

**MINUTES OF THE  
WV CONSOLIDATED PUBLIC RETIREMENT BOARD  
BOARD OF TRUSTEES MEETING  
MEETING OF OCTOBER 11, 2017**

A meeting of the West Virginia Consolidated Public Retirement Board, (CPRB) Board of Trustees was held in the CPRB Conference Room at 4101 MacCorkle Avenue, SE, Charleston, West Virginia 25304, and was called to order at 11:09 a.m. by Chairman David Wyant.

Roll Call was taken.

Trustees present were:

David Wyant, Esquire, Chairman  
Ann Urling, Esquire, *representing Governor James C. Justice, II*  
Jeff Waybright, *representing Auditor John B. McCuskey*  
Diana Stout, Esquire, *representing Treasurer John Perdue*  
Mary Jane Pickens, *representing Cabinet Secretary John A. Myers*  
Andy Bird  
Captain Michael Corsaro, *Vice Chairman*  
Michael Haney  
Joe Lynch  
Mike McKown

Trustees absent were:

Joseph Bunn, Esquire  
Angela Crank  
D. Todd Murray  
Jeffrey Vallet

A quorum was present.

Due notice had been posted.

Also in attendance were:

Jeffrey E. Fleck, CPRB Executive Director  
Terasa Miller, CPRB Deputy Director  
Candi Kinslow, CPRB Executive Assistant  
Jeaneen Legato, Esquire, CPRB General Counsel  
Ronda Harvey, Esquire, Bowles Rice  
Heather Drake, CPRB Administrative Assistant

Melody Bailey, CPRB Actuary Assistant  
Alysia Miller, CPRB Paralegal  
John Beane, CPRB I.T. Manager  
Eric Stringer, CPRB I.T. Staff  
Tina Baker, CPRB Internal Auditor  
Caroline Brady, CPRB Employer Reporting Manager  
Craig Slaughter, WVIMB Executive Director  
Marybeth Daubenspeck, Empower Retirement  
Denise Fortune, Empower Retirement  
Chris Meadows, Empower Retirement  
John Dunlap, Director, WV Office of Technology  
Satish Lalwani, Deloitte

**Tab 1: Approval of the August 30, 2017 Meeting Minutes**

Captain Corsaro made a motion to approve the minutes of the August 30, 2017 meeting of the CPRB. The motion was seconded by Mr. McKown. The motion carried unanimously.

**Approval of the October 4, 2017 Emergency Meeting Minutes**

Mr. McKown made a motion to approve the minutes of the October 4, 2017 emergency meeting of the CPRB. The motion was seconded by Mr. Bird. The motion carried unanimously.

The minutes are located behind Tab 1.

**Tab 2: Reports of the Chairman and Executive Director**

The Board heard the report from Jeffrey Fleck, Executive Director, which included the following information:

1. Executive Director Fleck reported on the Metric Chart. He announced the retirement numbers have gone up since we have gone live with the new COMPASS Computer System. He announced we have completed 495 retirements in PERS and 828 in TRS since July 1, 2017.
2. Executive Director Fleck reported on the Teachers' Defined Contribution (TDC) 2017 Educational Meetings. He announced as of September 30, 2017, Chris Meadows of Empower Retirement has held a total of 71 meetings so far, with 885 in attendance. Director Fleck announced as of September 30, 2017, there were a total of 4,333 participants and \$479,315,920 in total assets in the TDC Plan.
3. Executive Director Fleck reviewed the Fall Edition of the TDC Financial Footnotes.
4. Executive Director Fleck reported on the Delinquent Employers. He announced that

Green Acres is still making their payments on time. He informed the Board that the Mingo County PSD still has not paid, they are still waiting on an insurance settlement to pay their employer contributions.

5. Executive Director Fleck reported on the CPRB phone system issues. He announced that John Dunlap, Director of the Office of Technology is here to give us a report on what is happening with the phones. Mr. Dunlap addressed the phone issues that are effecting different agencies, including the CPRB. He announced there have been critical failures with the CPRB's phones and that he is ready to place an order to upgrade the CPRB phone system, but it will take six to eight weeks before we would receive it. He announced, once implemented, the CPRB will have 24 hours a day; 7 days a week work support for the phones and for any issues that we might have.

Ms. Stout asked Mr. Dunlap to come back to the November 15, 2017 Board Meeting and to give the Board an updated on where the Office of Technology is regarding the CPRB receiving a phone system upgrade.

Chairman Wyant announced there are also alternatives for us to purchase our own phone system.

6. Executive Director Fleck reviewed the August 31, 201 and September 30, 2017 financials with the Board. He announced that as of September 30, 2017, we are at 31.38% of budget.
7. Executive Director Fleck reported on the 2017 Financial Audit Update. He announced we are on course to meet our deadline of October 15, 2017 for the State Financial Audit.
8. Executive Director Fleck reported on the Legislative Interims. He announced he attended a Pensions Committee meeting three weeks ago and Troy Jaros of Conduent Consultants gave a presentation to the Committee on smoothing. The Committee asked Mr. Jaros to come back in January to give a presentation to the Pension Committee on the unfunded liability in TRS.
9. Executive Director Fleck reminded the Board Members to sign their fiduciary training forms and give them to Mrs. Kinslow, acknowledging they attended the CPRB fiduciary training.
10. Executive Director Fleck announced we have hired a new Chief Compliance Officer, Tim Abraham and his first day with the CPRB will be next week on Monday.

Chairman Wyant announced that since the last Board Meeting, we needed a new member added

to the Actuarial Assumptions Review Committee and appointed Captain Corsaro to that Committee.

The Reports of the Chairman and Executive Director are located behind Tab 2.

**Tab 3: Plans Investment Data**

Craig Slaughter, Executive Director of the West Virginia Investment Management Board (WVIMB), reviewed the Plan's Investment Returns for July 31, 2017. He announced that the market is looking good, the final numbers are in for FY 2017, and the plan returns were 15.8%.

Chairman Wyant introduced Ann Urling to the Board, he announced Ms. Urling is the representative for Governor Justice on the Board and welcomed her to the Board.

Marybeth Daubenspeck, Vice President of Empower Retirement introduced herself to the Board and introduced and announced that Denise Fortune, Relationship Manager will be the representative from Empower Retirement to attend the Board of Trustee meetings in the future.

The Plan's Investment Data report is located behind Tab 3.

**Tab 4: Consideration of Current Disability Retirement Applications**

Captain Corsaro reported the Disability Committee met on October 10, 2017, and make the following recommendations for the Board's approval.

The Disability Committee recommended the disabilities be approved for three TRS (TDC Transfers), effective nunc pro tunc (retroactive) to August 30, 2017, the date of the last Board Meeting: Diane Blume, Kelli Ellis and Marsha Tournay.

Mr. Lynch made a motion the Board accept and approve the three TRS (TDC Transfers) for Diane Blume, Kelli Ellis and Marsha Tournay, effective nunc pro tunc (retroactive) to August 30, 2017, the date of the last Board Meeting. Mr. Haney seconded the motion. The motion carried unanimously.

Captain Corsaro announced the Disability Committee approved the staff's recommendations of the disability retirement applications and made the following recommendations to the Board for their approval:

| <b>System</b>              | <b>Approved</b> | <b>Denied</b> | <b>Total</b> |
|----------------------------|-----------------|---------------|--------------|
| <b>PERS</b>                | 14              | 0             | 14           |
| <b>TDC</b>                 | 2               | 0             | 2            |
| <b>TRS (TDC Transfers)</b> | 8               | 0             | 8            |
| <b>TOTAL</b>               | <b>24</b>       | <b>0</b>      | <b>24</b>    |

Mr. Lynch made a motion the Board accept and approve the Disability Committee's recommendations concerning the disability retirement applications. The motion was seconded by Mr. Haney. The motion carried unanimously.

The Disability list is located behind Tab 4.

Chairman Wyant announced he would entertain a motion to go into Executive Session to discuss legal matters and a personnel matter.

Executive Director Fleck asked that John Beane, I.T. Manager be allowed to stay for Executive Session.

Captain Corsaro made a motion the Board go into Executive Session to discuss legal matters and a personnel matter as allowed by West Virginia Code §6-9A-4. The motion was seconded by Mr. Bird. The motion carried unanimously.

The Board went into Executive Session at 11:46 a.m.

Chairman Wyant reconvened the Public Session of the October 11, 2017 meeting of the CPRB from Executive Session at 1:03 p.m.

Chairman Wyant announced the Board was in Executive Session to discuss legal matters and a personnel matter as allowed by West Virginia Code §6-9A-4. He announced there were no decisions made during Executive Session.

Chairman Wyant announced we will now move the Agenda around to address the Internal Audit Committee behind Tab 6, under Committee Reports.

## **Tab 6: Committee Reports**

### **Internal Audit Committee**

Ms. Urling, Chairman of the Internal Audit Committee announced the Committee met yesterday, October 10, 2017, reviewed and approved the Internal Audit of the Annuitant Death Processes and the Updated 2017 Internal Audit Plan as presented by Tina Baker, Internal Auditor. The Committee has the following recommendations for the Board's approval.

Ms. Urling announced the Committee recommends the Board adopt and approve the Internal Audit of the Annuitant Death Processes.

Captain Corsaro made a motion the Board adopt and approve the Internal Audit of the Annuitant Death Processes. Mr. Waybright seconded the motion. The motion carried unanimously.

Ms. Urling announced the Committee recommends the Board adopt and approve the Updated 2017 Internal Audit Plan.

Ms. Stout made a motion the Board adopt and approve the Updated 2017 Internal Audit Plan. Mr. Bird seconded the motion. The motion carried unanimously.

Chairman Wyant moved the agenda back to address Tab #5, Legal Counsel Reports.

## **Tab 5: Legal Counsel Reports**

### **Report from Outside Legal Counsel – Ronda Harvey**

Ronda Harvey, Outside Legal Counsel with Bowles Rice, updated the Board on the case of *Thomas Ward v. CPRB*. She announced it appears that the Petitioner actually withdrew his PERS accumulated contributions. Thus, he has no further issue. Attempts have been made to reach Petitioner's counsel to request that he voluntarily dismiss the matter, but were unsuccessful as he failed to return messages. On March 8, 2017, CPRB filed a Motion to Dismiss. Judge Burnside has entered an Order requiring Petitioner to respond to the Motion by April 17, 2017. The Court also set a hearing for May 31, 2017.

The Petitioner also failed to appear at the May 31, 2017 hearing on the motion to dismiss. Judge Burnside agreed that dismissal was appropriate. He requested that we submit an order including support for the proposition that Petitioner's withdrawal of his PERS contributions was essentially an abandonment of this claim. Also, at the hearing, CPRB orally amended its motion to request attorney

fees and expenses associated with the motion. CPRB's counsel pointed out that CPRB is a fiduciary of the funds and should not have had to expend attorney fees to obtain dismissal. Also, petitioner's counsel had an obligation to respond and appear, but failed to do so; if petitioner was dropping his claim, petitioner's counsel should have advised the Court. It was CPRB's preference to provide the Court with an agreed dismissal order rather than file a motion and appear at a hearing. Judge Burnside also granted this relief and directed CPRB's counsel to file an affidavit of fees associated with the preparation of the motion, appearing at the hearing and the expenses related to those activities.

The affidavit of fees was submitted on June 14, 2017. On June 21, 2017, Judge Burnside entered an *Order Granting Motion to Dismiss* of the West Virginia Consolidated Public Retirement Board, which also grants the attorney's fee award.

She informed the Board that she sent a letter by certified mail to Petitioner's counsel asking for payment of the attorney's fee award by September 1, 2017. If payment is not received, formal collection proceedings will be considered.

Counsel has attempted to contact Mr. Feuchtenburger by phone and have left messages. On October 3, 2017, counsel wrote to him, enclosing a Motion for Contempt, advising that it has been filed, again requesting that he pay the award and agreeing to withdraw the Motion if he pays within the next week. Otherwise, a hearing will be scheduled and the Court may order additional sanctions against Mr. Feuchtenburger.

Ms. Harvey updated the Board on the case of *Gloria Haney-Nichols v. CPRB*. She announced that in March, Ms. Haney-Nichols appealed the decision of CPRB not to comply with her request to change the coding on her 1099-R, from a code 7 ("normal distribution") to a code 3 ("disability"). Ms. Haney-Nichols has been receiving disability retirement distributions from PERS for several years. CPRB sent her a letter dated March 13, 2017, explaining that CPRB cannot code her 1099-R as a code 3 because it cannot certify her disability. This is because disabilities that meet the requirements of a particular plan administered by CPRB may not meet the standard for a federal disability. A hearing was held before Hearing Officer Gary Pullin on May 23, 2017. At the hearing, it became clear that Ms. Haney-Nichols had previously received inconsistent tax advice and believed that the coding would make a difference on whether her disability retirement benefits were taxable. By the end of the hearing, Ms. Haney-Nichols seemed to have a better understanding regarding why CPRB had included code 7 on her 1099-R. On July 12, 2017, the Hearing Officer submitted a decision in the CPRB's favor. The Board accepted the decision and entered a Final Order on September 1, 2017.

Ms. Harvey informed the Board on a new case, Timothy Dale Bradley. She announced that Mr. Bradley has appealed the CPRB's denial of his partial duty disability retirement. She announced that this Administrative Appeal is in its infancy. A hearing was held before Hearing Officer, Anne Charnock on September 12, 2017. The State Police appeared by Counsel, Will Valentino and John Hoyer. Tim Bradley appeared by counsel, Brian Prim. Terasa Miller appeared for CPRB with counsel, Ronda Harvey. The Hearing Officer heard evidence and at the close of the hearing, she requested proposed orders by October 25, 2017.

The report of the Outside Legal Counsel is located behind Tab 6.

### **Report of In-House Legal Counsel – Jeaneen Legato**

Jeaneen Legato, In-House Legal Counsel, presented her report to the Board on all pending legal matters. She reported on all current Administrative, Circuit Court, Supreme Court and Less than Honorable Service (LTHS) cases.

Ms. Legato reviewed the Less than Honorable Service (LTHS) case of David Bryan Jarrell, a TRS member with 12.14 years of service. Mr. Jarrell was the Boone County Schools Transportation Director. She announced, on September 1, 2017, an Information charging David Jarrell with one count of felony Embezzlement was filed in Boone County Circuit Court. Mr. Jarrell, while acting in his capacity as an agent of Boone County BOE, made multiple purchases of various automotive related items for his own benefit as well as others while directing payment be made by the Boone County BOE. The purchases are believed to total at least \$20,000.00. On September 6, 2017, Mr. Jarrell entered a Guilty Plea, Plea Agreement. On September 18, 2017, Judge Thompson accepted the guilty plea and adjudged Mr. Jarrell guilty of Embezzlement.

Ms. Legato recommended the Board terminate the TRS membership of David Bryan Jarrell for LTHS.

Mr. McKown made a motion the Board accept the recommendation of Counsel and terminate the TRS membership of David Bryan Jarrell for LTHS. The motion was seconded by Captain Corsaro. The motion carried unanimously.

Ms. Legato updated the Board on the Less than Honorable Service case of Tracy Harvey, a TRS member with 3.7 years of service, Mr. Harvey was a mechanic for the Boone County Board of Education. Ms. Legato announced, on September 1, 2017, an Information charging Tracy Harvey with



one count of felony Embezzlement was filed in Boone County Circuit Court. Mr. Harvey, while acting in his capacity as an agent of Boone County BOE made multiple purchases of tires, brakes, and other items for his own benefit as well as others while directing payment be made by the Boone County BOE. The purchases are believed to total at least \$20,000.00. On September 6, 2017, Mr. Harvey entered a Guilty Plea, pursuant to a Plea Agreement. On September 18, 2017, Judge Thompson accepted the guilty plea and adjudged Mr. Harvey guilty of Embezzlement.

Ms. Legato recommended the Board terminate the membership in TRS of Tracy Harvey for LTHS.

Mr. Waybright made a motion the Board accept the recommendation of Counsel and to terminate the TRS pension of Tracy Harvey for LTHS. The motion was seconded by Mr. Haney. The motion carried unanimously.

Ms. Legato updated the Board on the Less than Honorable Service LTHS case of Marcus Slauer, a DSRS member with 3 years of service, which was refunded on August 30, 2017. On February 6, 2017, an Indictment charging *Bribery in Official Matters* was filed in Marion County Circuit Court. The allegation was that, while working as a police officer for the Town of Farmington, West Virginia, Marcus Slauer requested and accepted sexual acts from a woman during a traffic stop in exchange for not citing the woman with a misdemeanor traffic or criminal offense. On August 14, 2017, Mr. Slauer entered into a plea agreement and filed a Plea of Guilty to the felony offense of Bribery in Official Capacity. Also, on August 14, 2017, Judge Patrick Wilson accepted the plea and adjudged Marcus Slauer guilty.

Ms. Legato recommended the Board terminate the membership in DSRS of Marcus Slauer for LTHS.

Captain Corsaro made a motion the Board accept the recommendation of Counsel and to terminate the DSRS pension of Marcus Slauer for LTHS. The motion was seconded by Mr. Waybright. The motion carried unanimously.

Ms. Legato updated the Board on the case of *Ollie Hunting v. CPRB*. She announced this is a TRS appeal regarding the inclusion of a lump sum settlement as part of the final average salary. By Order entered on May 16, 2017, the Supreme Court of Appeals scheduled this case for oral argument under Rule 19 for September 19, 2017. On September 19, 2017, the Court heard oral argument. No decision has been received.

The report of the In-House Legal Counsel is located behind Tab 5.

**Tab 6: Committee Reports**

**Executive Director & Actuary Review Committee**

Chairman Wyant announced that the Board had previously authorized the Executive Director to proceed with hiring Mr. Jeff Bridges, but Mr. Bridges took another position. As a result, the Executive Director & Actuary Review Committee met this morning and interviewed Mr. Paul Baugher for the actuary position.

Chairman Wyant asked if there was a motion from the Executive Director & Actuary Review Committee with regards to Mr. Baugher.

Ms. Stout made a motion the Board give the Executive Director authority to make an offer to Mr. Paul Baugher in the salary range comparable to the previous applicant and to enter into negotiations with him. The motion was seconded by Ms. Urling. The motion carried unanimously.

The minutes of the Executive Director & Actuary Review Committee are located behind Tab 6.

**Tab 7: Other, Old Business**

Chairman Wyant asked if there was any old business to bring before the Board. None was heard.

**Tab 8: Other, New Business**

Chairman Wyant asked if there was any new business to bring before the Board.

Chairman Wyant announced staff has recommended a CPRB internal policy to require that all participating public employers must submit to the Consolidated Public Retirement Board (CPRB) a service verification form within one week of a retiring employee's last day on the employer's payroll. Any employer failing to do so will be assessed an administrative penalty of \$100.00 for each day the employer is in default. The penalty shall be deposited into the CPRB's administrative fund.

Chairman Wyant ask if there was a motion from the Board to adopt this internal policy.

Mr. McKown made a motion the Board adopt the internal policy and to require that all participating public employers must submit to the Consolidated Public Retirement Board (CPRB) a service verification form within one week of a retiring employee's last day on the employer's payroll.

Any employer failing to do so will be assessed an administrative penalty of \$100.00 for each day the employer is in default, and the penalty shall be deposited into the CPRB's administrative fund. Captain Corsaro seconded the motion. There was discussion on the motion.

Captain Corsaro made a motion to amend the motion and to change the first paragraph and to replace "within one week," with "within five working days." Ms. Stout seconded the motion to amend. The motion to amend carried unanimously.

Chairman Wyant returned to the motion to adopt the CPRB internal policy.

On the pending motion, Chairman Wyant requested a vote and the motion was carried unanimously.

Chairman Wyant asked if there was any other new business to bring before the Board. None was heard.

Chairman Wyant adjourned the October 11, 2017 meeting of the West Virginia Consolidated Public Retirement Board (CPRB) at 1:18 p.m.



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David Wyant, Chairman  
Consolidated Public Retirement Board



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Jeffrey E. Fleck, Executive Director  
Consolidated Public Retirement Board