

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box
Filing Date

FILED

2005 DEC 16 P 4: 50

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Division of Personnel TITLE NUMBER: 143

CITE AUTHORITY: West Virginia Code 29-6-10 and 5F-2-7

EMERGENCY 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: 7

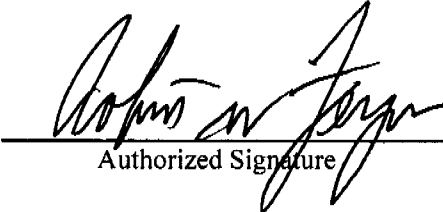
TITLE OF RULE BEING PROPOSED: Interdepartmental Transfer of Permanent State Employees

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

House Bill 407, passed by the Legislature on September 13, 2005, effective from passage and signed by the Governor on September 28, 2005, requires the promulgation of emergency rules by the Division of Personnel prior to December 31, 2005 to effectuate the provisions of a new section, 5F-2-7, relating to the interdepartmental transfer of permanent state employees.

Use additional sheets if necessary


Authorized Signature



West Virginia Division of Personnel

Willard M. Farley, Acting Director

STATE PERSONNEL BOARD
Rev. Paul Gilmer ♦ Elizabeth Walker
Sharon Lynch ♦ Eugene Stump

MEMORANDUM

TO: Members of the State Personnel Board

FROM:  Willard M. (Max) Farley, Acting Director
WV Division of Personnel

RE: Notice of an Emergency Rule

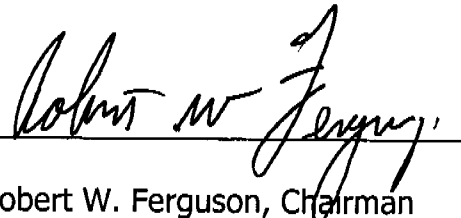
DATE: December 9, 2005

Your approval is requested for filing of a notice of an emergency rule and public comment on a proposed rule regarding *Interdepartmental Transfer of Permanent State Employees* with the Legislative Rule-Making Rule Committee and the Secretary of State's Office in accordance with the provisions of *W.V. Code §29A-3-1 et seq.* A copy of the proposed rule is attached.

On September 14, 2005, in its Fourth Special Session, the Legislature passed House Bill 407 to be effective from passage. The legislation relates to the power and authority of department secretaries to transfer employees between departments, establishes guidelines for the transfer of employees, protects the rights of transferred employees, requires annual reports, and requires promulgation of emergency and legislative rules. This request is made pursuant to the mandate of the Legislature.

Thank you for your consideration of this request.

APPROVED:



Robert W. Ferguson, Chairman
December 15, 2005

WMF:TMC/

Attachment

EMERGENCY RULE QUESTIONNAIRE

DATE: December 15, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Division of Personnel
Building 6, Room 416, State Capitol Complex
Charleston, West Virginia 25305 (304) 558-3950, x 202

EMERGENCY RULE TITLE: Interdepartmental Transfer of Permanent State Employees

1. Date of filing December 16, 2005
2. Statutory authority for promulgating emergency rule:
West Virginia Code 5F-2-7 and 29-6-10.
3. Date of filing of proposed legislative rule: December 16, 2005
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? It adopts new language.
5. Has the same or similar emergency rule previously been filed and expired?
No.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
N/A

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

West Virginia Code 5F-2-7(i): "Prior to the thirty-first day of December, two thousand five, the Division of Personnel shall promulgate an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the provisions of this section."

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

N/A

SUMMARY OF PROPOSED RULE

The proposed rule implements the provisions of *West Virginia Code* §5F-2-7 relating to the interdepartmental transfer of permanent state employees. The rule provides a mechanism for the transfer of employees, specifies the rights of employees to be transferred, and requires reports relative to such transfers

CIRCUMSTANCES CONSTITUTING THE EMERGENCY

The provisions of *West Virginia Code* §5F-2-7 require the Division of Personnel to promulgate an emergency rule prior to December 31, 2005.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 143CSR7, Interdepartmental Transfer of Permanent State Employees

Type of Rule: ☐ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Division of Personnel

Address: State Capitol Complex

Building 6, Room 416

Charleston, WV 25303

Phone Number: (304)558-3950 Email: tcrouse@wvadmin.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule implements the provisions of West Virginia Code 5F-2-7 which provides for the interdepartmental transfer of permanent state employees. It is anticipated that such transfers will result in savings in personal services and benefits costs.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title: 143CSR7, Interdepartmental Transfer of Permanent State Employees

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

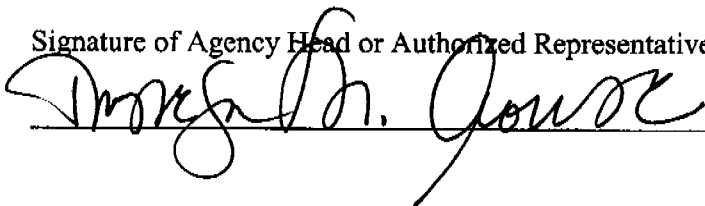
The interdepartment transfer of permanent state employees envisioned in the 5F-2-7 would be based on instant situations of lack of work, lack of funds, or material changes in organizations or duties. Such situations are not predictable. Consequently, it is not possible to provide a reliable estimate of the savings.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 15 December 2005

Signature of Agency Head or Authorized Representative



143CSR7

**TITLE 143
EMERGENCY RULE
WEST VIRGINIA DIVISION OF PERSONNEL**

FILED

2005 DEC 16 P 4: 50

**SERIES 7
INTERDEPARTMENTAL TRANSFER OF PERMANENT STATE EMPLOYEES**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Section 1. General

1.1. Scope: This rule implements the provisions set forth in West Virginia Code § 5F-2-7 regarding the interdepartmental transfer of permanent state employees.

1.2. Authority: This rule is issued under authority of West Virginia Code § 29-6-10 and § 5F-2-7.

1.3. Filing Date:

1.4. Effective Date:

Section 2. Definitions. Terms used in this rule have the meaning given in the *Administrative Rule* of the Division of Personnel, 143CSR1.

Section 3. Authorization of Transfers

3.1. When it becomes necessary by reason of shortage of work or funds, abolition of position, or material changes in duties or organization, a department secretary may enter into an agreement with another department secretary to transfer a permanent state employee from a position that is to be consolidated or eliminated, to a funded vacant position in another department, in accordance with the provisions of this rule.

3.2. The department secretary shall submit to the State Personnel Board for approval a description of the organizational unit or units to which a consolidation or elimination will apply and from which the transfer will be made. The organizational unit may be an entire agency, division, bureau, or other organizational unit.

3.3. Prior to the interdepartmental transfer of any employee, the department secretary shall file with the Director a proposed plan which shall include:

- a. a statement of the circumstances requiring the transfer;
- b. the approved organizational unit(s) from which the proposed transfer will take place;
- c. a list of each job class affected by the transfer;
- d. a list of all employees, in order of retention, in each job class affected by the transfer; and,

e. a copy of the proposed agreement to be entered into by the department secretaries between which the transfer is to be made.

3.4. It is the duty of the Director of Personnel to verify the details on which the lists are based and to notify the department secretary in writing of the plan's approval.

Section 4. Notice.

4.1. After the Board has approved the organizational unit to which the transfer will apply and the Director has notified the department secretary of the approval of the proposed interdepartmental transfer plan, the department secretary shall notify each affected employee of the transfer in writing at least fifteen days prior to the transfer.

4.2. The proposed interdepartmental transfer plan followed by the department secretary shall be available, upon request in writing, to any employee affected by the transfer.

Section 5. Order of Transfer.

5.1. After the department secretary has determined the number of positions by job class to be transferred and the Board has approved the organizational unit to which the transfer will apply, the order of transfer shall be applied in the following manner.

a. The department secretary shall first transfer affected employees voluntarily agreeing to be transferred. If there are more employees in the affected job class in the approved organizational unit than positions to be transferred, employees in the affected job class shall be offered the opportunity to voluntarily transfer in order of most tenure as a permanent employee of a state agency or in the classified service.

b. If sufficient permanent employees in the affected job class in the approved organizational unit do not volunteer to be transferred, the department secretary may order an involuntary transfer. Selection of permanent employees for an involuntary transfer shall be from the affected job class in the approved organizational unit and in order of least tenure as a permanent employee of a state agency or in the classified service. An involuntary transfer may be rejected by an employee if the involuntary transfer would require the employee to travel thirty miles or more, one way, than the distance, by customary route, the employee currently travels to his or her current job site.

c. Tenure credit does not accrue for periods during which terminal annual leave is paid or for periods during which an employee is not paid a wage or salary, except for military leave, educational leave, or periods during which the employee is paid temporary total disability benefits under the provisions of WV Code §23-4-1 for a personal injury received in the course of and resulting from covered employment as a permanent employee of a state agency or in the classified service, or unless otherwise provided by State or Federal statute.

d. In the event of a tie in the order of separation, the department secretary or his or her representative and those employees who are tied shall agree on a means of breaking the tie and shall notify the Director in writing of the agreement and the results.

Section 6. Transfer Rights.

6.1. An employee transferred under the provisions of West Virginia Code § 5F-2-7 shall receive the same level of benefits and rate of compensation or higher, and shall retain the same level of tenure.

6.2. A classified employee who is transferred under the provisions of West Virginia Code § 5F-2-7 shall retain his or her classified status.

6.3. A classified exempt employee who is transferred under the provisions of West Virginia Code § 5F-2-7 shall retain his or her classified exempt status provided that the transfer is made in accordance with the law. A classified exempt employee who is transferred to a position in the classified service must be appointed from a register, reinstated to the classified service, or added to the classified service in accordance with the law.

Section 7. Reporting.

7.1. The department secretary shall report the names of all employees who are to be transferred to the Director of Personnel, in writing, no later than the date the department secretary notifies the employee of the transfer.

7.2. Upon completion of interdepartmental transfers made under the provisions of West Virginia Code § 5F-2-7, the department secretary shall report the details of such transfers to the Director of Personnel, including but not limited to, the names of employees voluntarily and involuntarily transferred, as well as all furniture and equipment transfers.

Section 8. Rejection of Transfer.

8.1. An employee who qualifies for and chooses to reject a transfer shall be laid off in accordance with the law.

Section 9. Appeals.

9.1. Employees shall file appeals from involuntary interdepartmental transfers in accordance with West Virginia Code §29-6A-1 et seq.