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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

WEST VIRGINIA
SECRETARY OF STATE

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October 21, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: J. Michael Adkins
Consolidated Public Retirement Board
Capitol Complex
Building 5, Room 1000

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **West Virginia State Police Disability Determination and Appeal Process, 162CSR9**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Consolidated Public Retirement Board

Subject: West Virginia State Police Disability Determination and Appeal Process, 162CSR9

PERTINENT DATES

Filed for public comment: April 19, 2002

Public comment period ended: June 14, 2002

Filed following public comment period: July 23, 2002

Filed LRMRC: July 23, 2002

Filed as emergency:

Fiscal Impact: None

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ABSTRACT

The proposed rule is new. The following is a section-by-section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 relates to disability applications and petitions; eligibility. It allows a member of the West Virginia State Police to file a disability retirement application with the Board whenever the member has reason to believe that he or she is no longer physically or mentally capable of performing the essential duties of a law enforcement officer. It also allows the Agency to file a petition with the Board, if the member has failed or refused to file an application for disability retirement.

Section 4 relates to medical and factual information. It requires the member to provide any information requested by the

Board and to cooperate fully in the gathering of relevant medical and factual information and records. At the Board's request, the member must provide the Board with copies of all current and past medical records and the Agency must provide the Board with a copy of any fitness for duty standards which relate to the nature of the members alleged disability. The Agency is also required to provide all relevant medical and factual records in its possession.

Section 5 relates to disability examinations. Upon request of the Board, a member must submit to any mental or physical examinations determined necessary by the Board, with the cost of the examinations paid by the Board. After the examinations, the examining physician is required to furnish the Board with a report containing his or her findings or opinions regarding the nature, extent and cause of the member's alleged disabling injury or illness. The physician's report may, in the Board's discretion, be submitted to a vocational consultant for review. The Agency may also require the member to submit to an examination by a physician of its selection.

Section 6 relates to initial determination. Reports and evidence are reviewed by the Staff Review Committee, which makes a recommendation to the Board's review committee, which then presents its findings and position to the full Board on the member's ability to perform the essential duties of a law enforcement officer. The Board is required to provide a notice of denial to the member and the Agency.

Section 7 relates to the denial of an application; supplemental examination option. This section allows the member or the Agency to request the member be reexamined by another physician of the Board's selection at the expense of the requesting party. A second examination goes through the same review process as the first examination.

Section 8 relates to decisions on initial review; appeals by agency or member. This section allows the member or the Agency to appeal the approval or disapproval of disability retirement.

Section 9 relates to processes for appeal of Board decisions. It provides for the Board to appoint a hearing officer to consider the appeal of Board decisions. After the hearing, the hearing officer is to present his or her recommendation to the full Board.

The Board is to accept the recommendation of the hearing officer, unless an abuse of discretion is found to have occurred or unless the recommendation is found to be based on an error in facts or contrary to law.

Section 10 relates to appeal denied. It provides for appeal of the final decision of the Board to the Circuit Court of Kanawha County.

Section 11 relates to errors. It provides that each level of review is presumed to cure all errors in procedure of any prior level.

AUTHORITY

Statutory authority: W.Va. Code, §5-10D-1, which provides, in part, as follows:

...The consolidated public retirement board may propose for promulgation all rules necessary to effectuate its powers, duties and responsibilities pursuant to article three, chapter twenty-nine-a of this code: *Provided*, That the board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.