

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #4

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STATE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Municipal Pensions Oversight Board TITLE NUMBER: 211

CITE AUTHORITY: W.V.A. Code §8-22-18a(g)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

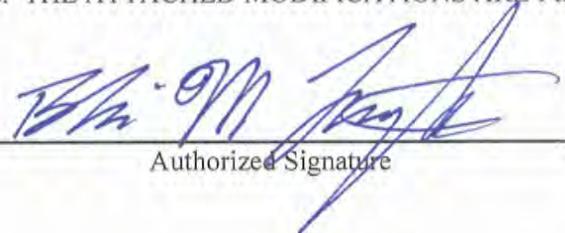
\_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: Policemen's and Firemen's Pensions Disability Calculation

\_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
Authorized Signature

AGENCY COPY

## Brief Summary of New Legislative Rule

The Municipal Pensions Oversight Board is submitting a proposed new Legislative Rule pursuant to WV Code §8-22-18a(g) which would govern the methodology used to calculate disability pensions paid from municipal policemen's and municipal firemen's pension and relief funds. The proposed rule provides a written explanation of step by step instructions on how the Pension Secretary and the Municipal Treasurer independently determine the monthly amount paid to a member awarded a total and temporary disability or total and permanent disability awarded by a the trustees of a municipal policemen's or a municipal firemen's pension and relief fund.

The proposed Legislative Rule is new and therefore strikethrough text and underlined text is not used.

## Statement of Circumstances Which Require this New Legislative Rule

In the Spring of 2012, the Municipal Pensions Oversight Board, MPOB, learned of a Supreme Court memorandum decision issued to the South Charleston Policemen's Pension and Relief Fund Board of Trustees regarding the calculation of a disability pension awarded to one of their members. The memorandum decision was issued as a result of a case where the policemen's pension board calculated a disability pension by averaging the former officer's last 12 months of salary, including overtime, to arrive at a monthly salary to then use to determine the monthly disability salary. The former officer thought the pension board would only use the last month to determine the monthly disability salary and had worked an extraordinary amount of overtime during that one month. The pension board had figured its last three disability pensions three different ways.

As a result of this information made available to the MPOB, the board formed an ad-hoc committee to draft a proposed legislative rule to explain what the WV Code states in how disability retirements are to be calculated.

In another example during the summer of 2013, the Municipal Pensions Oversight Board (MPOB) was approached by the Oak Hill Policemen's Pension Board of Trustees (Trustees) after one of their officers was granted a temporary disability. The Trustees asked the MPOB to review the monthly disability calculation for their officer. MPOB staff determined the Trustees had used §8-22-24 to calculate the disability amount, however they had not used §8-22-16d, which defines "salary or compensation" in conjunction with §8-22-24. When the MPOB staff took the officer's information on salary for the past 3 years in order to arrive at the code defined annual salary used to determine the monthly salary which is used to define the monthly disability salary, MPOB staff determined the officer's originally determined monthly disability salary was less than the officer was entitled to under the law. In this case, the Trustees did change the monthly disability salary to the correct amount prior to the officer receiving his first temporary disability payment.

**TITLE 211  
LEGISLATIVE RULE  
MUNICIPAL PENSIONS OVERSIGHT BOARD**

**SERIES 1  
POLICEMEN'S AND FIREMEN'S PENSIONS DISABILITY CALCULATION**

**§211-1-1. General.**

- 1.1. Scope. -- This legislative rule governs the methodology used to calculate disability pensions paid from the municipal policemen's and firefighter's pension plans.
- 1.2. Authority.-- W.Va. Code §8-22-18a(g).
- 1.3. Filing Date. -- \_\_\_\_\_.
- 1.4. Effective Date. -- \_\_\_\_\_.

**§211-1-2. Definitions.**

2.1 "Member" means any paid police officer or firefighter participating in a municipal pension fund who has applied for disability retirement who's medical condition, injury, illness or mental condition qualifies that person unfit for duty under the standards set forth by National Fire Protection Association standard 1001 in effect at the time of the application for disability.

2.2. "Salary or compensation" means remuneration actually received by a member, plus the member's deferred compensation under sections 125, 401(k), 414(h)(2) and 457 of the United States Internal Revenue Code of 1986, as amended: Provided, that the remuneration received by the member during any twelve-consecutive-month period used in determining benefits, which is in excess of an amount which is twenty percent greater than the "average adjusted salary" received by the member in the two consecutive twelve-consecutive-month periods immediately preceding the twelve-consecutive-month period used in determining benefits, shall be disregarded.

2.3. "Year-one" means the second twelve-consecutive-month period preceding the twelve-consecutive-month period used in determining benefits.

2.4. "Year-two" means the twelve-consecutive-month period immediately preceding the twelve-consecutive-month period used in determining benefits.

2.5. "Year-three" means the twelve-consecutive-month period used in determining benefits.

2.6. "Active military duty" means at least one full year of continuous, chronological military service.

2.7. "Pension secretary" means the person appointed by the policemen's or firefighter's pension board of trustees to keep a full and permanent record of all the proceedings of the board.

2.8. "Municipal treasurer" means the treasurer or other municipal officer, exercising the power and authority commonly exercised by a treasurer. The municipal treasurer is custodian and fund fiduciary of all the assets of the municipal policemen's and firemen's pension and relief funds.

2.9. "Base salary" means remuneration received by a member, exclusive of all overtime and other remuneration.

2.10. "Total salary" means all remuneration received by a member, including any deferred compensation.

### **§ 211-1-3. Qualified Military Experience**

3.1. Members qualify for benefit enhancement for up to four years of qualified military experience. To meet the criteria for qualified military experience, a member shall:

3.1.1. have been on active military duty;

3.1.2. have received an honorable discharged from the United States armed forces; and

3.1.3. if the member is returning to employment following active duty:

3.1.2.a. present himself or herself for resumption of duty to the appointing municipal officer within six months from his or her date of discharge, or within two years if the member has been hospitalized for, or was convalescing from, an illness or injury incurred in, or aggravated during military service; and

3.1.3.b. be accepted by two medical examiners, at least one of which is appointed by the oversight board, as being mentally and physically capable of performing the required duties as a member of the paid police or fire department at the time of hire or resumption of duty.

### **§211-1-4. Total and Temporary Disability and Total and Permanent Disability Calculations**

4.1. The pension secretary and the municipal treasurer shall independently determine the monthly amount paid to a member awarded a total and temporary or total and permanent disability in accordance with the provisions of West Virginia Code §8-22-24, and shall calculate the member's salary or compensation in accordance with West Virginia Code §8-22-16(d). Specifically the monthly sum to be paid to each member eligible for disability received as a proximate result of service rendered in the performance of his or her duties under the provisions of West Virginia Code §8-22-23a shall be equal to sixty percent of the monthly salary being received by the member, at the time he or she is disabled, or the sum of five hundred dollars per month, whichever is be greater. The pension secretary and the municipal treasurer shall compare their independently arrived at calculations to ensure their accuracy.

4.2. The following formulas shall be used to calculate disability awards:

4.2.1. Year one adjusted salary = year three base salary ÷ year one base salary x year 1 total salary

4.2.2. Year two adjusted salary = year three base salary ÷ year two base salary x year 2 total salary

4.2.3. Average adjusted salary = (year one adjusted salary + year two adjusted salary) x 50%

4.2.4. One hundred twenty percent of average adjusted salary = average adjusted salary x 120%

4.2.5. Annual salary = the lesser of one hundred twenty percent (120%) of average adjusted salary or year three total salary

4.2.6. Monthly salary = annual salary ÷ 12

4.2.7. If a member does not have qualifying military experience, then monthly disability salary = monthly salary x 60%

4.2.8. If a member does not have qualifying military experience, the member shall receive the amount calculated in subdivision 4.2.7 of this subsection, or \$500.00 per month, whichever amount is greater

4.2.9. If a member has one year of qualifying military experience, then monthly disability salary = monthly salary x 61%

4.2.10. If a member has one year of qualifying military experience, the member receives the amount calculated in subdivision 4.2.9 of this subsection, or \$500.00+ 1% of monthly salary, whichever amount is greater

4.2.11. If a member has two years of qualifying military experience, then monthly disability salary = monthly salary x 62%

4.2.12. If a member has two years of qualifying military experience, the member receives the amount calculated in subdivision 4.2.11 of this subsection, or \$500.00+ 2% of monthly salary, whichever amount is greater

4.2.13. If a member has three years of qualifying military experience, then monthly disability salary = monthly salary x 63%

4.2.14. If a member has three years of qualifying military experience, the member receives the amount calculated in subdivision 4.2.9 of this subsection, or \$500.00+ 3% of monthly salary, whichever amount is greater

4.2.15. If a member has four or more years of qualifying military experience, then monthly disability salary = monthly salary x 64%

4.2.16. If a member has four or more years of qualifying military experience, the member receives the amount calculated in subdivision 4.2.15 of this subsection, or \$500.00+ 4% of monthly salary, whichever amount is greater

Table 211-1-4 of this rule provides a disability calculation scenario for use in subdivisions 4.2.1 through 4.2.16 of this subsection.

Table 211-1-4

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	
1				Total Salary	Adjusted	Average	Ave Adj	Annual	Monthly	Monthly	Monthly Disability	Monthly Disability Salary with Military Service			
2	Year	Twelve Consecutive	Base Salary	Inclusive	Salary	Adjusted	Salary @	Salary	Salary	Disability	Active Duty/Qualified Military Years of Service				
3		Month Period	No Overtime	of Overtime		Salary	120%				Year 1	Year 2	Year 3	Year 4	
4															
5	Final					44,495.65	53,394.78	37,000.00	3,083.33	1,850.00	1,880.83	1,911.67	1,942.50	1,973.33	
6	3	5/1/12 thru 4/30/13	34,000.00	37,000.00											
7	2	5/1/11 thru 4/30/12	25,000.00	35,000.00	47,600.00										
8	1	5/1/10 thru 4/30/11	23,000.00	28,000.00	41,391.30										

Year one (E8) = (C6 + C8) x D8 or (34,000.00 + 23,000.00) x 28,000.00 = 41,391.30

Year two (E7) = (C6 + C7) x D7 or (34,000.00 + 25,000.00) x 35,000.00 = 47,600.00

Average Adjusted Salary (G5) = (E7 + E8) x 50% or (47,600.00 + 41,391.30) x 50% = 44,495.65

Average Adjusted Salary @ 120% (H5) = G5 x 120% or (44,495.65 x 120%) = 53,394.78

Annual Salary (I5) = the lesser of (D6) and (H5) or MIN(37,000.00; 53,394.78) = 37,000.00

Monthly Salary (J5) = (I5 + I2) or (37,000.00 + 12) = 3,083.33

Monthly Disability Salary (K5) = (J5 x 60%) or (3,083.33 x 60%) = 1,850.00

Active Duty/Qualified Military Years of Service Year 1 (M5) = (J5 x 61%) or (3,083.33 x 61%) = 1,880.83

Active Duty/Qualified Military Years of Service Year 2 (N5) = (J5 x 62%) or (3,083.33 x 62%) = 1,911.67

Active Duty/Qualified Military Years of Service Year 3 (O5) = (J5 x 63%) or (3,083.33 x 63%) = 1,942.50

Active Duty/Qualified Military Years of Service Year 4 (P5) = (J5 x 64%) or (3,083.33 x 64%) = 1,973.33



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

Senator Herb Snyder, Co-Chair
Delegate Mesha Poore, Co-Chair
Debra A. Graham, Chief Counsel
Jared Wyrick, Legislative Analyst
Mark White, Legislative Analyst
Trina Hartley, Committee Clerk

Jay Lazell, Associate Counsel
Brian Skinner, Associate Counsel
Kevin Baker, Associate Counsel
Robert Williams, Associate Counsel
Jeff Johnson, Associate Counsel
Sarah Stewart, Associate Counsel
Brandon Hatfield, Associate Counsel

November 21, 2013

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

TO: Natalie E. Tennant, Secretary of State, State Register

TO: Blair M. Taylor
Municipal Pensions Oversight Board
1700MacCorkle Avenue, S.E.
Charleston, WV, 25314

FROM: Legislative Rule-Making Committee

Proposed Rule: Policemen's and Firemen's Pensions Disability Calculation, 211CSR1

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

X

2. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.

3. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

4. Recommends that the Legislature rule be withdrawn; a statement of reasons for the recommendation is attached.

LRMRC Action Notice  
Page 2  
November 21, 2013

If the first page of this form indicates that your agency has agreed to modify the proposed rule in accordance with a motion adopted by the Committee, your agency should consult with the Committee's counsel on the preparation of the modifications. By Tuesday, December 3, 2013, your agency must file 1 copy of your modified rule with the Secretary of State's office and 10 copies with the Legislative Rule-Making Review Committee.

Please disregard this notice if you have already filed your modified rule. Committee rules state that a copy of this letter must be on file for each agency filing a rule.

Very truly yours,



Trina Hartley  
Administrative Assistant

LRMRC:tla