

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Consolidated Public Retirement Board TITLE NUMBER: 162
RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code Sections S-10D-1,
18-7B-1 et seq., 29A-3-1 et s
AMENDMENT TO AN EXISTING RULE: YES 7 NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 7

TITLE OF RULE BEING PROPOSED: Department of Public Safety,
Disability & Retirement Fund

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 26, 1991 AT 3:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Consolidated Public Retirement Board
Building 5, Room 1000
Charleston, West Virginia 25305
Attn: James L. Sims, Executive Secretary

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

Chuck Polan
Chuck Polan, Secretary
Department of Administration

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

3-10

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

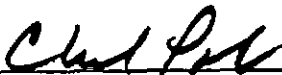
a tax qualified defined contribution retirement system for all participating members. W. Va. Code § 18-7B-4.

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 BoardType of Rule: X Legislative Interpretive ProceduralAgency Consolidated Public Retirement Board Address Capitol ComplexBuilding 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

Carl Pohn

DATE: July 1, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Consolidated Public Retirement Board

EMERGENCY RULE TITLE:

1. Date of filing: July 1, 1991
2. Statutory authority for promulgating the emergency rule: 5-10D-1
3. Date of filing of proposed legislative rule: July 1, 1991
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Adopt New Language
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
The statutes requires certain rules to 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 the

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

5-10D-1 - IRS Section 401

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

It is important that all contributions to the new teachers' defined contribution plan be taxed deferred. These rules must be filed in order to obtain a favorable determination letter from the IRS.

TITLE 162

LEGISLATIVE RULES

SERIES 7

CONSOLIDATED PUBLIC RETIREMENT BOARD

DEPARTMENT OF PUBLIC SAFETY DEATH, DISABILITY AND RETIREMENT FUND

§ 162-7-1. GENERAL

7-1.1. Scope. The scope of this Series of Rules involves the interpretation, application, and administration of the Department of Public Safety Death, Disability and Retirement Fund ("System").

7-1.2. Authority. -- West Virginia Code Section 5-10D-1(a), Section 15-2-26 (1990), and Sections 15-2-27, et seq.

7-1.3. Filing Date. -- _____

7-1.4. Effective Date. -- _____

§ 162-7-2. STATUTORY PROVISIONS

All of the statutory provisions as regards the Department of Public Safety Death, Disability and Retirement System in § 15-2-26, et seq., of the West Virginia Code, 1931, as amended, are hereby adopted and incorporated, in all court decisions, Attorney General opinions, and amendments to the Code are hereby incorporated by reference.

§ 162-7-3. HISTORY: ADOPTION OF RULES AND REGULATIONS

7-3.1 The Death, Disability and Retirement Fund was established by the Legislature in 1935. (W. Va. Code § 1263). At that time, the Board of Commissioners created by W. Va. Code § 1256 was charged with the duty of acting as a Pension Fund Board with the power to make awards and all necessary Rules and Regulations for the administration thereof.

The Board was later re-constituted in 1945 (W. Va. Code § 1263) which provided for a retirement Board consisting of the Attorney General, State Treasurer, the Superintendent (of Public Safety), and two members in active service of the Department of Public Safety. That particular statute also provided that the votes of a majority of the five (5) members of the Board would be necessary to make a decision of the Board and that such decisions were "supreme and final" and there would be no appeal therefrom.

Thereafter, the statutes were amended, revised, and repealed resulting in the amendments of 1977 which have eliminated from the West Virginia Code the statutory establishment of the Retirement Board as originally established.

However, the Public Safety Retirement Board has been kept in existence by virtue of the introductory language in § 15-2-26 of West Virginia Code, 1931, as amended.

7-3.2 No Rules or Regulations have been filed with the West Virginia Secretary of State by the Department of Public Safety Death, Disability and Retirement Board.

§ 162-7.4, et seq. (RESERVED).