

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED

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NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Consolidated Public Retirement Board TITLE NUMBER: 162

CITE AUTHORITY W.Va. Code Section 5-10D-1, et seq.; 18-7D-1 et seq.;
29A-7-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 5

TITLE OF RULE BEING PROPOSED: _____

Public Employees Retirement System

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.



WEST VIRGINIA CONSOLIDATED PUBLIC RETIREMENT BOARD
STATEMENT AND FACTS CONSTITUTING THE EMERGENCY

On August 31, 1990, the Legislature created the West Virginia Consolidated Public Retirement Board (hereinafter the "Board") to administer all public retirement plans in the State. W. Va. Code § 5-10D-1 et seq. The Board begins administration of the public retirement systems on July 1, 1991, except the West Virginia Teachers Defined Contribution System which it began to administer on January 1, 1991. W. Va. Code § 5-10D-1(b). The Board was given the powers to promulgate all rules necessary to effectuate its powers, duties and responsibilities. In this regard, the Board approved and adopted for filing the attached Emergency Rules at a regular meeting of the Board held on June 18, 1991. The Board intends to file for a public hearing within thirty (30) days from the date the Emergency Rule is filed.

Also effective August 13, 1990, the Legislature enacted the Teachers' Retirement Reform Act which created and established the West Virginia Teachers' Defined Contribution Retirement System. W. Va. Code § 18-7B-1 et seq. The Board is charged with the administration of the Teachers' Defined Contribution System. W. Va. Code § 18-7B-5.

The Board was charged with promulgating rules defining the minimum requirement for the investment and retirement options by June 30, 1991. W. Va. Code § 18-7B-9. Further, the Board was given all powers necessary to effectuate the purposes of the Teachers' Retirement Reform Act. The primary purpose is to provide

a tax qualified defined contribution retirement system for all participating members. W. Va. Code § 18-7B-4.

In this regard the Board has undertaken steps to obtain a determination letter from the Internal Revenue Service that the Teachers' Defined Contribution Retirement System is a qualified retirement system and subject to tax-deferred status. The Internal Revenue Service has indicated that the statutory scheme set forth in Article 7B of Chapter 18 of the West Virginia Code is not adequate for purposes of tax qualification in that it does not address allocation of benefits, Internal Revenue Code § 415 limitations on contributions, and minimum distribution rules. In this regard the Board has promulgated Rules in Series 3 (pages 25-40) with respect to obtaining a favorable determination letter from the Internal Revenue Service so that both employer and employee contributions, and investment earnings thereon, will be tax-deferred.

The new system is effective July 1, 1991, and a favorable determination by the Internal Revenue Service is needed for favorable tax treatment for members of the retirement system. Accordingly, these rules are required by both state and federal law and thus constitutes an emergency pursuant to W. Va. Code § 29A-3-15(g). Additionally, the promulgation of these rules is necessary to prevent substantial harm in that if the Teachers' Defined Contribution Retirement System is not a tax qualified plan then contributions will be currently taxable to participating in the System.

In conclusion, the relevant statutes requires certain rules to be promulgated by July 1, 1991, with respect to the operation of the Board, the adoption of the existing rules of the various retirement systems, and the minimum requirement and investment options under the Teachers' Defined Contribution Retirement System. Further, additional plan requirements must be adopted by the Board before the Internal Revenue Service will issue a favorable determination letter regarding the Teachers' Defined Contribution Retirement System. Accordingly, this Rule cannot wait to go through the regular process before it becomes effective.

Date: _____



CHUCK POLAN
Secretary of Administration and
Chairman, West Virginia
Consolidated Public Retirement Board

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Consolidated Public Retirement Board

Type of Rule: X Legislative Interpretive Procedural

Agency Consolidated Public Retirement Board Address Capitol Complex

Building 5, Room 1000, Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

Operation of the new Consolidated Public Retirement Board and
operation of the new teachers' defined contribution retirement plan.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: June 26, 1991

Signature of Agency Head or Authorized Representative

Chris Polk

DATE: July 1, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Consolidated Public Retirement Board

LEGISLATIVE RULE TITLE: _____

1. Authorizing statute(s) citation _____

W.Va. Code Sections 5-10D-1 et seq.; 18-7B-1 et seq.; 29A-3-1 et seq.

2. a. Date filed in State Register with Notice of Hearing:

Comment Period to August 26, 1991

b. What other notice, including advertising, did you give of the hearing?

None.

c. Date of hearing(s): _____

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received ☒

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

f. Name and phone number(s) of agency person(s) to contact for additional information:

James L. Sims, Executive Secretary

Consolidated Public Retirement Board

Capitol Complex, Bldg. 5, Room 1000

Charleston, West Virginia 25305

304-348-2031

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.

NA

b. Date of hearing: _____ NA _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

NA

d. Attach findings and determinations and reasons:

Attached _____ NA _____

TITLE 162

LEGISLATIVE RULES

SERIES 5

CONSOLIDATED PUBLIC RETIREMENT BOARD

THE PUBLIC EMPLOYEES RETIREMENT SYSTEM

§ 162-5-1. GENERAL

5-1.1 Scope. The scope of this Series of Rules involves the interpretation, application, and administration of the West Virginia Public Employees Retirement System.

5-1.2 Authority. -- West Virginia Code Section 5-10D-1(a), Section 5-10-5 (1990), and all other Sections of 5-10-1, et seq.

5-1.3 Filing Date. -- _____

5-1.4 Effective Date. -- _____

§ 162-5-2. STATUTORY PROVISIONS

All of the statutory provisions as regards the Public Employees Retirement System contained in § 5-10-1, et seq., of the West Virginia Code, 1931, as amended, are hereby adopted and incorporated, and all court cases, Attorney General opinions, and other interpretations of statutory law are also hereby incorporated by reference.

§ 162-5-3. ADOPTION OF RULES AND REGULATIONS

Legislative Rules of the Public Employees Retirement System are designated as Chapter 5-10, Series I which are on file in the Office of the West Virginia Secretary of State.

The Board hereby adopts and incorporates Sections 2, and 5-54 of the Public Employees Retirement System Rules and Regulations.

§ 162-5-4, et seq. (RESERVED)