

**WEST VIRGINIA
SECRETARY OF STATE**

Betty Ireland

ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In This Box

20 JULY 12 AM 11:22

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: West Virginia Division of Personnel TITLE NUMBER: 143

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code §6C-4-1 and §29-6-10

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: 8

TITLE OF RULE BEING PROPOSED: Reimbursement of Compensation Paid to State Employees for Training, Education and Professional Development

DATE OF PUBLIC HEARING: Thursday, June 19, 2008 TIME: 2:00 p.m.

LOCATION OF PUBLIC HEARING: West Virginia Division of Personnel
State Capitol Complex
1900 Kanawha Boulevard, East
Building 6, Room 425
Charleston, WV 25305

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☐ BOTH ☒

DATE WRITTEN COMMENT PERIOD ENDS: Thursday, June 19, 2008 TIME: 5:00 p.m.

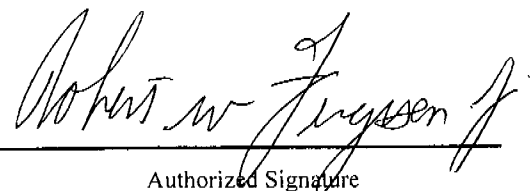
WRITTEN COMMENTS MAY BE MAILED TO:

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

West Virginia Division of Personnel
1900 Kanawha Boulevard, East
Charleston, WV 25305


Authorized Signature



West Virginia Division of Personnel

Otis G. Cox, Director

STATE PERSONNEL BOARD
Robert W. Ferguson, Jr., Chairman
John A. Canfield ♦ Mark W. Carbone
Sharon Lynch ♦ Eugene Stump

MEMORANDUM

TO: Members of the State Personnel Board

FROM: Otis G. Cox, Director *Otis G. Cox*
WV Division of Personnel

RE: Proposed Legislative Rule

DATE: May 15, 2008

Your approval is requested for filing of a notice of public hearing and public comment on a proposed legislative rule, *Reimbursement of Compensation Paid to State Employees for Training, Education and Professional Development*, 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. The purpose of this proposed rule is to implement the provisions of House Bill 4094, passed during the most recent legislative session. The legislation directs the Division of Personnel to propose a legislative rule to set forth a standard reimbursement agreement form relating to repayment to the State of compensation paid to or on behalf of an employee for advanced professional development training if that employee leaves State employment within one year of receiving the training. A copy of the proposed rule and the notice of public hearing is attached.

Thank you for your consideration of this request.

APPROVED:

Robert W. Ferguson, Jr.
Robert W. Ferguson, Jr., Chairman
State Personnel Board
May 15, 2008

OGC:TMC/

Attachment

SUMMARY OF PROPOSED RULE

Reimbursement of Compensation Paid to State Employees for Training, Education and Professional Development

This rule is proposed pursuant to House Bill 4094 (2008 Regular Session of the Legislature) adding a new article, §6C-4-1 et seq., to the Code of West Virginia relating to reimbursement of compensation paid to certain state employees for training, education, and professional development. The rule provides that a State agency may require an employee to enter into a reimbursement agreement to repay the agency's cost of advanced professional development training for the employee if the employee leaves the State's employment within one year of receiving the training. The rule sets forth a standard reimbursement form including terms, conditions, and exceptions. The rule also enumerates exemptions as provided in the statute.

CIRCUMSTANCES REQUIRING PROPOSED RULE

Reimbursement of Compensation Paid to State Employees for Training, Education and Professional Development

This rule is proposed pursuant to House Bill 4094 (2008 Regular Session of the Legislature) adding a new article, §6C-4-1 et seq., to the Code of West Virginia relating to reimbursement of compensation paid to certain state employees for training, education and professional development. The new subdivision, §6C-4-2(c), requires the Division of Personnel to propose rules for legislative approval.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Reimbursement of Compensation Paid to State Employees for Training,(*cont'd)

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Division of Personnel

Address: 1900 Kanawha Boulevard, East
Charleston, WV 25305
(Building 6, Room 416, State Capitol Complex)

Phone Number: (304) 558-3950, x 57212 Email: tari.m.crouse@wv.gov

Fiscal Note Summary

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

(*cont'd) Education and Professional Development

This measure should have no discernable impact on the cost of state government, but has the potential to return an undetermined amount of revenue in the form of repayment of training costs by employees who leave state government employment prior to working one full year after completing such training.

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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Reimbursement of Compensation Paid to State Employees for Training>(*cont'd)

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

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

(*cont'd) Education and Professional Development

This measure should have no discernable impact on the cost of state government, but has the potential to return an undetermined amount of revenue in the form of repayment of training costs by employees who leave state government employment prior to working one full year after completing such training.

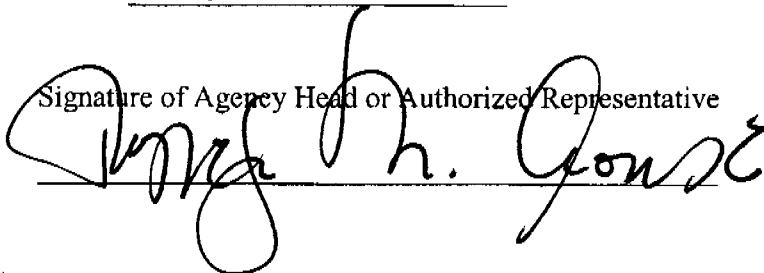
MEMORANDUM

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.

This measure should have no discernable impact on the cost of state government, but has the potential to return an undetermined amount of revenue in the form of repayment of training costs by employees who leave state government employment prior to working one full year after completing such training.

Date: 19 May 2008

Signature of Agency Head or Authorized Representative



QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 19 May 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Personnel
Building 6, Room 416
State Capitol Complex
1900 Kanawha Boulevard, East
Charleston, WV 25305

LEGISLATIVE RULE TITLE: ~~Reimbursement of Compensation Paid to State Employees for~~
Training, Education and Professional Development

1. Authorizing statute(s) citation W. Va. Code §29-6-10 and §6C-4-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

Filed with SOS and LRMRC on 19 May 2008

b. What other notice, including advertising, did you give of the hearing?

Notice to State agencies via e-mail and to State agencies, employees and the general public via notice on our web site.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

19 June 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached Pending Hearing No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

Pending

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Tari McClintock Crouse

Assistant Director for Employee Communication and Information
Building 6, Room 416

State Capitol Complex

Charleston, WV 25305

Phone: (304) 558-3950, extension 57212

FAX: (304) 558-1399

E-mail: tari.m.crouse@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

(same as above)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

143CSR8

TITLE 143
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF PERSONNEL

2006 MAY 19 AM 11:22

SERIES 8
REIMBURSEMENT OF COMPENSATION PAID TO STATE EMPLOYEES
FOR TRAINING, EDUCATION AND PROFESSIONAL DEVELOPMENT

STATE

§143-8-1. General.

1.1. Scope. – This rule implements the provisions set forth in West Virginia Code §6C-4-1 et seq. regarding reimbursement of compensation paid to state employees for training, education and professional development.

1.2. Authority. – West Virginia Code §6C-4-2(c) and §29-6-10.

1.3. Filing Date.. –

1.4. Effective Date. –

§ 143-8-2. Definitions.

2.1. Advanced professional development training: Any academy, class, conference, course, program, seminar or training attended by an employee that is not required by his or her current position, is not required for the performance of his or her current job responsibilities, and is intended to develop a higher level of skill, to develop an increase in professional or technical knowledge, or to obtain an advanced level of professional accreditation.

Advanced professional development training does not include routine job training, training required for the employee's performance of his or her current job responsibilities, attendance at professional conventions, seminars, continuing professional education or any form of training required to renew an employee's professional accreditation or any training costing less than one thousand dollars.

2.2. Agency: An administrative unit of state government, including, without limitation, any authority, board, bureau, commission, committee, council, division, section, or office within the executive branch of state government.

2.3. Continuing professional education: Educational courses, seminars, lectures or programs necessary to maintain or renew an employee's professional accreditation.

2.4. Employee: Any person who performs a full or part- time service for wages, salary, or other remuneration under a contract for hire, written or oral, express or implied, for an agency and

receives advanced professional development training after the effective date of this article.

2.5. Professional accreditation: Any certification, degree, advanced degree, endorsement or occupational license.

2.6. Training compensation: Tuition and expenses, paid to an or on the behalf of an employee for advanced professional development training.

§ 143-8-3. Agreement to reimburse agencies for training compensation.

3.1. An agency may require an employee to enter into a written reimbursement agreement to repay training compensation for advanced professional development training.

3.2. Any employee who voluntarily leaves employment with the agency within one year after receiving advanced professional development training and becomes employed within one year with an entity other than the State of West Virginia, in a capacity which utilizes the advanced professional development training, shall repay a pro rata portion of the training compensation as provided in the reimbursement agreement.

§ 143-8-4. Reimbursement agreement form.

4.1. The written reimbursement agreement to repay training compensation for advanced professional development training shall read as follows with the details of each agreement specified by the employing agency:

STATE OF WEST VIRGINIA

**ADVANCED PROFESSIONAL DEVELOPMENT TRAINING EXPENSE
REIMBURSEMENT AGREEMENT**

THIS AGREEMENT, made and entered into this ____ day of _____, 20____, by and between _____ (referred to in this Agreement as "the Employee"), and the _____ of the State of West Virginia (referred to in this Agreement as "the Agency"), provides as follows:

WHEREAS, the Agency will incur expenses in the form of training compensation related to advanced professional development training of the Employee in the form of _____, and

WHEREAS, "training compensation" means tuition and expenses, paid to or on the behalf of the Employee in the amount of _____ for the above specified advanced professional development training, and

WHEREAS, the Agency and the Employee recognize that it is unfair and inequitable for the Agency to incur expenses for advanced professional development training of the Employee if the

Employee does not remain with the Agency for at least one year after the completion of such advanced professional development training;

NOW THEREFORE, the parties agree as follows:

1. If the Employee voluntarily leaves employment with the Agency within one year after completion of advanced professional development training paid for by the Agency, and becomes employed within one year with an entity other than the State of West Virginia, in a capacity which utilizes the advanced professional development training, the Employee shall repay a pro rata portion of the training compensation calculated at the rate of 1/365th of the agency cost of the advanced professional development training for each day of the unmet employee obligation.
2. The Agency may utilize any and all lawful collection methods for repayment of the pro rata portion of the training compensation, including, but not limited to: withholding of the Employee's final paycheck; withholding payment of the Employee's annual leave upon separation; attachment of the Employee's wages; and, action against the Employee's contributions to and/or benefits of any State retirement system.
3. The Employee shall report any employment within one year with an entity other than the State of West Virginia, in a capacity which utilizes the advanced professional development training.
4. In the event the Employee is delinquent in repayment, the Agency shall be entitled to collect the entire amount immediately and may take legal action to do so. In the event this matter is referred to a collection agency, the Agency shall be entitled to recover all costs of collection and associated fees incurred by the Agency in collecting the unpaid balance.
5. This Agreement is the entire Agreement among the parties on the matters contained herein, and it may be modified only in writing signed by the parties. Any prior or contemporaneous promises, representations, or agreements related to the matters contained herein are revoked and waived. If any portion is held unenforceable for any reason, the remainder of the Agreement is deemed severable. This Agreement is governed by the laws of the State of West Virginia. The Employee and the Agency agree that jurisdiction and venue for all suits related to or arising out of this Agreement against the Agency shall be proper only in the Circuit Court of Kanawha County.
6. The Employee acknowledges that s/he has read this Agreement and has had a reasonable period of time to consider it. The Employee further acknowledges that this is a binding legal document and that s/he was advised of his/her right to have it reviewed by independent counsel before signing it and that s/he understands all the terms of the Agreement and has voluntarily agreed to those terms.

IN WITNESS WHEREOF, the Employee and Agency execute this Agreement, effective the latest of dates set forth below.

Date

[signature]

(Type name)

Employee

Date

[signature]

(Type name)

For

Agency

§ 143-8-5. Exemptions. The provisions of this rule do not apply to training offered to: a member of the West Virginia State Police during his or her participation in the West Virginia State Police Cadet Training Program in accordance with the provisions of West Virginia Code § 15-2-5(I); a member of the West Virginia National Guard; employees of the Legislature; employees of the Supreme Court of Appeals; employees of the Attorney General; employees of the Secretary of State; employees of the Auditor; employees of the Treasurer; and, employees of the Commissioner of Agriculture.

143CSR8

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

**SERIES 8
REIMBURSEMENT OF COMPENSATION PAID TO STATE EMPLOYEES
FOR TRAINING, EDUCATION AND PROFESSIONAL DEVELOPMENT**

§143-8-1. General.

1.1. Scope. – This rule implements the provisions set forth in West Virginia Code §6C-4-1 et seq. regarding reimbursement of compensation paid to state employees for training, education and professional development.

1.2. Authority. – West Virginia Code §6C-4-2(c) and §29-6-10.

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1.4. Effective Date. –

§ 143-8-2. Definitions.

2.1. Advanced professional development training: Any academy, class, conference, course, program, seminar or training attended by an employee that is not required by his or her current position, is not required for the performance of his or her current job responsibilities, and is intended to develop a higher level of skill, to develop an increase in professional or technical knowledge, or to obtain an advanced level of professional accreditation.

Advanced professional development training does not include routine job training, training required for the employee's performance of his or her current job responsibilities, attendance at professional conventions, seminars, continuing professional education or any form of training required to renew an employee's professional accreditation or any training costing less than one thousand dollars.

2.2. Agency: An administrative unit of state government, including, without limitation, any authority, board, bureau, commission, committee, council, division, section, or office within the executive branch of state government.

2.3. Continuing professional education: Educational courses, seminars, lectures or programs necessary to maintain or renew an employee's professional accreditation.

2.4. Employee: Any person who performs a full or part- time service for wages, salary, or other remuneration under a contract for hire, written or oral, express or implied, for an agency and receives advanced professional development training after the effective date of this article.

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REIMBURSEMENT AGREEMENT**

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WHEREAS, the Agency will incur expenses in the form of training compensation related to advanced professional development training of the Employee in the form of _____, and

WHEREAS, "training compensation" means tuition and expenses, paid to or on the behalf of the Employee in the amount of _____ for the above specified advanced professional development training, and

WHEREAS, the Agency and the Employee recognize that it is unfair and inequitable for the Agency to incur expenses for advanced professional development training of the Employee if the Employee does not remain with the Agency for at least one year after the completion of such advanced professional development training;

NOW THEREFORE, the parties agree as follows:

1. If the Employee voluntarily leaves employment with the Agency within one year after completion of advanced professional development training paid for by the Agency, and becomes employed within one year with an entity other than the State of West Virginia, in a capacity which utilizes the advanced professional development training, the Employee shall repay a pro rata portion of the training compensation calculated at the rate of 1/365th of the agency cost of the advanced professional development training for each day of the unmet employee obligation.
2. The Agency may utilize any and all lawful collection methods for repayment of the pro rata portion of the training compensation, including, but not limited to: withholding of the Employee's final paycheck; withholding payment of the Employee's annual leave upon separation; attachment of the Employee's wages; and, action against the Employee's contributions to and/or benefits of any State retirement system.
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4. In the event the Employee is delinquent in repayment, the Agency shall be entitled to collect the entire amount immediately and may take legal action to do so. In the event this matter is referred to a collection agency, the Agency shall be entitled to recover all costs of collection and associated fees incurred by the Agency in collecting the unpaid balance.
5. This Agreement is the entire Agreement among the parties on the matters contained herein, and it may be modified only in writing signed by the parties. Any prior or contemporaneous promises, representations, or agreements related to the matters contained herein are revoked and waived. If any portion is held unenforceable for any reason, the remainder of the Agreement is deemed severable. This Agreement is governed by the laws of the State of West Virginia. The Employee and the Agency agree that jurisdiction and venue for all suits related to or arising out of this Agreement against the Agency shall be proper only in the Circuit Court of Kanawha County.
6. The Employee acknowledges that s/he has read this Agreement and has had a reasonable period of time to consider it. The Employee further acknowledges that this is a binding legal document and that s/he was advised of his/her right to have it reviewed by independent counsel before signing it and that s/he understands all the terms of the Agreement and has voluntarily agreed to those terms.

IN WITNESS WHEREOF, the Employee and Agency execute this Agreement, effective the latest of dates set forth below.

Date

[signature]
(Type name)
Employee

Date

[signature]

(Type name)

For

Agency

§ 143-8-5. Exemptions. The provisions of this rule do not apply to training offered to: a member of the West Virginia State Police during his or her participation in the West Virginia State Police Cadet Training Program in accordance with the provisions of West Virginia Code § 15-2-5(I); a member of the West Virginia National Guard; employees of the Legislature; employees of the Supreme Court of Appeals; employees of the Attorney General; employees of the Secretary of State; employees of the Auditor; employees of the Treasurer; and, employees of the Commissioner of Agriculture.