

Form #3

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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 24, 2004

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

FROM: **West Virginia Consolidated Public Retirement Board
State Capitol Complex
Building 5, Room 1000
1900 Kanawha Boulevard, East
Charleston, WV 25305**

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:
July 1, 2004

- 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 various members of the WV Association of Counties, County Commissioners Association of WV, WV Municipal League, AFSCME, and to PERSA for review and circulation to their potentially interested members. Copies were also provided to the Chairs of the House and Senate Committees on Pension and Retirements.

- c. Date of Public Hearing(s) *or* Public Comment Period ended: August 2, 2004
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

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

August 24, 2004

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

Joseph J. Jankowski, Jr., Executive Director
WV Consolidated Public Retirement Board
State Capitol Complex
Building 5, Room 1000
1900 Kanawha Boulevard, East
Charleston, WV 25305
(304) 558-6244 x 403
(304) 558-6337 (fax)
jjankowski@wvretirement.com

- 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)

Karen S. Copeland, Membership Manager
WV Consolidated Public Retirement Board
State Capitol Complex
Building 5, Room 1000
1900 Kanawha Boulevard, East
Charleston, WV 25305
(304) 558-6244 x 414
(304) 558-6337 (fax)
kcopeland@wvretirement.com

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 therefor?
 - 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 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:

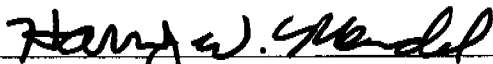
Protects members from making member contribution cash out election following retirement eligibility, protecting the full retirement benefits. Requires contribution deposits within 10 days following the months end and sets forth penalties for employers who contribute late. The penalties protect employers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

FILED

TITLE 162
LEGISLATIVE RULE
CONSOLIDATED PUBLIC RETIREMENT BOARD

2004 AUG 24 P 3:11

SERIES 5
PUBLIC EMPLOYEES RETIREMENT SYSTEM

OFFICE 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)~~ 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.

~~§162-5-10.~~ §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)~~ 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. ~~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 fifteenth (15th) 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 WVCSR §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.



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Patricia L. Hamilton
Executive Director

President
Clarence "Sam" Hall

July 30, 2004

Imm. Past President
Barbara Core

Vice Presidents
Jim Booton
Michael Elliott
Brenda Miller
Dana Lynch
Thomas Burgoyne
Paul Blake Jr

Director Joseph Jankowski
Consolidated Public Retirement Board
Capitol Complex, Building 5, Room 1000
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Board Members
Commissioners
Bob Bell
Charles McCann
Reta Kight
Walt Schmidlen III

Dear Director Jankowski:

On behalf of the Board of Directors and members of the West Virginia Association of Counties, I would like to comment on the proposed legislative rule which would impose a penalty on late contributions to the retirement systems under the authority of the Consolidated Public Retirement Board. It is my understanding that this penalty is being recommended due to a problem with delinquent contributions, particularly among small towns and public service districts.

While we can certainly understand the need for timely payments and also have a concern about the loss of interest, we recommend that the penalty be imposed after fifteen (15) days rather than the proposed ten (10) days. For those entities that are late due to a cash flow problem, this will allow them a little extra time without incurring further financial hardship in the form of a penalty. Fifteen days also coincides with the date on which federal liabilities are due so it would provide consistency.

Thank you for your consideration of our proposal.

Sincerely,

Patti Hamilton, Executive Director
West Virginia Association of Counties

Sheriffs
Ron Barniak
Bernie Kazienko
Danny Moore
William R. Laird IV

Prosecuting Attorneys
Mark Sorsaia
Mike Clifford
Alexander Ross
Brian Abraham

Directors Emeritus
John Sorrenti
Chris Chiles
Norma Sine



COPY

Board Members

Governor Bob Wise
Auditor Glen B. Gainer III, Vice Chairman
Treasurer John D. Perdue
Acting Cabinet Secretary Tom Susman

Executive Director

Joseph J. Jankowski, Jr.

State of West Virginia
Consolidated Public Retirement Board

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Board Members

David L. Wyant, Chairman
David Anderson
F. Douglas Beasley
E. Gene Davis
Carl A. Guthrie
Frances A. Hughes
William B. McGinley
D. Todd Murray
Jerry A. Weaver
Janet F. Wilson

August 2, 2004

Patti Hamilton, Executive Director
West Virginia Association of Counties
2211 Washington Street East
Charleston, WV 25311-2118

Re: Proposed WVCSR 162-5-10

Dear Patti:

Thank you for your July 30, 2004 comment concerning the above captioned proposed rule change. The West Virginia Municipal League expressed similar concerns and also suggested a 15 day time period.

You comment letter will be forwarded to the Board for consideration at its meeting on August 11, 2004.

Very truly yours,

Joseph J. Jankowski, Jr.
Executive Director



July 23, 2004

Mr. Joseph Jankowski, Director
WV Consolidated Public Retirement System
State Capitol Complex
Building 5, Room 100
Charleston, WV 25305

Dear Mr. Jankowski:

I am responding to the proposed rules- WVCSR 162-5-22 -on behalf of the WV Municipal League. Approximately one half of our 234 municipal members participate under the Public Employees Retirement System. We understand that none of them may be meeting the current 5 day post close of the previous month mandate in the existing rules and would like to offer our explanation and suggestion for changes.

The concerns I am hearing from municipal officials from across the state include the non-ability to transmit reports and payments under the proposed deadlines and the penalty that will be assessed for non-compliance. As you may receive comments from individual municipalities, I will summarize their comments on this issue.

City councils meet at different intervals during a calendar month. These dates are usually set forth in the city's charter or operating ordinances and in my experience, most small cities meet on the 2nd and/or 4th weeks of a calendar month. These councils are charged with approving all expenditures for the month, before payment is made to individual vendors. Therefore it is impossible for council to approve expenditures for a month end deadline earlier than eight days (using the example that the first of the month were to begin on a Tuesday and council met the following Tuesday- eight days have passed - without factoring mail delivery time) The assessment of a \$50.00 penalty for being unable to meet this deadline can not be avoided. With salaries being calculated including the last day of the month, there is very little latitude afforded the clerk to process the payments any earlier.

Our suggestion would be to amend the rule to mandate at least enough time to allow cities to follow their charters and get their payments to you in a timely fashion. As with regularly monthly expenditures such as utilities, vendors and debt payment, *penalties should not be assessed until a complete billing cycle has passed.*

Thank you for your consideration of our comments. If I can provide additional information or answer questions, please do not hesitate to call me at 1-800-344-7702.

Sincerely,
Lisa Dooley
Executive Director

2020 Kanawha Boulevard East
Charleston, WV 25311
PH: 304-342-5564 ★ FAX: 304-342-5586
1-800-344-7702 ★ www.newwave.net/~wvml

MAYOR JAMES HERRICK
President, New Martinsville
MAYOR EMMETT PUGH, III
Vice President, Beckley
MAYOR TERRY WILLIAMS
Secretary, Spencer
MAYOR TERRY GREAVIER
Treasurer, Clarksburg
MAYOR CATON HILL, JR.
Philippi
MAYOR JOE TIMMS
Bridgeport
MAYOR JIMMY COLOMBO
Parkersburg
MAYOR TONY PAESANO
Follansbee
MAYOR NICK SPARACHANE
Wheeling
MAYOR NICK FANTASIA
Fairmont
MAYOR DANNY JONES
Charleston
MAYOR JIM KNORR
Buckhannon
MAYOR RICHARD MILAM
St. Albans
MAYOR OLLIE HARVEY
Ripley
MAYOR CLAIR ROSEBERRY
Ravenswood
MAYOR GEORGE KAROS
Martinsburg
MAYOR DAVID FELINTON
Huntington
MAYOR CLEO MATTHEWS
Hinton
MAYOR ROBERT PERKINSON, JR.
Bluefield
MAYOR BARBARA HICKMAN
Oak Hill
MAYOR RON LIVELY
Princeton
MAYOR JOHN MANCHESTER
Lewisburg
MAYOR RON JUSTICE
Morgantown
MAYOR STANLEY ADKINS
Summersville
COUNCILOR TOM MAINELLA
Fairmont
COUNCILOR GARY LAWSON
Ravenswood
COUNCILOR JAMES JARRELL
Whitesville
COUNCILOR JAMES MIRASOLA
Follansbee
COUNCILOR FRANK SCAPELLA
Morgantown
COUNCILOR ED ROEDERSHEIMER
Parkersburg
CLERK SUZAN SINGLETON
Glen Dale
CLERK JANICE JONES
Wheeling
CITY MANAGER DOUG FREEMAN
Princeton
MAYOR RAYMOND PEAK
Immediate Past President
Hurricane
Past Presidents
COUNCILOR JAMES HUNT
Clarksburg
MAYOR LYDIA MAIN
Masonston
MAYOR TERRY WILLIAMS
Spencer
MAYOR RITCHIE ROBB
South Charleston
MAYOR DAVE HAMILL
Ranson
MAYOR DAVID NOHE
Parliamentarian
Vienna
TREAS./RECORDER NANCY SHOBE
Auditor
Buckhannon
COUNCILOR MARK SIMMS
Chaplain
Moundsville
LISA DOOLEY
Executive Director

2003 - 2005

City of Ravenswood

212 Walnut Street
Ravenswood, West Virginia 26164
Telephone (304) 273-2621
Fax (304) 273-2603
<http://ravenswoodwv.org>

CPRS JUL 29 04

Mayor
Clair Roseberry

Recorder
Lucy J. Harbert

Clerk Treas.
Joan Turner

Council Members
Lee Corder
Robert L. Dittmar
Jack Greene
Gary Lawson
Judy K. Wiseman

July 21, 2004

Joseph Jankowski
WV CPRS
State Capitol
Building 5, Room 100
Charleston, WV 25305

Re: PERS Rules changes
WVCSR 162-5-22

Dear Mr. Jankowski:

The City of Ravenswood is definitely opposed to allowing for the assessment of a surcharge for late submission of monthly contributions and the reporting of political subdivisions and other participating employers. We feel that most cities try to send their reports in a timely manner. Probably the main reason that a city or town would be late in sending in their monthly reports and funds would be due to the fact that a lot of cities and towns are just barely getting by with their water and sewer funds. In some cases, the entity has to get some of their customers to pay their utility bill to the City in order to be able for the City to pay certain bills. If a city or town is already struggling to keep their bills paid, adding another fee or surcharge would be adding to the problem.

The cities and towns have already had one percent added to their contributions for the retirement fund.

I would be interested in knowing how the interest is earned on the contributions in the first place. I would think that you would not earn any interest until you would receive the funds. It is my understanding that the municipal employees retirement fund share is not underfunded, especially when compared to the teachers and State employees retirement funds.

I appreciate your time in reviewing our concerns over another possible cost to the operations of city government.

Respectfully yours,


Clair Roseberry,
Mayor

CR/jt



COPY

Board Members

Governor Bob Wise
Auditor Glen B. Gainer III, Vice Chairman
Treasurer John D. Perdue
Acting Cabinet Secretary Tom Susman

Executive Director

Joseph J. Jankowski, Jr.

State of West Virginia
Consolidated Public Retirement Board

Capitol Complex, Building 5, Suite 1000
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0720
Telephone: 304-558-3570 or 800-654-4406
Fax: 304-558-6337
email: CPRB@wvretirement.com
www.state.wv.us/admin/cprb

Board Members

David L. Wyant, Chairman
David Anderson
F. Douglas Beasley
E. Gene Davis
Carl A. Guthrie
Frances A. Hughes
William B. McGinley
D. Todd Murray
Jerry A. Weaver
Janet F. Wilson

July 30, 2004

Clair Roseberry, Mayor
City of Ravenswood
212 Walnut Street
Ravenswood, WV 26164

Re: Proposed Changes to WVCSR 162-5-10

Dear Ms. Singleton:

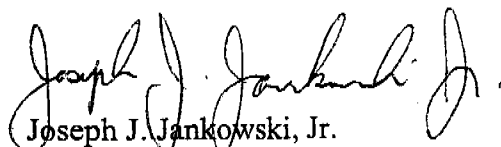
Thank you for your comment letter on July 21, 2004 concerning the Board's proposed changes to the above captioned rule. Your letter and other comments we received will be presented to the Board at its next meeting on August 11, 2004.

We are aware of the problem the 10 day limitation may cause certain cities and we intend to work with the West Virginia Municipal League to come to more equitable resolution of the problem.

In answer to your specific questions, you are correct that interest cannot be earned until we receive the money. That is why the surcharge is pegged to the actuarial rate of return that we would have expected to earn on the contributions had they been made timely. However, the surcharge is really designed to induce PERS employers to remit their contributions on time. For example, as of today we have about two dozen employers who have not made their contributions for the month of June.

Also, as of the last actuarial valuation the PERS system was 73.1% funded compared to the Teachers System which was 19.1% funded

Very truly yours,


Joseph J. Jankowski, Jr.
Executive Director



City of Glen Dale

402 Wheeling Avenue • Glen Dale, West Virginia 26038
Phone: 304-845-5511 Fax: 304-845-5581
E-mail glendalewv@aol.com

David W. Blazer, Mayor

July 23, 2004

Mr. Joseph Jankowski, Director
WV CPRS
State Capitol
Building 5, Room 100
Charleston, WV 25305

Dear Mr. Jankowski:

RE: Proposed changes to rule WVCSR 162-5-22

The City of Glen Dale like most small municipalities in West Virginia, in compliance with Chapter 8 of the West Virginia Code, is required to have their City Councils approve all expenditures before they can be paid. Council meetings for the City of Glen Dale are held on the 2nd and 4th Mondays, at which time, expenditures are approved for payment. Our outside accounting firm then processes all checks on the Wednesday following council meetings.

For those councils that meet from the second full week of the month on, there is not one month in the year that we can pay the PERS by the 10th and should not be penalized because of the date of our council meetings. The PERS payment is different each month due to variations in wages, therefore, they cannot be approved in advance.

If you have any further questions, please feel free to contact me.

Sincerely,

Suzan Singleton, City Clerk
CITY OF GLEN DALE

cc: Senator Jeff Kessler
Lisa Dooley, Executive Director, WVML



COPY

Board Members

Governor Bob Wise
Auditor Glen B. Gainer III, Vice Chairman
Treasurer John D. Perdue
Acting Cabinet Secretary Tom Susman

Executive Director

Joseph J. Jankowski, Jr.

State of West Virginia
Consolidated Public Retirement Board

Capitol Complex, Building 5, Suite 1000
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0720
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Fax: 304-558-6337
email: CPRB@wvretirement.com
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Board Members

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Carl A. Guthrie
Frances A. Hughes
William B. McGinley
D. Todd Murray
Jerry A. Weaver
Janet F. Wilson

July 30, 2004

Suzan Singleton, City Clerk
City of Glen Dale
402 Wheeling Avenue
Glen Dale, WV 26038

Re: Proposed Changes to WVCSR 162-5-10

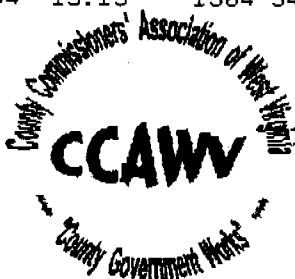
Dear Ms. Singleton:

Thank you for your comment letter on July 23, 2004 concerning the Board's proposed changes to the above captioned rule. Your letter and other comments we received will be presented to the Board at its next meeting on August 11, 2004.

We are aware of the problem the 10 day limitation may cause certain cities and we intend to work with the West Virginia Municipal League to come to more equitable resolution of the problem.

Very truly yours,

Joseph J. Jankowski, Jr.
Executive Director



**County Commissioners' Association
of West Virginia**

2309 Washington Street, East
Charleston, West Virginia 25311

E-mail ccaww@citynet.net (304) 345-4639 Fax (304) 346-3512

August 1, 2004

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

Dear Mr. Jankowski:

I am responding to the following rules on behalf of the County Commissioners' Association of West Virginia:

These comments are in response to Proposed Legislative Rules:

Title 162, Series 5, and Title 162, Series 10

The proposed rules would allow CPRB to assess a surcharge to PERS participating employers that fail to remit payment of employer and employee contributions in a timely manner. The proposed rules allow for 10 days & imposed a penalty thereafter. We feel that 15 days would be a more reasonable deadline. Fifteen days is consistent with the date by which federal liabilities must be paid and would also fall in line with bi-monthly payrolls. While we agree that everyone benefits when contributions are timely submitted, those entities which might be late in paying are those with probably the least ability to pay, therefore, it would seem rational to give at least 15 days before imposing a penalty causing additional cost.

Thank you for your consideration of our comments.

Sincerely,

Vivian Parsons,
Executive Director

Vivian Parsons, Executive Director

visit our web site www.polsci.wvu.edu/ccaww

RESPONSE TO PUBLIC COMMENT RECEIVED ON TITLE 162, SERIES 5

The West Virginia Consolidated Public Retirement Board (Board) received public comment regarding the proposed surcharge for the delinquency of employer and employee contributions. The Board agrees that requiring the contributions to be remitted by the tenth day following the end of each calendar month may not allow a reasonable or sufficient amount of time to get checks signed by authorized personnel and mail time. The Board has modified the rule to assist its participating employers in the timely remittance of employer and employee contributions.