

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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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 § 5-10-D-1

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 5

TITLE OF RULE BEING AMENDED: Public Employees Retirement System

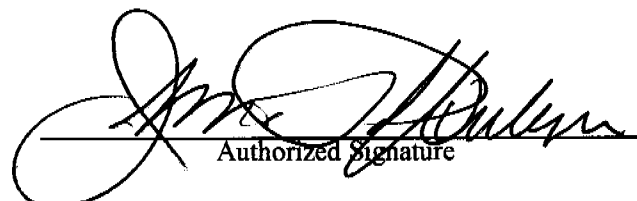
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

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 August 2, 2004 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Joseph J. Jankowski, Executive Director
WV Consolidated Public Retirement
Board
State Capitol Complex
Building 5, Room 1000
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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 amendatory additions and revisions to Title 162, Series 5 of the West Virginia Code of State Regulations. Specifically, the Board proposes new language to provide staff the opportunity to assess a surcharge to Public Employee Retirement System (PERS) participating employers that fail to remit payment of employer and employee contributions in a timely manner. Further, the Board proposes revisions that will provide PERS participating employers an additional five (5) days to remit payments due the Retirement System as well as the electronic availability of monthly report forms and data.

The Board also proposes amendatory revisions to § 22 to delete an obsolete provision of the rule, and to provide a provision that a member who terminates employment before attaining age sixty 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 contributions made to the Retirement System, but, in lieu thereof, is entitled to a monthly annuity. Other non-substantial changes are also proposed.

STATEMENT OF CIRCUMSTANCES REQUIRING
PROPOSAL AND PROMULGATION OF PROPOSED RULES CHANGES TO SERIES 5
OF TITLE 162 OF THE WV CODE OF STATE REGULATIONS

In an effort to protect the financial integrity of the system, certain amendatory changes to the rules governing the Public Employees Retirement System (PERS) must be made. The Consolidated Public Retirement Board (Board) proposes an amendatory addition to allow staff the opportunity to assess a surcharge for the untimely submission of monthly contributions and reporting to the retirement system. Currently, there are several participating employers who habitually remit the required monthly reporting and contributions well past the required fifth day following the end of the calendar month. By imposing a surcharge, the Board hopes to prevent loss of interest earnings to the system as well as deter this behavior.

Additionally, the Board proposes additional language to WVCSR § 162-5-22 to provide that any member of the Retirement System who terminates employment before obtaining age sixty and who is otherwise eligible for an annuity at the time of withdrawal is not eligible to receive a refund of contributions made to the Retirement System, but, in lieu thereof, is entitled to receive a monthly annuity. This rule change has been determined necessary to close a "loop hole" in the current rule. The Board also proposes to delete an obsolete provision of § 22, as 2002 legislative changes to W. Va. Code § 5-10-21(a) have trumped this rule provision. Other non-substantial changes are also proposed.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 162 (Series 5) Public Employees Retirement System

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	\$0				
PERSONAL SERVICES	\$0				
CURRENT EXPENSE	\$0				
REPAIRS & ALTERATIONS	\$0				
EQUIPMENT	\$0				
OTHER	\$0				

2. Explanation of Above Estimates:

The rule provides for certain technical modifications and clarifications and does not increase or decrease any benefits currently provided. The rule modifies certain benefit distribution rights. The rule sets forth contribution deposit requirements and penalty for late deposits.

Rule Title: Title 162 (Series 5) Public Employees Retirement System

3. Objectives of These Rules:

- a. Provides certain technical changes and clarifications to provisions.
- b. Provides that members eligible for regular retirement are only eligible for retirement benefits and may not elect a cash out of member contributions.
- c. Provides for a 10 day following end of month deposit requirement for all contributions. Establishes a late fee assessment of the greater of \$50 or the actuarial interest loss for late deposits on a monthly basis.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Allows for the more efficient processing of benefits. Protects the Plan from interest losses due to late deposits by State and local employers. Will require State employers to pay late deposit penalties if deposits are not paid on a timely basis.

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

Protects members from making member contribution cash out election following retirement eligibility, protecting the full retirement benefits. Requires contribution deposits within 10 days following the months end and sets forth penalties for employers who contribute late. The penalties protect employers who contribute in a timely manner.

C. Economic Impact on Citizens/Public at Large:

None.

Date: June 30, 2004

Signature of Agency Head and/or Authorized Representative:


Harry W. Mandel
Member, American Academy of Actuaries
Board Actuary, WVCPRB

TITLE 162
LEGISLATIVE RULE
CONSOLIDATED PUBLIC RETIREMENT BOARD
SERIES 5
PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED

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GEORGE WEST VIRGINIA
SECRETARY OF STATE**§162-5-1. General.**

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

1.2. Authority. -- W. Va. Code §5-10-31.

1.3. Filing Date. --

1.4. Effective Date. --

§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/or 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.

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 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 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 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:

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

5.1.1. 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;

5.1.2. 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 5.1.1. of this Rule;

5.1.3. The member's final average salary shall be one-third (1/3) of the aggregate salary determined in Subsection 5.1.2. of this Rule; and

5.1.4. 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.

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 executive director. The executive director shall request the refund after he or she has received from the executive officer of the payroll records of a participating public employer the reason for making the erroneous contributions, the amount of the erroneous contributions, and to whom the refund is payable.

§162-5-7. ~~Reserved.~~**~~§162-5-8. Verification of Prior Service.~~**

~~8.1. 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.

~~8.2. 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.

~~8.3. 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.

~~8.4. 7.4.~~ In the event a member employee cannot obtain the certificate specified in subsections ~~8.1. and 8.2. 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.

~~§162-5-9. §162-5-8. Employer Contributions.~~

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. 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

~~five (5)~~ ten (10) 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.

~~§162-5-10.~~ §162-5-9. Employee Contributions.

All participating public employers shall withhold four and five-tenths percent (4.5%) from the gross compensation of each member. 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 ~~five (5)~~ ten (10) 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. ~~The Board may accept reports from agencies based on the same format as the Public Employees Retirement System.~~

§162-5-10. Surcharge for Delinquency of Employer and Employee Contributions.

Any participating public employer who fails to make any payment due the Retirement System by the tenth (10th) day following the end of each calendar month wherein 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 month the payment is delinquent, with a minimum surcharge of fifty (50) dollars per month.

§162-5-11. Public Corporations.

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 ~~must~~ 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.

§162-5-12. Annuity Payment Age.

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.

§162-5-13. Prior Service on Reemployment.

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 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 employer, the member may purchase the prior service.

§162-5-14. Employee Membership in

Retirement System.

14.1. 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.

14.2. 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 that employment.

14.3. 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.

14.4. 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.

14.5. Other retirement system membership. -- Any employee of a participating 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.

§162-5-15. Participating After July 1, 1961.

Members of any participating 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.

§162-5-16. Employer Termination of Membership.

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.

§162-5-17. Approval of Applications for Voluntary Retirement and Death Annuities by Executive Director the Consolidated Public Retirement Board.

17.1. The State Auditor and State Treasurer may pay continuing monthly annuities to retirants, beneficiaries of retirants and beneficiaries of deceased members, after the executive director Consolidated Public Retirement Board has:

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

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

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

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

17.1.5. Submitted the proper transmittals to the Department of Administration State Auditor's and the State Treasurer's office.

§162-5-18. Reinstatement Interest.

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.

§162-5-19. Reduction of Annuities on Request of Retirant.

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

§162-5-20. Time of Application for Filing for Benefits.

Any employee or former employee of a participating 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 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.

§162-5-21. Military Service Credit.

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.

§162-5-22. Refunds of Contributions Where an Annuity May Be Payable.

Any member of the Retirement System who terminates employment after attaining age sixty (60) and who has five (5) or more years ~~credit contributing service, three (3) years or more of which was contributing service~~; and is otherwise entitled to an annuity payable from the Retirement System, is not eligible for a refund of 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. ~~However, a~~ 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 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. However, 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, may shall be entitled to a refund of contributions upon written application filed with the Retirement System.

§162-5-23. Early Retirement.

23.1. 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 WVCSS §162-7-4, et. seq. All funds must be repaid while a member is an active participant.

23.2. 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 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.

§162-5-24. Employer Participation After a Former Employee Has Retired.

If a retirant was employed by a non-participating agency, which subsequently elects to become a participating agency, the executive director 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.

§162-5-25. Temporary Employment Retirants.

Any former member of the Retirement System drawing an annuity may accept temporary employment with a participating 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.

§162-5-26. Member Receiving Workers' Compensation.

Any member of the Retirement System who is injured or suffers a disease growing out of the course of his or her employment and who is receiving Workers' Compensation benefits shall receive credited service toward his or her

retirement: Provided, That the member returns to employment with a participating employer upon recovery of his or her injury or disease.

§162-5-27. Deputy Assessors - Service Credit.

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.

§162-5-28. Officers of the Department of Public Safety and Municipal Police or Fire Department.

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.

§162-5-29. Repayment of Withdrawals.

Any former member of the Retirement System who withdrew his or her contributions and who is reemployed by a participating employer may repay his or her withdrawals over a three (3) year period, together with interest as provided for in WVCSR §162-7-4, et. seq., if repayment in a lump sum will work a hardship. 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.

§162-5-30. Refunds of Contributions Upon Accepting Employment With a Different Participating Employer.

Any member who terminates his or her employment with a participating employer and who shortly hereafter accepts employment with another participating employer is not entitled to a refund of contributions made to the Retirement System.

§162-5-31. Employee and Employer Contributions When an Employee is on Annual

Leave or Compensated Sick Leave.

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.

§162-5-32. Insurance Premiums.

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

§162-5-33. Elected Officials of the Legislature.

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.

§162-5-34. Refunds of Member Contributions When Made.

Members of the West Virginia Public Employees Retirement System who terminate their employment with a participating 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 employer, following the filing of a report from the employee's payroll office.

§162-5-35. Temporary Employment for Retirants Defined.

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.