

**Full Performance Evaluation**

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**Consolidated Public Retirement Board**

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**The Consolidated Public Retirement Board Serves An Important Function By Administering Eight Government Retirement Plans**

**The Consolidated Public Retirement Board Has Only Recently Begun to Verify the Earned Incomes of Disability Retirees**

**The Consolidated Public Retirement Board Has Not Effectively Monitored the Disabled Status of Public Employees Retirement System Retirees**



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January 9, 2006

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable J.D. Beane  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Full Performance Evaluation of the *Consolidated Public Retirement Board*, which will be presented to the Joint Committee on Government Operations on Monday, January 9, 2006. The issues covered herein are "The Consolidated Public Retirement Board Serves An Important Function By Administering Eight Government Retirement Plans;" "The Consolidated Public Retirement Board Has Only Recently Begun to Verify the Earned Incomes of Disability Retirees;" and "The Consolidated Public Retirement Board Has Not Effectively Monitored the Disabled Status of Public Employees Retirement System Retirees."

We transmitted a draft copy of the report to the Consolidated Public Retirement Board on December 23, 2005. We held an exit conference with the Board on December 29, 2005. We received the agency response on January 5, 2006.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

JS/wsc

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*Joint Committee on Government and Finance*

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# Executive Summary

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## **Issue 1: The Consolidated Public Retirement Board Serves An Important Function By Administering Eight Government Retirement Plans.**

The CPRB serves an important function by administering Eight government retirement plans. The Legislative Auditor recommends continuing the Consolidated Public Retirement Board.

*Since this new criteria is more restrictive on the income a disability retiree can earn than the old law for most retirees, it is more important to verify the earnings of all disability retirees.*

## **Issue 2: The Consolidated Public Retirement Board Has Only Recently Begun to Verify the Earned Incomes of Disability Retirees.**

According to the West Virginia Code, the CPRB is authorized to verify the earned income of disability retirees for each of the retirement plans it administers; however, it is not mandatory to do so. In 2005, the Legislature amended §5-10-26 of the Code, which pertains to the Public Employees Retirement System (PERS), to limit the income its disability retirees can earn to the “substantial gainful activity (SGA)” amount defined by the U.S. Social Security Administration. Under the new law, a PERS disability retiree’s earned income cannot exceed the SGA amount. If the PERS disability retiree’s earned income exceeds the SGA amount, the disability annuity should be terminated. Since this new criteria is more restrictive on the income a disability retiree can earn than the old law for most retirees, it is more important to verify the earnings of all disability retirees.

*The CPRB began requesting tax information for approximately 10% of PERS disability retirees in November 2005. As of December 2005, no annuity terminations had occurred.*

The CPRB has indicated that it would require additional staff in order to perform income verification for all disability retirees. However, the Legislative Auditor is not certain if or how many additional staff would be needed. The income verification and annuity adjustments would be a once-a-year occurrence that would take a limited amount of time to perform. Therefore, it is not clear if the CPRB would need additional staff or simply use current staff to prioritize income verification for the time needed.

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### **Issue 3: The Consolidated Public Retirement Board Has Not Effectively Monitored the Disabled Status of Public Employees Retirement System Retirees.**

*The CPRB scheduled only 26 out of a total of 981 PERS members who received disability retirements from fiscal years 2000 through 2005 for a reexamination of their physical condition one year after retirement. Of those 26, 15 disability retirees actually underwent reexaminations one year after retirement.*

The CPRB has never terminated a PERS disability retirement annuity because the retiree was no longer disabled. The West Virginia Code gives the CPRB the authority to reexamine disability retirees to determine their current medical conditions. However, the CPRB scheduled only 26 out of a total of 981 PERS members who received disability retirements from fiscal years 2000 through 2005 for a reexamination of their physical condition one year after retirement. Of those 26, 15 disability retirees actually underwent reexaminations one year after retirement. If more PERS disability retirees are reevaluated each year, the number of people receiving disability annuities from the state would probably decrease and result in cost savings as the CPRB identifies ineligible disability retirees.

The CPRB's process for the evaluation and documentation of disabling conditions lacks the uniformity and thoroughness of the Social Security Administration's (SSA) process. Currently the CPRB provides only a two-page form for examining physicians to complete and does not provide detailed guidelines for evaluating and documenting disabling conditions. Unlike the CPRB, the SSA has clear disability requirements and time frames for conducting reexaminations. The CPRB could consider the possibility of establishing more detailed examination criteria and documentation and have reexaminations at regularly-scheduled intervals just as the SSA does.

*The Legislative Auditor's staff identified 10 states whose statutes require at least one reexamination (see Appendix C), whereas the CPRB has the option of reexamining a PERS disability retiree but is not legally required to do so.*

The Legislative Auditor's staff identified 10 states whose statutes require at least one reexamination (see Appendix C), whereas the CPRB has the option of reexamining a PERS disability retiree but is not legally required to do so. Another weakness of the CPRB's evaluation process compared to other states lies in the fact that at least 16 states identified by the Legislative Auditor's staff have a process whereby a physician employed by that state's retirement agency reviews the results of the initial medical exam. The CPRB does not employ any physicians and does not have a physician on its Disability Review Committee. This means that no one with similar medical qualifications reviews the conclusions drawn by the CPRB's first examining physician.



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## **Recommendations:**

1. *The Legislative Auditor recommends continuing the Consolidated Public Retirement Board.*
2. *The Legislative Auditor recommends that the Legislature consider amending Chapter 5, Article 10 of the West Virginia Code to require the Consolidated Public Retirement Board to obtain an annual statement of earnings from each disability retiree to verify income for possible disability annuity terminations, and that it be a criminal offense to provide false income information to the CPRB.*
3. *The Legislature should consider amending the Code to give the Consolidated Public Retirement Board statutory authority to obtain tax data from the State Tax Department for the purpose of income verification.*
4. *The Legislature should consider amending the disability retirement provisions of the Teachers Retirement System to conform with the earned income criteria established under the Public Employees Retirement System for new hires.*
5. *The Legislative Auditor recommends that the Consolidated Public Retirement Board reexamine larger numbers of PERS disability retirees, using earned income as one indicator of a retiree's continued disability, and therefore, criteria for scheduling reexaminations.*



# Review Objective, Scope and Methodology

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## Objective

The objective of the Full Performance Evaluation of the Consolidated Public Retirement Board (CPRB) is to address the following questions:

1. Is the CPRB necessary?
2. Does the CPRB monitor the amount of income earned by disability retirees of the Public Employees Retirement System (PERS)?
3. Does the CPRB monitor the disabled status of PERS disability retirees through a system of regular physical examinations?

## Scope

The scope of this review extends from FY 2000 through FY 2004.

## Methodology

This report focuses on disability PERS retirees who represent 2,613 or 54.6% of all CPRB disability retirees. Since PERS accounts for such a large percentage of disability retirees, it is representative of the manner in which the CPRB administers other retirement plans.

The CPRB provided the identities of all PERS disability retirees for each year from fiscal years 2000 through 2004, in addition to the annual annuity payments each retiree received. The State Tax Department provided data from 1099 and W-2 forms submitted by PERS disability retirees, which verified their earned incomes for the purposes of this review. The Legislative Auditor's staff used these income data and compared them to the annuities paid to each retiree and the date of retirement for each individual.

The Legislative Auditor's staff obtained information from the CPRB regarding disability retirement examination policies, then number of examinations completed annually, as well as the forms completed by examining physicians. Information regarding the Social Security Administration's examination policies came from the agency and its web site. The Legislative Auditor's staff gathered information on the disability determination and examination policies of other states by contacting various states' public retirement agencies and referring to their web sites and statutes.



## **The Consolidated Public Retirement Board Serves An Important Function By Administering Eight Government Retirement Plans.**

### **The CPRB Manages Eight Government Retirement Plans**

The Consolidated Public Retirement Board (CPRB) currently manages eight government employee retirement programs:

1. The Judges Retirement System;
2. The Teachers Defined Benefit Retirement Plan;
3. The Teachers Defined Contribution Retirement Plan;
4. The Public Safety Plan A;
5. The Public Safety Plan B;
6. The Deputy Sheriff Retirement System;
7. The Public Employees Retirement System;
8. The 457 Deferred Compensation Plan.

As of November 1, 2005, the retirement programs had a total of 46,925 retired members. The Public Employees Retirement System (PERS) and the two teachers retirement plans account for the vast majority of government employees retired under CPRB-managed plans. The CPRB serves an important function by administering government retirement plans. The Legislative Auditor recommends continuing the Consolidated Public Retirement Board.

### **Recommendation:**

1. *The Legislative Auditor recommends continuing the Consolidated Public Retirement Board.*



### **The Consolidated Public Retirement Board Has Only Recently Begun to Verify the Earned Incomes of Disability Retirees.**

#### **Issue Summary**

*A review of preliminary data collected by the Legislative Auditor's staff with the assistance of the Tax Department has shown that some PERS disability retirees have earned substantial amounts of income during recent years.*

Currently, the CPRB has requested tax information from disability retirees to verify the earned incomes of 10% of PERS disability retirees. The CPRB is authorized by law to verify earned income; however, it is not mandatory to do so. Given that there were 1,946 PERS disability retirees as of November 1, 2005, it is important to determine the number of individuals receiving disability retirement annuities to which they should not be entitled. A review of preliminary data collected by the Legislative Auditor's staff with the assistance of the Tax Department has shown that some PERS disability retirees have earned substantial amounts of income during recent years. Furthermore, the Legislature amended the Code (§5-10-26) in 2005 to limit the income that disability retirees can earn to the "substantial gainful activity" amount defined by the U.S. Social Security Administration. Under the new law, if a disability retiree's earned income exceeds the substantial gainful activity amount set by the federal government, which is \$10,320 for CY 2006, the disability annuity should be terminated. This new criteria is more restrictive on the income a disability retiree can earn than the old law for most retirees. Therefore, the change in the law makes it more important to verify earnings for all disability retirees.

*This new criteria is more restrictive on the income a disability retiree can earn than the old law for most retirees. Therefore, the change in the law makes it more important to verify earnings for all disability retirees.*

The Legislative Auditor recommends that the Legislature consider making the verification of earned income mandatory. In November 2005, the CPRB requested tax information from approximately 10% of disability retirees. At the time of the writing of this report, no annuity terminations have occurred. The CPRB has indicated that it would require one or two additional staff to perform income verification for all disability retirees. The Legislative Auditor is not certain if or how many additional staff would be needed. If the Legislature amended the Code to permit it, the CPRB could eventually request and receive tax information electronically from the West Virginia Tax Department. In the future, when the Tax Department's new computer system is completed, it may be possible to determine electronically those retirees who will require a termination of their annuity. Obtaining electronic tax data from the Tax Department would depend on the ability of the Tax Department's new computer system to record income data for individuals who file their taxes jointly. It is not clear if the CPRB would need additional permanent staff or to simply use current staff to prioritize income verification for the time needed.

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## Recent Changes to the State Law Have Affected the Amount of Income Disability Retirees May Earn and Continue to Receive a Disability Annuity

*Prior to the passage of House Bill 2984 during the 2005 Regular Legislative Session, the West Virginia Code required the Consolidated Public Retirement Board to reduce the annuity of a disability retiree who received disability annuity payments plus earned income in a given year in excess of his or her “annual rate of compensation.”*

Prior to the passage of House Bill 2984 during the 2005 Regular Legislative Session, the West Virginia Code required the Consolidated Public Retirement Board to reduce the annuity of a disability retiree who received disability annuity payments plus earned income in a given year in excess of his or her “annual rate of compensation.” The term “annual rate of compensation” refers to the amount equal to a retiree’s final 12 months of total compensation prior to disability retirement. Before 2005, West Virginia Code §5-10-26(c) read as follows:

*If a disability retiree, who has not attained age sixty years, becomes engaged in a gainful occupation, business or employment, and the sum of his earnings from such occupation business or employment and his disability annuity shall be reduced to an amount which when added to the amount so earned by him shall equal his said annual rate of compensation. If his earnings are later changed, his disability annuity shall be correspondingly adjusted.*

*House Bill 2984 uses the Social Security Administration’s substantial gainful activity amount, which changes annually and is currently \$860 per month for CY 2006, to compare to the retiree’s earned income. If a disability retiree earns more than \$860 per month (approximately \$10,320 for CY 2006), the CPRB should terminate that retiree’s annuity payments.*

With the passage of House Bill 2984, West Virginia Code §5-10-26(c) was amended concerning employment income and annuity payments to read as follows:

*If a review of the disability retiree’s annual statement of earnings or other financial information as required by the Board determines that the disability retiree’s earned income for the preceding year exceeds the substantial gainful activity amount as defined by the United States Social Security Administration, the disability retirees annuity shall be terminated by the Board, upon recommendation of the Board’s disability review committee, on the first day of the month following the Board’s action.*

Before House Bill 2984, a disabled retiree could work but the Code required the CPRB to reduce the retiree’s annuity by the amount of excess



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*According to the CPRB, the teachers retirement plans are not subject to the statutory earned income limits that apply to the other plans the Board administers. Teachers who have retired as the result of a disabling condition can earn an unlimited amount of income provided that they do not return to teaching.*

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income earned. House Bill 2984 uses the Social Security Administration's substantial gainful activity amount, which changes annually and is currently \$860 per month for CY 2006, to compare to the retiree's earned income. If a disability retiree earns more than \$860 per month (approximately \$10,320 for CY 2006), the CPRB should terminate that retiree's annuity payments.

According to the CPRB, the teachers retirement plans are not subject to the statutory earned income limits that apply to the other plans the Board administers. **Teachers who have retired as the result of a disabling condition can earn an unlimited amount of income provided that they do not return to teaching.** While there are no retirees from the Teachers Defined Contribution Plan, there were 2,042 disability retirees from the Teachers Retirement System as of December 9, 2005, including 68 individuals receiving survivor's annuities. Since the CPRB's retirement plans pay survivor's benefits to deceased disability retirees, it is important to determine the continued eligibility of disability retirees for an annuity prior to their deaths. **The Legislative Auditor recommends that the Legislature consider amending the earned income criteria for teachers disability retirement for new hires to make it consistent with PERS.** The Legislative Auditor plans to conduct a study on earned incomes of disability retirees in the Teachers Retirement System to determine the amount that would have been saved if the earned income criteria under PERS were used.

### **Some PERS Disability Retirees Have Substantial Amounts of Earned Income**

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*The Legislative Auditor has so far been able to identify 4 individuals during CY 2003 and CY 2004 who had substantial amounts of earned income in addition to their disability annuities. They earned from between \$19,000 to \$30,000 each year. Two of these individuals earned at least \$19,000, and as much as \$27,000, both years from CY 2003-2004.*

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The Legislative Auditor's staff reviewed preliminary data on disability retirees from the Public Employees' Retirement System (PERS) as of June 2004. The Legislative Auditor's staff then obtained data on taxable income for some retirees from the State Tax Department for calendar years 2003 and 2004. The analysis is ongoing and currently the data are incomplete. The Legislative Auditor will provide a more detailed analysis to the Legislature's pensions committees during the 2006 Legislative Session. The Legislative Auditor has so far been able to identify 4 individuals during CY 2003 and CY 2004 who had substantial amounts of earned income in addition to their disability annuities. They earned from between \$19,000 to \$30,000 each year. Two of these individuals earned at least \$19,000, and as much as \$27,000, both years from CY 2003-2004. While, the analysis is not yet complete, it is possible that some of these individuals earned enough income to receive reduced annuities. Under the new earned income restrictions of House Bill 2984, which specifies the federal substantial gainful employment limit (currently \$860 per month or \$10,320 annually), these individuals would clearly lose their disability annuities under the new law. Given that the Legislative Auditor has identified disability

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*Given that the Legislative Auditor has identified disability retirees who may have earned more income than allowed by law, and the changes in House Bill 2984 are more restrictive on earned income, the Legislature should consider amending the law to make income verification mandatory and that it be a criminal offense to provide false income information to the CPRB.*

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retirees who may have earned more income than allowed by law, and the changes in House Bill 2984 are more restrictive on earned income, **the Legislature should consider amending the law to make income verification mandatory and that it be a criminal offense to provide false income information to the CPRB.** The ability of some PERS disability retirees to earn substantial amounts of income raises the possibility that they are not currently disabled and highlights the importance of reexamining disability retirees to reevaluate their disabled status (see Issue 3).

### **The CPRB Claims That It Will Require Additional Staff to Verify Incomes**

The CPRB contends that it will require additional employees to collect and process the copies of disability retirees' tax returns used to verify income:

*The CPRB will definitely need additional staff in order to receive and reconcile the annual financial records/tax returns from PERS disabilities. We will need at least 1, but possibly 2 additional staff to handle the volume of documents that we will be receiving.*

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*The CPRB contends that it will require additional employees to collect and process the copies of disability retirees' tax returns used to verify income. The Legislative Auditor does not completely agree with this assessment. Since this would be a once-a-year occurrence that would last for a limited amount of time, it is possible that if additional staff is necessary, the CPRB could use current staff to prioritize income verification for the time needed.*

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The Legislative Auditor does not completely agree with this assessment. The CPRB should consider electronically requesting tax information from the state Tax Department instead of the tax payer, and receive it electronically. Using an electronic process of verification would not be time consuming. Furthermore, since this would be a once-a-year occurrence that would last for a limited amount of time, it is possible that if additional staff is necessary, the CPRB could use current staff to prioritize income verification for the time needed. However, in order for the CPRB to receive this information from the Tax Department, it would require the Legislature to amend State Law to require the Tax Department to share this information with the CPRB. Moreover, any manual process necessary to analyze such data, would be substantially reduced once the Tax Department's new computer system is installed and functional. Finally, it should be noted that the CPRB would be unable to receive tax information from the Tax Department on its retirees who file their taxes in other states.

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*Some disability retirees are earning more income than the substantial gainful activity amount. This shows the need to reexamine disability retirees, which is discussed in Issue 3.*

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Some disability retirees are earning more income than the substantial gainful activity amount. **This shows the need to reexamine disability retirees, which is discussed in Issue 3.**

### **The CPRB Did Not Begin Requesting Tax Returns From Disability Retirees to Verify Their Incomes Until November 2005**

The recent changes to the West Virginia Code and the CPRB's legislative rules that gave the CPRB the ability to request tax returns for the purpose of verifying the income of disability retirees resulted in a plan to begin requesting tax returns by September 1, 2005. In a letter dated July 5, 2005 the CPRB's current Acting Executive Director, stated:

*With the passage of House Bill 2984 during the regular Legislative session, as well as the passage of WVCSR §162-2-9 during the 2004 regular Legislative session, the CPRB will begin requesting during 2005 from PERS disability retirees who have not attained age 60 to submit a copy of their federal tax returns for 2004 as well as require their physician to complete a form certifying that they are continuously disabled. We are in the process of having the programming for this ongoing project completed, and we anticipate mailing out the requests no later than September 1.*

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*While the CPRB failed to begin requesting statements of earnings by September 1, 2005, it did begin sending out these requests by late November 2005. As of December 14, 2005, the CPRB had sent requests for annual statements of earnings to approximately 200, or 10% of PERS disability retirees. To date, there have been no annuity terminations.*

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In a follow-up letter dated September 30, 2005, the previous Acting Executive Director stated that the CPRB had not yet sent disability retirees letters requesting 2004 tax returns. During the course of this review, it was found that the State Tax Department does not maintain separate electronic data on individuals in the case of incomes earned by married couples who file jointly. The only way to obtain this information was to review actual income tax returns and W-2 forms submitted by retirees. The State Tax Department is in the process of implementing a new data system that should be able to record more detailed income data.

The enforcement of the provisions of House Bill 2984 related to the amount of income that a disability retiree can earn requires the verification of earned income. Given that there were 1,946 PERS disability retirees as of November 1, 2005, it is important to determine the number of individuals receiving disability retirement annuities to which they should not be entitled.

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While the CPRB failed to begin requesting statements of earnings by September 1, 2005, it did begin sending out these requests by late November 2005. As of December 14, 2005, the CPRB had sent requests for annual statements of earnings to approximately 200, or 10% of PERS disability retirees. To date, there have been no annuity terminations.

## **The CPRB Will Consider Plans to Recover Disability Retirement Overpayments**

When asked if the CPRB can currently take action to recover overpayments made to PERS disability retirees, a CPRB representative stated:

*The new law does not specifically address this, but I will raise the issue with the Board to see if they wish for us to seek a statutory change to do so.*

*Under the new law, many disability annuities would be terminated that otherwise would have only been reduced under the old law.*

## **Conclusion**

Under the new law, many disability annuities would be terminated that otherwise would have only been reduced under the old law. The Legislature should consider making income verification mandatory. The CPRB indicates that it would need one or two additional staff to verify income for all PERS disability retirees. It is not clear if or how many additional staff would be needed for complete income verification. The Legislative Auditor contends that this would be a once-a-year occurrence that would last for a limited amount of time. There are options the CPRB should eventually consider, such as the possible receipt of electronic tax data from the West Virginia Tax Department in developing complete income verification.

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## **Recommendations:**

2. *The Legislative Auditor recommends that the Legislature consider amending Chapter 5, Article 10 of the West Virginia Code to require the Consolidated Public Retirement Board to obtain an annual statement of earnings from each disability retiree to verify income for possible disability annuity terminations, and that it be a criminal offense to provide false income information to the CPRB.*
  
3. *The Legislature should consider amending the Code to give the Consolidated Public Retirement Board statutory authority to obtain tax data from the State Tax Department for the purpose of income verification.*
  
4. *The Legislature should consider amending the disability retirement provisions of the Teachers Retirement System to conform with the earned income criteria established under the Public Employees Retirement System for new hires.*



# Issue 3

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## The Consolidated Public Retirement Board Has Not Effectively Monitored the Disabled Status of Public Employees Retirement System Retirees.

### Issue Summary

*Although the West Virginia Code gives the CPRB the authority to reexamine disability retirees to determine their current medical conditions, the CPRB scheduled only 26 out of a total of 981 PERS members who received disability retirements from fiscal years 2000 through 2005 for a reexamination of their physical condition one year after retirement. Fifteen of the 26 actually underwent reexaminations one year after retirement.*

Enforcing financial eligibility requirements alone would make the task of periodically reexamining the physical or mental condition of disability retirees more manageable for the CPRB. The CPRB could then use the remaining disability retirees' earned incomes as criteria for choosing individuals for medical reexamination.

Although the West Virginia Code gives the CPRB the authority to reexamine disability retirees to determine their current medical conditions, the CPRB scheduled only 26 out of a total of 981 PERS members who received disability retirements from fiscal years 2000 through 2005 for a reexamination of their physical condition one year after retirement. Fifteen of the 26 actually underwent reexaminations one year after retirement. **The CPRB has never terminated a PERS disability retirement annuity because the retiree was no longer disabled.** If more PERS disability retirees are reevaluated each year, the number of people receiving disability annuities from the state would probably decrease and result in cost savings as the CPRB identifies ineligible disability retirees.

*The CPRB has never terminated a PERS disability retirement annuity because the retiree was no longer disabled.*

The CPRB currently provides only a two-page form for examining physicians to complete and does not provide detailed guidelines for evaluating and documenting disabling conditions. In the absence of the Social Security Administration's (SSA) extensive and objective guidelines for the evaluation and documentation of disabling conditions, the CPRB's process lacks the uniformity and thoroughness of the SSA's process. Unlike the CPRB, the Social Security Administration has clear disability requirements and time frames for conducting reexaminations. The CPRB could consider the possibility of establishing more detailed examination criteria and documentation and have reexaminations at regularly-scheduled intervals just as the SSA does. The Legislative Auditor's staff identified 10 states whose statutes require at least one reexamination (see Appendix C).

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## The CPRB's Statutory Authority to Reexamine Disability Retirees

*The Code authorizes the CPRB to reexamine disability retirees once annually for the first five years of benefits and every three years thereafter.*

The Code authorizes the CPRB to reexamine disability retirees once annually for the first five years of benefits and every three years thereafter. West Virginia Code §5-10-26(a) addresses the reexamination of disability retirees under the Public Employees Retirement System. It states:

*At least once each year during the first five years following the retirement of a member on account of disability, as provided in section twenty-five of this article, and at least once in each three-year period thereafter, the Board may require a disability retiree, who has not attained age sixty years, to undergo a medical examination to be made by or under the direction of a physician designated by the board, or to submit a statement signed by the disability retiree's physician certifying continued disability, or both, and a copy of the disability retiree's annual statement of earnings. If the retiree refuses to submit to the medical examination or provide the certification in any period, his or her disability annuity may be discontinued by the Board until the retiree complies. If the refusal continues for one year, all the retiree's rights in and to the annuity may be revoked by the board. If, upon medical examination of a disability retiree, the physician reports to the board that the retiree is physically able and capable of resuming employment with a participating public employer, the retiree shall be returned to the employ of the participating public employer from whose employment he or she retired and his or her disability annuity shall terminate: Provided, That the Board concurs in the physician's report.*

This section of the West Virginia Code addresses two important eligibility criteria for disability retirees:

1. The verification of a retiree's income by requiring a copy of the retiree's annual statement of earnings (addressed in Issue 2);
2. If the disability retiree is found to be capable of resuming employment then their annuity shall terminate.



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## **The CPRB Has Three Committees That Deal With Disability-Related Issues**

The CPRB has three committees created to study disability-related issues. The Board expects to gain informed recommendations for disability issues, policies and procedures from the work of these committees. These committees, along with the primary responsibilities and number of members of each, are listed below.

1. The Disability Language Review Committee - The primary responsibility of this committee is to review current and proposed statutes and the language of CPRB forms that relate to disability. This is a new committee with three members.
2. Task Force to Review Disability Issues - The primary responsibility of this committee is to review certain issues concerning disability. There are five members on this committee. Recently this committee brought to the Board for approval the “substantial gainful employment” Social Security provision which is stated in HB 2984 and WVCSR §162-2-9.
3. The Disability Review Committee - The primary responsibility of this committee is to make the initial determination for disabilities for applicants. This committee is comprised of five members and reports ten times a year to the Board.

The last committee has been in existence in various forms since the CPRB was created. The CPRB expects a monthly review and report concerning disability applications from this committee.

## **The CPRB Has Required a Minimal Number of Reexaminations of PERS Disability Retirees**

Table 1 highlights the number of PERS approved disability retirees, PERS disability retirees approved for benefits with a recommendation by their examining physician for a reexamination one year after retirement, and PERS disability retirees reevaluated during fiscal years 2000 through 2005.

Table 1 PERS Disability Retirement Statistics							
	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	Totals
Approved Disability Retirees	141	173	165	176	168	158	981
Disability Retirees Approved with a 1-Year Reexamination	1	4	4	11	2	4	26
Disability Retirees Reevaluated	2	0	0	0	1	12	15
<i>Source: The Consolidated Public Retirement Board</i>							

*The most noticeable trend is that a small number of newly-approved disability retirees are scheduled for reexaminations, while an even smaller number actually undergo these reexaminations.*

The most noticeable trend is that a small number of newly-approved disability retirees are scheduled for reexaminations, while an even smaller number actually undergo these reexaminations. The CPRB scheduled only 26 out of a total of 981 PERS members who received disability retirement from fiscal years 2000 through 2004 for a reexamination of their physical condition one year after retirement. Fifteen of the 26 of new disability retirees recommended for reexaminations actually underwent reexaminations one year after retirement. While the Code authorizes the CPRB to reexamine disability retirees once annually for the first five years of benefits and every three years thereafter, it is the CPRB's policy not to order reexaminations unless recommended by the initial examining physician. This policy, coupled with the fact that only 15 disability retirees received one-year reexaminations during the five-year period covered by this review, makes it unlikely that the average PERS disability retiree receives a reexamination after the first year.

*While the Code authorizes the CPRB to reexamine disability retirees once annually for the first five years of benefits and every three years thereafter, it is the CPRB's policy not to order reexaminations unless recommended by the initial examining physician.*

Generally speaking, with regards to the reexamination of PERS disability retirees, the current practice of the CPRB is that if the Board's physician recommends that the applicant be reexamined within a certain time period, then it is the official policy of the CPRB to do so. While a disability retiree's personal physician must annually recertify his or her disabled status, the CPRB only conducts reexaminations on PERS disability retirees that the Board's physician recommends for reevaluation. The Board's physician bases his or her recommendations solely on "medical criteria." When asked to provide a definition of "medical criteria," a CPRB representative stated:

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*The CPRB pays for reevaluations recommended by its initial examining physician. The CPRB does not employ any physicians. It does, however, utilize the services of ten physicians and the Physicians Office Center, West Virginia University School of Medicine to handle the medical aspects of disability retirement. The costs of reexaminations can range from \$150 to \$2,400, based on the type and complexity of the evaluation required.*

*The CPRB feels that the limited number of doctors in specialized fields can create difficulties in scheduling reexaminations.*

*Currently, the CPRB is reviewing the possibility of randomly selecting individuals for re-examination. The CPRB could use the earned income verification process as a means to identify individuals to reexamine, which would be a more cost-effective method compared to random selection.*

*Due to the wide variety of medical causes for disability retirement the physician sets forth within the report the medical criteria applied and the reasons for the final conclusions made from that examination.*

In the event that the Board's physician recommends a reexamination of a PERS disability retiree after one year, the retiree is mailed a letter informing him or her of the need to set up an appointment to be reexamined. It is the retiree's responsibility to make the appointment with the Board-approved physician. CPRB mails the Board physician the applicable forms when the appointment is set up. The physician must then complete the CPRB forms and return them to the CPRB offices.

The CPRB pays for reevaluations recommended by its initial examining physician. The CPRB does not employ any physicians. It does, however, utilize the services of ten physicians and the Physicians Office Center, West Virginia University School of Medicine to handle the medical aspects of disability retirement. The costs of reexaminations can range from \$150 to \$2,400, based on the type and complexity of the evaluation required. The Legislative Auditor's staff inquired about the possibility of the CPRB hiring its own physician(s). A CPRB representative responded:

*Due to the vast range of specialties required to facilitate all the disability retirees' physical and physiological problems no single doctor would be adequate to handle the needs of the agency.*

The CPRB feels that the limited number of doctors in specialized fields can create difficulties in scheduling reexaminations. However, to date, the CPRB has not modified the number of reevaluations based on the number of doctors available. **The CPRB has never terminated a PERS disability retirement annuity because the retiree was no longer disabled.**

Currently, the CPRB is reviewing the possibility of randomly selecting individuals for reexamination. The CPRB could use the earned income verification process as a means to identify individuals to reexamine, which would be a more cost-effective method compared to random selection. Those who can earn more income compared to other disability retirees may demonstrate less need for retirement annuities. **The Legislative Auditor recommends that the Consolidated Public Retirement Board reexamine larger numbers of PERS disability retirees, using earned income as an indicator of a retiree's continued disability, and therefore, criteria for scheduling reexaminations.**

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## The Social Security Administration and Some Other States Have More Detailed Processes for Evaluating Disability Retirement Candidates and Regularly Scheduled Reexaminations

*The CPRB currently provides only a two-page form for examining physicians to complete and does not provide detailed guidelines for evaluating and documenting disabling conditions. In the absence of extensive and objective guidelines for the evaluation and documentation of disabling conditions, the CPRB's process lacks uniformity. Individual examining physicians decide which information is relevant to determining disability.*

*It is conceivable that two disability retirement applicants could have the same disabling condition and receive different recommendations for disability eligibility determination and future reexaminations.*

The Social Security Administration produces the document, *Disability Evaluation Under Social Security* (also known as the “Blue Book”), which contains an extensive list of both mental and physical impairments it considers serious enough to qualify persons to be disabled. Within the Blue Book are separate sections for adults and children, a description of the basic disability determination process used by the SSA, and specific guidelines for developing the disability claim file based on the type of impairment. The SSA finds the information contained within the Blue Book to be useful in properly documenting disability claims. The Blue Book also provides physicians and other health professionals with an understanding of the disability programs administered by the SSA, an explanation of how each program works, and the kinds of information a health professional can furnish to help ensure sound and prompt decisions on disability claims.

The CPRB currently provides only a two-page form for examining physicians to complete and does not provide detailed guidelines for evaluating and documenting disabling conditions. **In the absence of extensive and objective guidelines for the evaluation and documentation of disabling conditions, the CPRB's process lacks uniformity. Individual examining physicians decide which information is relevant to determining disability.** It is conceivable that two disability retirement applicants could have the same disabling condition and receive different recommendations for disability eligibility determination and future reexaminations.

Unlike the CPRB, the Social Security Administration has clear disability requirements and time frames for conducting reexaminations. If the SSA expects improvement in the disabled person, a reexamination will be performed once a year. If the possibility of improvement is unknown, a reexamination is performed every three years. Lastly, if no improvement is expected, a reexamination will be performed every seven years. As illustrated in Appendix C, three states: Arkansas, Indiana and Oklahoma currently rely on the decisions of the Social Security Administration to determine the eligibility of state employees for disability retirement. The CPRB would benefit from more detailed and objective examination criteria when evaluating disability retirements. The CPRB could consider the possibility of establishing more detailed examination criteria and documentation and have reexaminations at regularly scheduled intervals just as

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the SSA does.

*The Legislative Auditor's staff identified 10 states whose statutes require at least one reexamination (see Appendix C), whereas the CPRB has the option of reexamining a PERS disability retiree but is not legally required to do so.*

The Legislative Auditor's staff identified 10 states whose statutes require at least one reexamination (see Appendix C), whereas the CPRB has the option of reexamining a PERS disability retiree but is not legally required to do so. Another weakness of the CPRB's evaluation process compared to other states lies in the fact that at least 16 states, identified by the Legislative Auditor's staff, have a process whereby a physician employed by that state's retirement agency reviews the results of the initial medical exam. The CPRB does not employ any physicians and does not have a physician on its Disability Review Committee. This means that no one with similar medical qualifications reviews the conclusions drawn by the CPRB's first examining physician. The CPRB makes disability determinations on the medical opinions of two physicians, the retiree's physician and the Board's physician.

## **Conclusion**

For fiscal years 2000-2004, the CPRB approved 26 PERS disability retirements with the stipulation that in one year a reexamination will occur. However, for the fiscal years mentioned, the CPRB reexamined 15 PERS disability retirees. The current practice of the CPRB regarding the reexamination of PERS disability retirees is that if the Board's physician recommends reexamination within a certain time period, then it is standard for the CPRB to do so. The CPRB only conducts reexaminations on PERS disability retirees that the Board's physician recommends for reevaluation. The physician bases recommendations for reexaminations solely on "medical criteria" of his or her own choosing. The CPRB should reexamine larger numbers of PERS disability retirees, using earned income as an indicator of a retiree's continued disability, and therefore, criteria for scheduling reexaminations.

The process for becoming and remaining disabled under the SSA and some states is more detailed in its documentation and involves mandatory reexaminations. The CPRB could consider more detailed disability evaluation criteria.

## **Recommendation:**

5. *The Legislative Auditor recommends that the Consolidated Public Retirement Board reexamine larger numbers of PERS disability retirees, using earned income as one indicator of a retiree's continued disability, and therefore, criteria for scheduling reexaminations.*



# Appendix A: Transmittal Letter

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## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

December 23, 2005

Terasa L. Miller, Acting Executive Director  
Consolidated Public Retirement Board  
1900 Kanawha Blvd., E.  
Building 5, Room 1000  
Charleston, WV 23505

Dear Ms. Miller:

This is to transmit a draft copy of the Full Performance Evaluation of the Consolidated Public Retirement Board. This report is scheduled to be presented during the January 6-8, 2006 interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting on Thursday, December 29, 2005. Please notify us to schedule an exact time. In addition, we need your written response by noon on Wednesday, January 4, 2006 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday January 5, 2006 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

Enclosure

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*Joint Committee on Government and Finance*

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# Appendix B: State Government Disability Retirement Requirements

State	Minimum Service Requirement for Non-Duty Related Disability*	Medical Re-examination Policy	Re-examination Schedule	Disability Benefit Formula*
Alabama	10 years	Mandatory	Once per year for first 5 years and once every 3 years thereafter	FAS x Years/Months of Service x 2.0125%
Alaska	5 years	Optional	Not more than once per year until retirement age	40% of FAS
Arizona	None	Mandatory	One full file review after 24 months and then every 12 months	66 2/3% of regular earnings when disabled
Arkansas	5 years	Follows Social Security Administration decisions	Social Security Administration schedule	1.70% x Years of service x FAS
California	5 years	Optional	Upon request	33.3% of FAS
Colorado	5 years	Optional	Upon request	50% of FAS
Connecticut	5 years	Mandatory	Once after 24 months	3% x Years of service x FAS for non-duty related disability and 1.66%x Years of service x FAS for duty related disability
Delaware	None	Mandatory	Upon request	FAS x 1.85
Florida	5 years	Optional	Upon request	Years of service x 25%-42% x FAS

<b>State</b>	<b>Minimum Service Requirement for Non-Duty Related Disability*</b>	<b>Medical Re-examination Policy</b>	<b>Re-examination Schedule</b>	<b>Disability Benefit Formula*</b>
<b>Georgia</b>	13 years 4 months	Optional	Once per year for the first 5 years and once every 3 years thereafter	1.64% FAS x Years of service
<b>Hawaii</b>	10 years	Optional	Upon request	1.75% x Years of service x FAS
<b>Idaho</b>	5 years	Optional	Any time after 2 years they are limited to every 12 months	2% x monthly salary x months of service /12
<b>Illinois</b>	18 months	Optional	Upon request	50% of FAS
<b>Indiana</b>	5 years	Follows Social Security Administration decisions	At least once per year	1.1% x FAS x Years of service
<b>Iowa</b>	10 years	Optional	Upon request	60% x Years/30 x FAS
<b>Kansas</b>	5 years	Optional	Upon request	50% of FAS
<b>Kentucky</b>	5 years	Optional	Upon request	2.49% x FAS x Years of service
<b>Louisiana</b>	10 years	Optional	Once per year during the first 5 years and once every 3 years thereafter	2.5% FAS x Years of service
<b>Maine</b>	5 years	Optional	Once per year	59% of FAS
<b>Maryland</b>	5 years	Mandatory	Once per year	25% of FAS

<b>State</b>	<b>Minimum Service Requirement for Non-Duty Related Disability*</b>	<b>Medical Re-examination Policy</b>	<b>Re-examination Schedule</b>	<b>Disability Benefit Formula*</b>
<b>Massachusetts</b>	10 years	Mandatory	Once per year during first 2 years and once in each 3 years thereafter	72% of FAS if duty-related or 1.5% FAS x Years of service if non-duty
<b>Michigan</b>	10 years	Optional	No more than once per year	1.5% x Years of service x FAS
<b>Minnesota</b>	3 years	Optional	Once per year during the first 5 years and once every 3 years thereafter	2.7% x Years of service
<b>Mississippi</b>	4 years	Mandatory	Once per year during the first 5 years and once every 3 years thereafter	1.875% of FAS for up to 25 Years of service and 2% for more than 25 Years of service
<b>Missouri</b>	None	Optional	Periodically throughout the first 2 years	60% of pre-disability income
<b>Montana</b>	5 years	Optional	Upon request	1.78%- 2% x FAS x Years of service
<b>Nebraska</b>	2 years	Optional	Once per year	N/A
<b>Nevada</b>	5 years	Optional	Annually	2.5% x FAS x Years of service

<b>State</b>	<b>Minimum Service Requirement for Non-Duty Related Disability*</b>	<b>Medical Re-examination Policy</b>	<b>Re-examination Schedule</b>	<b>Disability Benefit Formula*</b>
<b>New Hampshire</b>	10 years	Optional	Once per year during the first 5 years and once every 3 years thereafter	1.67% FAS x Years of service
<b>New Jersey</b>	10 years	Optional	Upon Request	43.6% of FAS
<b>New Mexico</b>	5 years	Mandatory	Once after the first year and any time the board deems necessary	3% x Years of service x FAS
<b>New York</b>	10 years	Mandatory	At least once, or more according to the Comptroller's decision	1/60 FAS x Years of service to age 60
<b>North Carolina</b>	5 years	Optional	Once per year during first 5 years and once every 3 years thereafter	65% of final salary
<b>North Dakota</b>	6 months	Optional	Executive Director's decision	25% FAS
<b>Ohio</b>	5 years	Mandatory	Annually for the first 5 years	30%-75% FAS
<b>Oklahoma</b>	7 years 6 months	Follows Social Security Administration decisions	Social Security Schedule	60% FAS

<b>State</b>	<b>Minimum Service Requirement for Non-Duty Related Disability*</b>	<b>Medical Re-examination Policy</b>	<b>Re-examination Schedule</b>	<b>Disability Benefit Formula*</b>
<b>Oregon</b>	10 years	Optional	Board's decision	1.67% salary at disability x Years of service
<b>Pennsylvania</b>	5 years	Optional	Medical Examiner's decision	33% FAS
<b>Rhode Island</b>	5 years	Optional	Once each year	66.67% of salary
<b>South Carolina</b>	5 years	Optional	Once each year during the first 5 years and once every 3 years thereafter	1.82% FAS x Years of service to age 65
<b>South Dakota</b>	3 years	Optional	Based on administrator's decision	50% of FAS
<b>Tennessee</b>	5 years	Optional	Once every 2-3 years	1.5% x FAS x Years of service
<b>Texas</b>	10 years	Optional	Once each year during first 5 years and once every 3 years thereafter	2.3% x FAS x Years of service
<b>Utah</b>	None	Optional	Upon request	2/3 salary on the last day of work
<b>Vermont</b>	5 years	Optional	Once each year during first 5 years and once every 3 years thereafter	25% of FAS minimum
<b>Virginia</b>	None	Optional	Once each year	50% FAS

<b>State</b>	<b>Minimum Service Requirement for Non-Duty Related Disability*</b>	<b>Medical Re-examination Policy</b>	<b>Re-examination Schedule</b>	<b>Disability Benefit Formula*</b>
<b>Washington</b>	5 years	Optional	Upon request	2% FAS x Years of service for non-duty related disability and 66.67% FAS for duty related disability
<b>West Virginia</b>	10 years	Optional	Once per year during the first 5 years and once every three years thereafter	Up to Age 65: 50% x FAS; After Age 65: 2% x FAS x Years of service
<b>Wisconsin</b>	15 years	Optional	Once each year	1.6% FAS x Years of service
<b>Wyoming</b>	10 years	Optional	Once per year	2% FAS x Years of service
<p><i>Source: State statutes and National Conference of State Legislatures data.</i></p> <p><i>*There is no minimum service requirement for duty related disability.</i></p> <p><i>*FAS: Final Average Salary.</i></p>				

# Appendix C: Agency Response

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#### Board Members

Governor Joe Manchin III  
Auditor Glen B. Gainer III, Vice Chairman  
Treasurer John D. Perdue  
Cabinet Secretary Robert W. Ferguson, Jr.

### State of West Virginia Consolidated Public Retirement Board

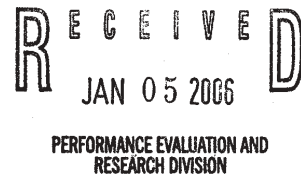
Capitol Complex, Building 5, Suite 1000  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0720  
Telephone: 304-558-3570 or 800-654-4406  
Fax: 304-558-6337  
email: CPRB@wvretirement.com  
www.wvretirement.com

#### Board Members

David L. Wyant, Chairman  
David Anderson  
E. Gene Davis  
Drema B. Evans  
Carl A. Guthrie  
Paul Hardesty  
William B. McGinley  
D. Todd Murray  
LTC Stephen C. Tucker  
Janet F. Wilson

January 5, 2006

John Sylvia, Director  
Performance Evaluation Research Division  
Building 1, Room W-314  
Charleston, West Virginia 25305



RE: Consolidated Public Retirement Board Performance Review

Dear Mr. Sylvia:

This is to confirm receipt today of the revised draft Consolidated Public Retirement Board (CPRB) Performance Review. I appreciate the time and expertise you and various members of your staff have devoted to this audit over this last year and look forward to working with you to effect any necessary legislative changes to implement some of your suggestions.

When we had our exit conference last Thursday, December 29, 2005, it was my understanding that since there were some necessary revisions to your report upon which we all agreed, the final revised report would be sent to me on Tuesday, January 3, 2006, for the agency's written comments and responses to be returned to you Thursday, January 5, 2006, for inclusion in the printed report. As you know, the revised report was not available to us until 10:30AM this morning, so I would ask that you consider this our preliminary response and that CPRB be permitted to provide a more detailed response at the Joint Committee on Government Operations meeting, if necessary.

In general, as we discussed at the exit conference, it is CPRB's position that it has a legal and fiduciary duty to administer all its retirement plans for the exclusive benefit of the plans' members

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John Sylvia, Director  
January 5, 2006  
Page 2

and their beneficiaries, pursuant to 26 USCS §401(a) and related sections of the Internal Revenue Code as applicable to governmental retirement plans. To the extent practicable with those duties, the Board proposed legislative changes to improve the Public Employees Retirement System disability provisions and in 2005, the Legislature adopted the Board's recommended legislative changes in HB 2984. The Board welcomes the Legislative Auditor's review of CPRB's implementation but would note that as of November 1, 2005, there had been less than seven months of time in which to effectuate these changes.

#### **CPRB's Response to Issue 1**

I would note that the heading reads "**The Consolidated Public Retirement Board Serves an Important Function by Administering Seven Government Retirement Plans**" but it actually administers eight (8) not seven (7) plans. The subsequent heading reads "**The CPRB Manages seven of the Eight Government Retirement Plans**" but again I would note that CPRB actually administers all eight (8) not seven (7) of the eight (8) plans.

We obviously are in agreement with the Legislative Auditor's recommendation.

#### **CPRB's Response to Issue 2**

On page 2 in the first paragraph of the section labeled "**Issue Summary**" the Legislature actually amended the referenced code section in 2005 not 2004. On page 5, in reference to the report statement concerning pre-April 8, 2005, work activity by disability retirants, CPRB informed disability retirants that they could NOT work based on the definitions in West Virginia Code §5-10-25, although CPRB is in agreement that HB 2984 makes it very clear that a disability retirant may



only work and earn income up to a certain amount. CPRB disagrees that a statutory definition for “earnings” is required in the referenced state code section; “earnings” or “earned income” are adequately defined in the state and federal tax codes.

In the last paragraph on page 3 concerning the disability retirants under the two teachers’ retirement systems, there appears to be an error concerning the Teachers’ Defined Contribution plan (TDC). Members of that plan have retired and some have retired as disability retirants so there are retirees both regular and disability who participate in TDC. These retirants do not receive an annuity but receive lump sums which they may convert into an annuity. The reference to “teachers disability retirement system” on the last line of page 3 is confusing as there is no such entity. If the recommendation is to amend the Teachers’ Retirement System (TRS) to make its disability earned income criteria consistent with the new criteria established in 2005 by the Legislature for PERS, CPRB would note that it would be a policy decision for the Legislature and if it chose to enact the necessary changes in the statutes, it should be for new hires only to prevent any Booth v. Sims detrimental reliance claims.

On page 4, CPRB is without sufficient information to agree or disagree with the statement that “Some PERS Disability Retirees Have Substantial Amounts of Earned Income.” The Legislative Auditors’ recommendation that income verification should be mandatory would be a policy decision for the Legislature. As to the second recommendation, the Board has already proposed to the Joint Pension Committee statutory changes for the upcoming legislative session to add criminal and administrative penalties for anyone, not just disability retirants, providing fraudulent information to CPRB.

As to the staffing issue discussed on page 2, 4 and 5, the report erroneously assumes the CPRB has the ability and authority to electronically request tax information and receive it in that

form. I discussed this again yesterday with a Tax Department attorney and he agrees with CPRB's counsel that it will take legislative changes to permit the Tax Department to share any information with CPRB. Until these changes are enacted, CPRB's only way to obtain this information is to request the tax information from the tax payer. CPRB's counsel is in disagreement with the Legislative Auditor's repeated recommendation to use temporary staff for these important and sensitive information verifications. In her view, temporary staff are not appropriate for use in this function.

CPRB is in agreement that it did not begin requesting tax returns from PERS disability retirees to verify their incomes until December 2005. It was first given the statutory authority to do so in April 2005 and in that same legislative enactment it was given the responsibility to organize and implement a tremendously time and resource intensive project (the potential TDC to TRS merger) that had specific 2005 and early 2006 deadlines. Nonetheless, in less than seven (7) months from enactment, CPRB did establish a process, draft and print appropriate communications, and mail to two hundred (200) PERS disability retirants the tax return request. CPRB does consider this a priority and will continue to devote personnel and resources.

CPRB does not disagree with any of the Recommendations under this issue except number 6 for the reasons listed above.

### **CPRB's Response to Issue 3**

CPRB is of the opinion that it can always do a better job but in general believes that based upon and limited by its statutory provisions and its fiduciary and legal duties, it is moving towards an effective monitoring of the disability status of PERS disability retirants. From an economic

viewpoint, it has instituted an earned income verification process for PERS disability retirants that it expects will assist in the monitoring. From a medical viewpoint, CPRB continues to examine various methods of examination and re-examination and has instituted the annual medical recertification process for all PERS disability retirants.

CPRB, however, disagrees with the Legislative Auditor's recommendation that it should adopt a different system similar to Social Security Disability's review system. CPRB investigated and rejected that system because it is a record review system with only a limited physical examination of the applicants by medical personnel. This system is inconsistent with CPRB's disability statutes which require physical examinations and subsequent reports by two physicians for the initial determination. CPRB also disagrees with the Auditor's conclusions that it should join the ten (10) states that require a mandatory re-examination.<sup>1</sup>

On page 11, the report states that CPRB "utilizes the services of ten physicians and the Physicians Office Center, West Virginia University School of Medicine to handle the medical aspects of disability retirement." In actuality, pursuant to statute, CPRB utilizes these physicians to review medical records, conduct medical examinations and prepare reports. CPRB does not allow these physicians, on behalf of CPRB, to offer any treatment or diagnosis services or other medical aspects of disability retirement.

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<sup>1</sup>PERD offers a chart that compares fifty (50) state government disability retirement requirements. Assuming the accuracy of the chart, which CPRB has been unable to verify, 10 states have mandatory re-exams, 37 have optional re-exams and 17 of those 37 allowing re-exams are only upon request. West Virginia is in the middle with 20 other states who establish an optional schedule with an examination the year following and then examinations at differing intervals in subsequent years.

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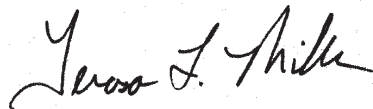
John Sylvia, Director  
January 5, 2006  
Page 6

The Legislative Auditor appears to suggest that CPRB should not rely upon the independent, expert medical judgment of licensed West Virginia physicians in their determinations of whether or not a PERS member is disabled pursuant to the provisions of the applicable PERS statutes. CPRB disagrees with that conclusion and finds no legal basis for the Legislative Auditors' conclusion that these physicians should not be relied upon.

In general, CPRB agrees that the disability retirements of PERS members may warrant additional review. It is also strongly in agreement that a legislative change to permit or require the state Tax Department to share personal income tax information with CPRB would greatly assist the Board in fulfilling its legal and fiduciary duties. It is not in agreement with some of the recommendations as noted above but would welcome further dialogue with the Legislative Auditor.

Thank you for the opportunity to respond.

Very truly yours,



Terasa L. Miller  
Acting Executive Director

TLM/AWL/