

Form #3

OFFICE WEST VIRGINIA
SECRETARY OF STATE

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

QUESTIONNAIRE

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

DATE: August 13, 2008

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

FROM: *(Agency Name, Address & Phone No.)* **WV Consolidated Public Retirement Board**
4101 MacCorkle Ave, S.E.
Charleston, WV 25304
(304) 558-3570

LEGISLATIVE RULE TITLE: Title 162, Series 5; Consolidated Public Retirement Board;
Public Employees Retirement System

1. Authorizing statute(s) citation: W. Va. Code § 5-10D-1
2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 18, 2008
 - b. What other notice, including advertising, did you give of the hearing?

Written Notice, along with a copy of the proposed rule amendments, were forwarded to representatives of the WV Association of Counties, PERSA, County Commissioners Association of WV, and the WV Municipal League for review and circulation to their interested members. Copies were also provided to the Chairs and Vice Chairs of the House and Senate Committees on Pension and Retirements.

- c. Date of Public Hearing(s) *or* Public Comment Period ended: July 18, 2008
 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following the public hearing: (be exact)

August 13, 2008

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Anne Werum Lambright, Executive Director
WV Consolidated Public Retirement Board
4101 MacCorkle Ave, S.E.
Charleston, WV 25304
(304) 558-3570 x 52403
(304) 558-6337 (fax)
Anne.W.Lambright@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give, **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Terasa L. Miller, Chief Operations Officer
WV Consolidated Public Retirement Board
4101 MacCorkle, S.E.
Charleston, WV 25304
(304) 558-3570 x 52405
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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:
- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.
 - b. Date of hearing or comment period:
 - c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?
 - d. Attach findings and determinations and reasons:

BRIEF SUMMARY OF PROPOSED AMENDMENT TO TITLE 162, SERIES 5

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 5, of the West Virginia Code of State Regulations. Specifically, the Board proposes an amendment that makes minor technical changes to the language in the section entitled "Refund of Erroneous Contributions" and is compliant with the Internal Revenue Code.

**STATEMENT OF CIRCUMSTANCES REQUIRING PROPOSAL AND
PROMULGATION OF PROPOSED RULE CHANGES TO SERIES 5 OF TITLE 162 OF
THE WEST VIRGINIA CODE OF STATE REGULATIONS**

As statutory administrator for the State's several pension plans, the West Virginia Consolidated Public Retirement Board, ("Board") proposes amendatory changes to Title 162, Series 5, of the West Virginia Code of State Regulations. Currently, the legislative rule specifies the method in which refunds of erroneous payments will be made. This rule change provides for situations in which a refund of erroneous payments may be made in compliance with the Internal Revenue Code and minor technical changes to the language of the rule.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 162 (Series 5) Public Employees Retirement System
Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural
Agency: West Virginia Consolidated Public Retirement Board
Address: 4101 MacCorkle Ave. S.E.
Charleston, West Virginia 25304
Phone Number: (304) 558-3570 X 52465 Email: Harry.W.Mandel@WV.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There are no changes in the costs or revenues of state government due to the changes in the rule.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2008 Increase/Decrease (use "-")	2009 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$ 0	\$ 0	\$ 0
Personal Services			
Current Expenses	\$ 0	\$ 0	\$ 0
Repairs & Alterations			
Assets			
Equipment			
Other	\$ 0	\$ 0	\$ 0
2. Estimated Total Revenues			

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) Clarifies provisions regarding "Benefit Commencement"; and, 2) Adds provisions regarding possible refunds of an employer's "erroneous contributions".

MEMORANDUM

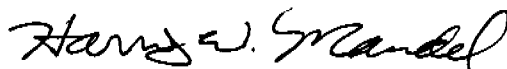
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

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.

Date: June 17, 2008

Signature of Agency Head or Authorized Representative



Harry W. Mandel

Board Actuary, MAAA, MSPA, EA

FILED

2008 AUG 13 PM 3: 12

TITLE 162
LEGISLATIVE RULE
CONSOLIDATED PUBLIC RETIREMENT BOARD

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 5
PUBLIC EMPLOYEES RETIREMENT SYSTEM

§ 162-5-1. General.

1.1. Scope. -- This rule establishes the eligibility for membership and the general administrative procedures in the Public Employees Retirement System.

1.2. Authority. -- W. Va. Code ~~§5-10-3~~ § 5-10D-1.

1.3. Filing Date. -- ~~April 30, 2008~~.

1.4. Effective Date. -- ~~June 1, 2008~~.

§ 162-5-2. Definitions.

2.1. Board. -- The West Virginia Consolidated Public Retirement Board.

2.2. Retirement System. -- The West Virginia Public Employees Retirement System.

2.3. Full time employment -- Employment of an employee by a participating public employer in a position which normally requires twelve (12) months per year service and requires at least one thousand forty (1,040) hours per year service in that position.

2.4. Insurable Interest -- Insurable Interest shall be construed as being an interest that arises from the ties of blood or marriage to the member as will justify a reasonable expectation or advantage or benefit from the continuance of his or her life, or that relationship where a person has a legal claim on the member for service or support from the personal relationship between them, and where he or she has a reasonable right to expect some pecuniary advantage from the continuance of the life of the member.

§ 162-5-3. Interest.

3.1. For the purpose of calculating interest to the members deposit fund, interest is four percent (4%) per annum computed annually.

§ 162-5-4. Service Credit.

4.1. In crediting service to member employees, paid on a salary basis:

4.1.1. A day of service shall mean a day in which an employee works or has worked four (4) or more hours for the state or other participating public employer with pay.

4.1.2. The Board shall credit a member with a calendar month of service for any calendar month in which the member received one-half or more of the member's normal monthly salary. For any calendar month in which the member received less than one-half of his or her normal monthly salary, no service credit shall be credited to the member in that calendar month.

4.1.3. The Board shall credit ten (10) or more months of ~~credited~~ service in a calendar year as a calendar year's service.

4.2. The Board shall credit any employee hired and paid by a participating public employer on an hourly basis with one month's contributing service for each one hundred twenty (120) hours of work paid by his or her employer in a calendar year.

4.3. Employees of a participating public employer who work regularly twelve (12) days or more in a calendar month, and otherwise meet eligibility for membership, shall be members of the Retirement System.

§ 162-5-5. Final Average Salary.

5.1. In computing a member's final average salary, the Board shall follow the following procedure:

5.1.1. No compensation shall be considered for any period for which service is not credited;

5.1.2. The ten (10) years of credited service immediately preceding the date of the member's employment with a participating public employer last terminated is the one hundred nineteen (119) months of service preceding the last month before retirement;

5.1.3. The three (3) consecutive years of service for which the member's compensation was the highest is the highest aggregate of his or her compensation for the thirty-six (36) consecutive months of service contained within the one hundred nineteen (119) months of service, plus the last month of service determined in Subsection 5.1.2. of this Rule;

5.1.4. The member's final average salary shall be one-third (1/3) of the aggregate salary determined in Subsection 5.1.3. of this Rule; and

5.1.5. Only compensation paid by county courts and the State of West Virginia shall be used to determine final average salary for court reporters.

§ 162-5-6. Refund of Erroneous Contributions.

6.1. To the extent permissible under the provisions of section 401(a) et seq. of the Internal Revenue Code and the guidance issued thereunder, the State Auditor and State Treasurer may refund from the funds of the Retirement System any erroneous contributions made to the System upon proper transmittals by the Board's staff. The Board's staff shall may request the refund if it determines it is appropriate and permissible under the provisions of section 401(a) et seq. of the Internal Revenue Code and guidance

issued thereunder, after ~~receipt~~ receiving from the executive officer of the payroll records of a participating public employer an explanation of the reason for making the erroneous contributions and the amount of the erroneous contributions. ~~and to whom the refund is payable.~~

§ 162-5-7. Verification of Prior Service.

7.1. The Board shall accept a certificate from the executive office or the payroll records of the employer as evidence of service prior to July 1, 1961, and as evidence of the date the public employer elected to become a member of the Retirement System.

7.2. The certificate and affidavits submitted by the employer shall show the member's full name (no initials), the name of the employer and the exact dates of the prior service.

7.3. Copies of W-2 Forms furnished an employee, bona fide copies of Internal Revenue Tax Returns, or records of Health, Education and Human Services or Internal Revenue Service which show gross earnings and the employee's and the employer's name shall be considered sufficient evidence of prior service.

7.4. In the event a member employee cannot obtain the certificate specified in subsections 7.1. and 7.2. of this Rule, the Board may grant prior service credit to the member employee furnishing two (2) affidavits to the Retirement System from two (2) credible persons who worked with the member employee during the periods stated or who had personal knowledge of the employment.

§ 162-5-8. Employer Contributions.

8.1. Each participating public employer shall contribute nine and five-tenths percent (9.5%) of each compensation payment of all its employees who are members of the Public Employees Retirement System: Provided, That beginning on the first day of July, two thousand three, each participating public employer shall contribute ten and five-tenths percent (10.5%) of each compensation payment of all its employees who

are members of the Public Employees Retirement System.

8.2. The sums are due the Public Employees Retirement System at the end of each calendar month in arrears and shall be paid not later than fifteen (15) days following the end of the calendar month. Each remittance shall be accompanied by a detailed summary of the sums withheld from the compensation of each member and the credited service each employee was entitled to for that month on forms, either paper or electronic, provided by the Public Employees Retirement System for that purpose.

§ 162-5-9. Employee Contributions.

9.1. All participating public employers shall withhold four and five-tenths percent (4.5%) from the gross compensation of each member.

9.2. The sums withheld each calendar month are due the Retirement System at the end of each calendar month and shall be paid not later than fifteen (15) days following the end of each calendar month. Each remittance shall be made by check separate from the employer remittance and shall be made payable to the West Virginia Public Employees Retirement System. Each remittance shall be accompanied by a detailed summary of the sums withheld from the compensation of each employee and the credited service each employee was entitled to for that month on forms, either paper or electronic, provided by the Public Employees Retirement System for that purpose.

§ 162-5-10. Public Corporations.

10.1. In order to be accepted for membership by the Board as a participating public employer, any separate corporation or instrumentality established by one or more counties, cities or towns, or any corporation or instrumentality supported in most part by counties, cities or towns, which by a three-fifths (3/5) majority vote of its governing body elects to join the Retirement System, the public corporation or instrumentality shall pass a resolution whereby it would allow the

entity from which it derives its funds to deduct from its appropriations any sums the Board finds are subsequently delinquent, and for the entity to pay the delinquent funds to the Board. In the event the entity fails to pay the delinquent funds, then the Consolidated Public Retirement Board may collect the delinquent funds, as provided in W. Va. Code § 5-10-33.

§ 162-5-11. Annuity Payment Age.

11.1. For the purpose of calculating annuity benefits, the Board shall use the age at the nearest birthday to the effective date of retirement of the member, retirant or beneficiary.

§ 162-5-12. Prior Service on Reemployment.

12.1. The Board shall credit each member of the Retirement System with prior service before July 1, 1961 if that member was in the employ of the State of West Virginia or other participating public employer within a period of thirty (30) years immediately preceding the date the State or other participating public employer became a participating public employer: Provided, however, That the member was reemployed after July 1, 1961 by a participating public employer or the State of West Virginia within fifteen (15) years subsequent to the date that the participating public employer elected to become a participating public employer in order to receive the prior service credit with no contributions required. If the member was reemployed after July 1, 1961, by a participating public employer or the State of West Virginia later than fifteen (15) years subsequent to the date the participating public employer elected to become a participating public employer, the member may purchase the prior service.

§ 162-5-13. Employee Membership in Retirement System.

13.1. Employees of boards of education, colleges or universities. -- Any employee or person whose salary or compensation is paid in whole, or substantially in part, by any college, university, county board of education, State Department of Education, State Board of

Education or State Teachers' Retirement System is not entitled to membership in the West Virginia Public Employees Retirement System while so employed in that capacity.

13.2. Employees of cooperative associations under direction of the Department of Agriculture. -- Employees of cooperative associations under the supervision of the Department of Agriculture, whose compensation is payable by the cooperative association are not entitled to membership in the Retirement System for such employment.

13.3. Registrars of Division of Vital Statistics. -- Those employees of counties furnishing statistical information to the Department of Health and Human Services whose job is considered full time, or whose position is considered one which normally requires twelve (12) months of service and at least one thousand forty (1,040) hours per year service in that position, shall become members of the Retirement System.

13.4. Deputy Commissioners of Delinquent and Forfeited Lands. -- The various Deputy Commissioners for Delinquent and Forfeited Lands, by reason of that appointment are not entitled to membership in the Retirement System for that employment.

13.5. Other retirement system membership. -- Any employee of a participating public employer who is eligible for membership in another retirement system of a political body is not eligible for membership in the West Virginia Public Employees Retirement System, except as provided in W.Va. Code § 5-10-17.

§ 162-5-14. Participating After July 1, 1961.

14.1. Members of any participating public employer, including, but not limited to, hourly employees of the State Division of Highways who were eligible to participate July 1, 1961, shall not receive service credit during the period July 1, 1961, until the date on which the member employee actually commenced participation by contribution to the Retirement System; however,

during that period they shall be considered to be members of the Retirement System for all other purposes.

§ 162-5-15. Employer Termination of Membership.

15.1. Once an employer, whether a municipality, county or public corporation, elects to participate in the Retirement System, the action of the municipality, county or public corporation is final and it may not, at a later date, elect to terminate its participation in the Retirement System.

§ 162-5-16. Approval of Applications for Voluntary Retirement and Death Annuities by the Board.

16.1. Commencement of annuity. The State Auditor and State Treasurer may pay continuing monthly annuities to retirants, beneficiaries of retirants and beneficiaries of deceased members, after the Board has:

16.1.1 Approved the date of birth of the member, retirant or beneficiary;

16.1.2. Approved the prior and contributing service the member is entitled to;

16.1.3. Approved the date of the death of a member in the event of his or her death;

16.1.4. Complied with the other provisions of this Rule; and

16.1.5. Submitted the proper transmittals to the State Auditor's and the State Treasurer's office.

16.2. Option chosen final. When the choice of an option has been made, that choice is final and cannot after that date be changed, except as provided in W. Va. Code § 5-10-24. A beneficiary cannot affect or change the option chosen by the member.

§ 162-5-17. Reinstatement Interest.

17.1. If a former member of the Retirement System is reinstated under W. Va. Code § 5-10-18, the Board shall deposit the payment of regular interest on his or her refund to the member's deposit fund and shall credit the member's individual account.

§ 162-5-18. Reduction of Annuities on Request of Retirant.

18.1. A retirant is not entitled to elect a reduced annuity except as provided for in W. Va. Code § 5-10-24.

§ 162-5-19. Time of Application for Filing for Benefits.

19.1. Any employee or former employee of a participating public employer who files his or her application for benefits and who may become eligible for benefits or who was eligible for benefits upon terminating his or her employment, and files his or her application for benefits within one year after becoming otherwise eligible to receive retirement benefits, shall receive benefits accumulated, as otherwise provided for in W. Va. Code § 5-10 et seq., commencing the end of the month following the month after he or she was last on the payroll of a participating public employer. Notwithstanding anything in this Rule to the contrary, distributions shall be made in accordance with the provisions of W. Va. Code § 5-10-27b.

§ 162-5-20. Military Service Credit.

20.1. Credit for military service shall be made in accordance with the provisions of W. Va. Code § 5-10-15. Any member applying for retirement benefits who is claiming service credit pursuant to W. Va. Code § 5-10-15 shall present to the Retirement System an original or copy of his or her discharge from the service or other appropriate documents required by the Board to comply with the provisions of W. Va. Code § 5-10-15.

§ 162-5-21. Refunds of Contributions Where

an Annuity May Be Payable.

21.1 Any member of the Retirement System who terminates employment after attaining age sixty (60) and who has five (5) or more years contributing service, and is otherwise entitled to an annuity payable from the Retirement System, is not eligible for a refund of accumulated contributions made to the Retirement System, but, in lieu therefore, is entitled to a monthly annuity payable pursuant to W. Va. Code § 5-10-20.

21.2 Any member of the Retirement System who terminates employment before attaining age sixty (60) and who is otherwise entitled to a regular annuity payable from the Retirement System at the time of his or her application for a refund, is not eligible for a refund of accumulated contributions made to the Retirement System, but, in lieu thereof, is entitled to a monthly annuity payable pursuant to W. Va. Code § 5-10-20.

21.3 Any member of the Retirement System who terminates employment before attaining age sixty (60) and who is not immediately entitled to a regular annuity payable from the Retirement System, even though he or she may be entitled to deferred benefits, is entitled to a refund of accumulated contributions upon written application filed with the Retirement System.

§ 162-5-22. Early Retirement.

22.1. Any member who was a member of the Retirement System prior to June 30, 1986 who hereafter or heretofore acquires ten (10) years or more of credited service with the Retirement System, three (3) years or more of which are contributing service, and has terminated his or her employment after attaining age fifty-five (55), but before attaining age sixty (60) may be entitled to an annuity pursuant to W. Va. Code § 5-10-21; Provided, That the member makes application for retirement on or before he or she attains age sixty-two (62); Provided further, That the member has not withdrawn his or her contributions made to the System or that the member redeposits what withdrawals he or she may have withdrawn plus interest as provided for in WVCSR § 162-7-4, et

seq. All funds must be repaid while a member is an active participant.

22.2. Recalculation of early retirement factor after reemployment period. -- The Board shall treat any member who retires early pursuant to W. Va. Code § 5-10-21, and is subsequently reemployed by a participating public employer of the System, and who again retires, for purposes of the determination of the newly applicable early retirement factor, as if he or she were retiring at an age calculated by adding to this original early retirement age the number of years and months during which he or she was reemployed. In the event that the artificially determined age exceeds sixty (60), the Board shall not make any reduction for early retirement.

§ 162-5-23. Employer Participation After a Former Employee Has Retired.

23.1. If a retirant was employed by a non-participating agency, which subsequently elects to become a participating agency, the Board's staff may recalculate the member's file and give the member additional benefits effective the date the employer came into the Retirement System: Provided, That the Board can properly verify the previous employment and that the employment was prior to July 1, 1961.

§ 162-5-24. Temporary Employment Retirants.

24.1. Any former member of the Retirement System drawing an annuity may accept temporary employment with a participating public employer: Provided, That his or her compensation does not exceed the limitation established by W. Va. Code § 5-10-48. The earnings received in the calendar year as limited by that section, regardless of over what period, is the controlling factor for suspension of the annuity for the balance of the calendar year.

§ 162-5-25. Member Receiving Workers' Compensation.

25.1. Any member of the Retirement System

who is injured or suffers a disease growing out of the course of his or her employment with a participating public employer and who is receiving Workers' Compensation benefits shall receive credited service toward his or her retirement: Provided, That the member physically returns to employment with a participating public employer upon recovery of his or her injury or disease.

§ 162-5-26. Deputy Assessors - Service Credit.

26.1. Deputy assessors shall receive credited service for actual time for which they are compensated, however, final average salary shall be based upon their annual compensation.

§ 162-5-27. Officers of the Department of Public Safety and Municipal Police or Fire Department.

27.1. Any member of the Retirement System who served as an officer of the Division of Public Safety or a municipal fire or police department and is not receiving an annuity from that system, may be granted prior service credit if he or she is otherwise entitled to the credit.

§ 162-5-28. Repayment of Withdrawals.

28.1. Any former member of the Retirement System who withdrew his or her contributions and who is reemployed by a participating public employer may repay his or her withdrawals in periodic payments, together with interest as provided for in the West Virginia Consolidated Public Retirement Board's rule Refund, Reinstatement and Loan Interest Factors, 162CSR7, et seq. The individual shall be a contributing member for a full year before any repayment of funds are allowed and all funds must be repaid within five (5) years of reemployment.

§ 162-5-29. Refunds of Contributions Upon Accepting Employment With a Different Participating Public Employer.

29.1. Any member who terminates his or her employment with a participating public employer

and who shortly hereafter accepts employment with another participating public employer is not entitled to a refund of contributions made to the Retirement System.

§ 162-5-30. Employee and Employer Contributions When an Employee is on Annual Leave or Compensated Sick Leave.

30.1. The employee and employer shall make regular contributions to the Retirement System, notwithstanding the fact that the employee is drawing compensation for annual or sick leave.

§ 162-5-31. Insurance Premiums.

31.1. The Board shall not consider premiums paid by a participating public employer for group life insurance or group health and accident insurance on its employees as compensation for retirement purposes.

§ 162-5-32. Elected Officials of the Legislature.

32.1. Elected clerks, sergeants at arms and doorkeepers of the Legislature shall receive one year's service credit with the Retirement System for each year served.

§ 162-5-33. Refunds of Member Contributions When Made.

33.1. Members of the West Virginia Public Employees Retirement System who terminate their employment with a participating public employer without an annuity payable are entitled to a refund of their contributions made to the Retirement System thirty (30) days after they have last appeared on an official payroll of the State of West Virginia or other participating public employer, following the filing of a report from the employee's payroll office.

§ 162-5-34. Temporary Employment for Retirants Defined.

34.1. Any retirant who accepts employment for a relatively short period (in the case of a state employee, not more than ninety (90) consecutive

days) and who is not considered in any way a permanent or regular employee is a temporary employee within the meaning of W. Va. Code § 5-10-2 and the employee shall not be a member of the Retirement System.

§ 162-5-35. Surcharge for Delinquency of Employer and Employee Contributions.

35.1. Any participating public employer who fails to make any payment due the Retirement System by the fifteenth (15th) day following the end of each calendar month in which the contributions are due may be required to pay the actuarial rate of interest lost on the total employee and employer contributions owed for each day the payment is delinquent. Accrual of the loss in earnings owed by the delinquent employer commences after the fifteenth (15th) day following the end of the calendar month in which the contributions are due and continues until receipt of the delinquent employee and employer contributions. Interest compounds daily and the minimum surcharge is fifty (50) dollars.