILED

**TITLE 162
LEGISLATIVE RULE
CONSOLIDATED PUBLIC RETIREMENT BOARD**

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**SERIES 4
TEACHERS DEFINED BENEFIT PLAN**

§162-4-1. General.

1.1. Scope. -- This rule establishes the eligibility for membership in the Teachers Defined Benefit Retirement System.

1.2. Authority. -- W. Va. Code § 5-10D-1.

1.3. Filing Date. -- April 7, 2000.

1.4. Effective Date. -- July 1, 2000.

§162-4-2. Definitions.

2.1. Money purchase annuity. - That portion of total monthly benefits from the member's contributions plus state matching plus interest, times the actuarial factor for attained age.

2.2. Disabled. - The inability to do substantially all the material acts necessary in the performance of assigned duties, by reason of physical or mental impairment, in the usual or customary manner for a period of six (6) months beginning with the last day of service.

2.3. Earnable compensation. - Full compensation actually received by members for service as teachers whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions. Allowances from employers for maintenance of members shall be considered a part of the earnable compensation of those members whose allowances were approved by the Teachers Retirement Board and contributions to the Teachers Retirement System were made in accordance therewith on or before July 1, 1980.

2.4. Option. - Actuarial method by which a

member chooses to have his or her normal monthly benefit calculated and paid.

2.5. Monthly benefit. - The total monthly payment, including a member's money purchase annuity, received by a retiree based upon the option chosen.

2.6. Prior service. - Service performed before the date the member became eligible to make contributions.

2.7. Schools. - All educational units supported by moneys appropriated by the West Virginia Legislature.

2.8. Substitute teacher. - Any teacher who is assigned (1) To fill the temporary absence of any teacher or the unexpired school term made vacant by the resignation, death, suspension or dismissal of any teacher, (2) to fill a teaching position of a regular teacher on leave of absence or (3) to perform instructional services of any teacher who is authorized by law to be absent from class with loss of pay, providing the absence is approved by the Board of Education in accordance with the law. The substitute shall be a duly certified teacher.

§162-4-3. Membership Eligibility.

3.1. Membership eligibility in this system closed as of July 1, 1991.

3.2. Membership ceases:

3.2.1. Upon death of the member;

3.2.2. Upon retirement of the member;

3.2.3. Upon withdrawal by the member;

3.2.4. When the member's service amounts to less than five (5) years in any ten (10) consecutive year period; or

3.2.5. Upon transfer of assets to the West Virginia Teachers Defined Contribution Plan.

3.3. Beneficiary:

3.3.1. Each member may name a refund or surviving beneficiary;

3.3.2. A member may change his or her beneficiary prior to retirement by filing a proper record with the Board;

3.3.3. Beneficiary changes after retirement are subject to the terms of the retirement option chosen.

§162-4-4. Service Credit.

4.1. One year service credit.- A member of the system shall receive one year of service credit for each school term or fiscal year completed. The Board shall determine in each case what part of a year taught constitutes a year of credit.

4.1.1. Summer teaching shall not generate additional service credit when the time taught is included in the year of service credit already granted and the member's salary is subject to regular contributions and inclusion in the member's fiscal year salary.

4.2. Prior service credit. The Board shall grant the member prior service as follows:

4.2.1. Teachers and professional employees as distinguished from nonteachers for service prior to July 1, 1941;

4.2.2. Nonteachers and former teachers for service prior to March 9, 1945;

4.2.3. Financial secretaries and county agents, agriculture extension at West Virginia University except secretaries and clerks, for service prior to March 9, 1945;

4.2.4. School nurses for services prior to June 30, 1945;

4.2.5. Non-teaching employees (except cooks) for service prior to July 1, 1947;

4.2.6. Employees of the board of school finance for service prior to October 1, 1952, if they were formerly employed as a teacher in the public school system;

4.2.7. Employees of the Department of Education, if they are classified as a present teacher, for service rendered prior to November 4, 1958;

4.2.8. Cooks for service rendered prior to July 1, 1962, or according to the date on which the employer became responsible for the salary of the employee.

4.3. Non-teaching assignment. Any member placed on a special assignment after November 1, 1978, (such as a sabbatical) by an employer is considered regularly employed for the purpose of this Rule. The employer shall collect and remit to the Board the member's contributions to ensure proper credit for a non-teaching assignment.

4.4. Credit for leave time. Any member shall be considered employed as long as the member remains on the payroll of any employer and contributes on salary earned. For purposes of determining service credit, the Board shall count annual or vacation leave or sick leave paid by the employer as service credit.

4.4.1. When computing service credit for annual or personal leave, the last day of service shall be verified as last day paid for leave. The effective date of retirement is the first day of the following month.

4.5. Maximum yearly service credit. Under no circumstances shall a member of the system receive more than one year of service credit for any one fiscal year even though he or she may have reciprocal service with both the Public Employees Retirement System and the Teachers

Retirement System, which under the Rules of both systems could conceivably entitle him or her to more than one year service credit.

4.6. Service credit. Fractional part of year. The Board shall give fractional credit for service as a teacher for a teacher who taught parts of school terms and who taught at least half-time throughout the term. The fractional parts may be combined to form one year's credits and all fractions shall be included in the final statement of total credits.

4.6.1. The Board shall give teachers absent from teaching for more than one month in a school year a fractional credit for service that year. The numerator of the fraction shall be the number of months taught and the denominator shall be the number of months, minus one, that the school was open for pupil attendance.

4.7. When service verification records or other legal documents are not available and the Board has contributions credited to the account of a member for that service, the service may be proven by affidavits from two (2) persons with knowledge of the employment; official minutes; education directories or other records showing proof of employment.

4.8. Public employee service. The Board shall grant prior service credit to a member for service in a position which would not be covered by the Public Employees Retirement System if the service was rendered prior to July 1, 1947, and the member never became a member of the Public Employees Retirement System.

4.8.1. In giving credit for service as a public employee, the Board shall consider the service "non-teaching service" as defined in W. Va. Code §18-7A-1 et seq.

4.8.2. A member shall have completed more than three (3) years of contributory service before any service from another department or agency of West Virginia covered by the Public Employees Retirement System may be transferred to the Teachers Defined Benefit Retirement

System.

4.8.3. Members transferring service from another department or agency to the West Virginia Teachers Defined Benefit System shall make payments for services performed between July 1, 1947, and the date the member became a contributing member of the Public Employees Retirement System.

4.8.4. When transferring Public Employees Retirement System service which was performed prior to the establishment of the Public Employees Retirement System and for which salaries are not available, the Consolidated Public Retirement Board shall charge contributions equal to the maximum contributions in effect at the time the services were performed.

4.9. Credit for military service. ~~The Board shall allow prior service credit for service in Armed Forces of the United States as follows:~~

4.9.1. ~~A member shall be considered to have been on active duty who was regularly enlisted in the Armed Forces of the United States during a period of national emergency, during which a Federal Selection Service Act was in effect and who was separated from the Armed Forces by an honorable discharge. Pursuant to the provisions of W. Va. Code §18-7B-8a service credit with respect to qualified military service will be provided in accordance with Section 414(a) of the Internal Revenue Code.~~

4.9.2. Unless otherwise required by the provisions of W. Va. Code §18-7B-8a twenty-eight (28) days in the Armed Services is considered one month of service as a "teacher".

4.9.3. Not more than one year shall be credited for each year of service in the Armed Forces.

4.9.4. Members who are eligible for fractional credit for military service and for actual teaching within the same fiscal year shall receive credit in the following order of preference:

4.9.4.1. Credit for actual teaching;

4.9.4.2. Prior service credit for military service.

4.9.5. Subject to the provisions of W. Va. Code §18-7B-8a mMilitary service cannot be duplicated by the Teachers Retirement System when it has been credited by an out-of-state Teachers Retirement System, the Public Employees Retirement System, the West Virginia Public Safety Retirement System or the West Virginia Judges Retirement System.

4.10. Out-of-state service credit. The Board shall grant out-of-state service credit for service performed while in the employment of federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory; Provided, That

4.10.1. The member pays to the system double the amount he or she contributed during the first full year of service performed in West Virginia following the out-of-state service to be purchased, plus interest at a rate to be determined by the Consolidated Public Retirement Board from the date of the first full year of membership to the date of payment times the number of years for which credit is granted.

4.10.2. Any service that is fully vested, eligible to be fully vested without further service or from which the member is currently receiving benefits is not subject to purchase.

4.11. Retroactive contributions by a surviving spouse. The surviving spouse of a deceased member may elect, within one hundred twenty (120) days following the death of the member, to make retroactive contributions for services rendered under an agency now covered by the Teachers' Retirement System.

4.12. Individual payments. Unless provided for by specific legislation or prohibited by law, payments, other than loans, due the system may be paid in the following manner:

4.12.1. For a member:

4.12.1.1. Payment in full; or

4.12.1.2. By borrowing from the individual's account

4.12.2. For a retiree:

4.12.2.1. Payment in full;

4.12.2.2. Designation, by the Board, of an amount to be deducted from the monthly benefit to be applied to the debt until the debt is deleted;

4.12.2.3. At death, if a debt balance exists, deduction by the Board of the balance from the final payment, if any, due the beneficiary or estate.

4.13. Conversion of accrued unused sick and annual leave. The Board shall permit conversion of accrued unused sick and annual leave only as follows:

4.13.1. Conversion privilege. The Board shall permit a member, who is a participating employee under the West Virginia Public Employees Insurance Act at the time of retirement, to convert accrued unused sick and annual leave, standing to the credit of that member with the member's last employer, to service credit upon the basis permitted by W Va Code § 5-16-13(e).

4.13.2. Calculation of conversion. The conversion of accrued unused sick and annual leave shall be based on the average annual length of a member's actual contract status over the entirety of the member's employment history. The calculation shall treat the accrued unused sick and annual leave as having been accrued equally over the entirety of the member's employment history, and shall be calculated as follows:

4.13.2.a. The number of days of actual accrued unused and annual leave shall be multiplied by two;

4.13.2.b. The number of months in each contract period shall be added and the sum thereby obtained divided by the number of contract periods to obtain the average monthly length of each year of employment;

4.13.2.c. The result of the calculation obtained in 4.13.2.b of this subdivision shall be multiplied by twenty to obtain the number of average days for each year of employment;

4.13.2.d. The Board shall subtract twenty from the result of the calculation obtained in 4.13.2.c of this subdivision to adjust for the provisions of W. Va. Code § 18-7A-17; and

4.13.2.e. The result of the calculation obtained in 4.13.2.a. shall be divided by the result of the calculation obtained in 4.13.2.d, which quotient shall be the additional service credit in years to which a member is entitled as a result of the conversion.

§162-4-5. Monthly Benefits.

5.1. Monthly benefit options. Members who make contributions to retirement accounts, who qualify for benefits because of age or service, shall select one of the following options: ; subject to the provisions of W. Va. Code §18-7A-28b:

5.1.1. Option A. Monthly benefits for the lifetime of the member. The member's death terminates this option.

5.1.2. Option B. Monthly benefits for the lifetime of the member: In the event of the member's death before the total benefits received equal the member's accumulated contributions at retirement, the plan shall pay a sum equal to the balance of the contributions to the beneficiary or the estate.

5.1.3. Option C. Monthly benefits payable for the lifetime of the member. If the member dies prior to the beneficiary, the monthly benefit would be continued in the same amount to the beneficiary for the lifetime of the beneficiary.

5.1.4. Option D. Monthly benefits payable for the lifetime of the member. If the member dies prior to the beneficiary, the monthly benefit would be continued for half the amount to the beneficiary for the lifetime of the beneficiary.

5.1.5. Option E. Monthly benefits payable for the lifetime of the member. If the member dies before having received a total of one hundred twenty (120) payments, the balance of payments continues to the member's named beneficiary, if living; otherwise, the plan shall pay the commuted value of the payments of the member's estate or plan contingent beneficiary.

5.2. Payment of monthly benefit. The Board shall pay all monthly benefits in twelve (12) monthly payments, with fractions of a cent considered a cent.

5.2.1. When an application for retirement has been submitted by a member who has met all the eligibility requirements and who dies before the application is approved by the Consolidated Public Retirement Board, the Board shall process the application as though the applicant were still alive.

5.3. Option chosen final. When the choice of an option has been made, that choice is final and cannot after that date be changed. A beneficiary cannot affect or change the option chosen by the member.

5.4. Change in monthly benefit. A member (active or retired) may submit new information at any time for the Board's consideration. The Board shall change the monthly benefit in accordance with the approved data, the change being effective with the payment for the month within which the Board received the new data.

§162-4-6. Retirement.

6.1. A member's active membership ceases upon retirement and the status of a retired member may only be affected by an action of the Board.

6.1.1. The Board shall, if requested by

the retiring member, make those withholdings from the monthly benefit that are necessary to provide for the continuance of the insurance program carried by the member with the West Virginia Public Employees Insurance Agency.

6.1.2. The Board shall, if requested by the retired member or beneficiary or if required by law, make ~~such~~ those withholdings from the monthly benefit as that are necessary to pay federal withholding taxes.

6.1.3. The Board shall furnish, as required by state and federal law and regulations, those forms and reports related to the retirement annuity necessary for the retired member or beneficiary to comply with the laws and regulations.

6.2. Post retirement employment. Any retirant who accepts employment, other than as a college teacher, for a relatively short period (no more than a one hundred ~~twenty~~ (100) (120) day contract) who is not considered in any way a permanent or regular employee is considered a temporary, part-time or substitute employee and shall continue to receive his or her normal monthly benefit during the temporary employment. The days may be consecutive. However, if the allowed number of employment days are is exceeded, the retirant shall ~~lose retirement~~ not receive a prior service allowance for each month thereafter during which one or more days are worked, for the balance of that fiscal year.

6.3. A college retirant teacher may teach on a non-contract basis less than seven (7) hours of college credits per semester without a loss of benefits. The Board shall discontinue the payment of retirement benefit to such retirants who teach 7 or more college credits hours per semester, with benefits being discontinued on the first day of the month within which employment begins. Benefits shall be resumed on the first day of the month succeeding the month within which the employment ceases.

6.3.1. A member may not retire creating a vacancy and then be hired as a "substitute" in

that vacancy or any other vacancy during the same fiscal year in which he or she is retiring without a loss of benefits from the first day of employment.

6.3.2. Any employer employing a retired member, on any basis but a day-to-day basis, shall report that employment and conditions of employment to the Board within thirty (30) days of the employment.

6.3.3. Each day a retiree is paid constitutes one day worked regardless of the number of hours or the amount of pay.

6.3.4. This section applies only to employers whose employees are participants in any pension or retirement operated directly or indirectly by the State of West Virginia.

§162-4-7. Termination and Withdrawal and Reentry.

7.1. Termination by death. If a member who dies was at least fifty (50) years of age and had twenty-five (25) years of service credit, the surviving spouse shall receive an annuity based on Option C, if the surviving spouse is designated as the member's sole-primary beneficiary.

7.1.1. In the event the member's spouse does not qualify for an annuitized benefit at the death of the member under W Va Code 18-7A-23(c)(1), the beneficiary shall receive the sum of accumulated contributions with refund interest (as established by W. Va. Code §18-7A-23) up to, but not including, the date of the member's last contribution plus the amount of accumulated contributions from the employers, accumulation fund.

7.2. Withdrawal prior to retirement. The plan shall pay any member who terminates service, upon request, his or her accumulated contributions, less applicable supplemental fees plus interest up to, but not including, the date of his or her last contribution.

7.2.1. A member who has five (5) years of West Virginia service may elect to receive a retirement annuity at age sixty (60). The member

shall notify the Board in writing of the election.
In the event no election is made, the plan shall
make a refund under Subdivision 8.1.1 of this
Subsection.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 162 (Series 4)

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	Nil		Nil		
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

There will be no material change in the total amount of benefits paid as a result of these rules, hence no fiscal impact.

3. Objectives of These Rules:

The purpose of this bill is to codify rules adopted and implemented by the Agency (the Consolidated Public Retirement Board) to reflect the increase in the number of days a retired teacher can work without suffering a loss of retirement benefits, from 100 to 120 days in a plan year, and technical changes to the TRS (Teachers Retirement System) which arise from a number of changes to Federal laws. Collectively, the required changes are referred to as "the GUST amendments" as described briefly in the next paragraph. In the Series 4 regulations, the GUST amendments changed some of the administrative rules regarding the process to determine which military service is recognized for calculating benefits under TRS. The amount of benefits under TRS has not been changed.

The origins of the "GUST" Amendments

Pursuant to Rev. Proc. 99-23, sponsors of qualified plans have until the last day of the first plan year beginning on or after January 1, 2000 to amend their plans to comply with recent changes in the law. These changes are often referred to as the "GUST" amendments, borrowing a letter from four of the five laws at issue: the Uruguay Round Agreements Act, Pub. L. 103-464 ("GATT"), the Uniformed Services Employment and Re-employment Rights Act of 1994, Pub. L. 103-353 ("USERRA"), the Small Business Job Protection Act of 1996, Pub. L. 104-188 ("SBJPA"), the Taxpayer Relief Act of 1997, Pub. L. 105-34 ("TRA '97"), and the Internal Revenue Restructuring and Reform Act of 1998, Pub. L. 105-206 ("RRA '98").

Rule Title: Title 162 (Series 4)

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

The net economic result is not material.

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

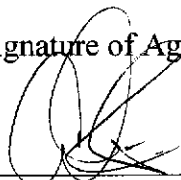
The net economic result is not material.

C. Economic Impact on Citizens/Public at Large:

Those retired members of TRS who have limited their part time work to 100 days in order to avoid any reduction in their pension benefits may now work up to 120 days without any loss of their pension benefits.

Date: July 10, 2000

Signature of Agency Head or Authorized Representative:



Dreighton H. Rosier, FSA
Director of Actuarial Services