

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

Form #3

Do Not Mark In This Box

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2008 JUL 25 PM 12:05

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Division of Personnel TITLE NUMBER: 143

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

AMENDMENT TO AN EXISTING RULE: YES _____ NO x _____

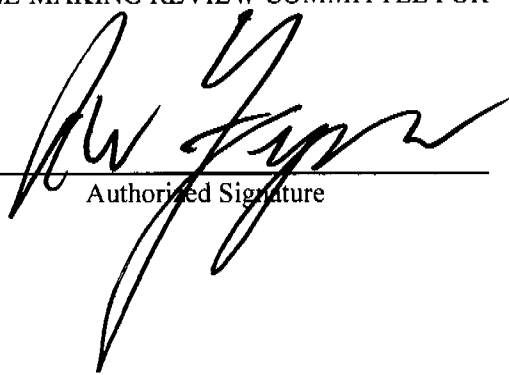
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature



West Virginia Division of Personnel

Otis G. Cox, Director

Joe Manchin III, Governor
Robert W. Ferguson, Jr., Cabinet Secretary

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*
Division of Personnel

RE: Proposed Legislative Rule for *Reimbursement of Compensation Paid to State Employees for Training, Education and Professional Development*

DATE: July 17, 2008

Your approval is requested for the filing of the agency-approved proposed rule regarding *Reimbursement of Compensation Paid to State Employees for Training, Education and Professional Development* with the Legislative Rule-Making Review 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 and a notice of public hearing were filed with the Secretary of State's Office and copies of the proposed rule were sent to state agencies and other interested parties for comment. There were no comments from the public at the public hearing. The draft response to the one department which provided written comment is included with your materials. Clarifications were made to the rule based on these comments and a comment made by Board member Mr. Canfield in the May meeting.

Thank you for your consideration of this request.

APPROVED:

Robert W. Ferguson, Jr.
Robert W. Ferguson, Jr., Chairman
State Personnel Board
July 17, 2008

tmc/

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

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.

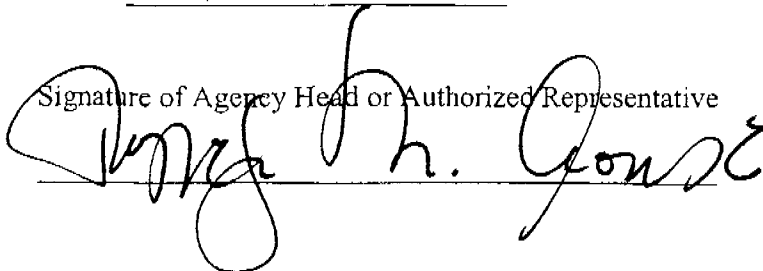
MEMORANDUM

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

Douglas H. Gonsky

143CSR8

FILED

2008 JUL 25 PM 12: 05

TITLE 143
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF PERSONNEL

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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.

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 for which s/he has entered into a written reimbursement agreement under the provisions of this rule, 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, within one year of his/her employment with an entity other than the State of West Virginia, 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.

**Public Hearing on the Proposed Reimbursement of Compensation Paid to State
Employees for Training, Education and Professional Development Rule
June 19, 2008 at 2:00 p.m.**

Personnel Board Chairman Robert Ferguson: Public notice of the proposed Reimbursement of Compensation Paid to State Employees for Training, Education and Professional Development Rule was filed with the Secretary of State on May 19, 2008. Notice of the public hearing was also provided by posting on the Division of Personnel web site. Both written and oral comments will be accepted, oral comments at this time and written comments received or postmarked before midnight tonight. Is there anybody here for oral comments? Going once...

Personnel Board Member Jack Canfield: I do have a question. Can we ask questions? I think it's one that we answered last time but I read through the... Is this the same version we had last time, no changes made to it? I still have the same question and don't know at what point it will be addressed and that is, we don't address how the pay-back is to take place, monthly payments or within a year of notification and my suggestion is that somewhere along the line staff address that with Legislative review authority or, unless I'm missing it, I could not find in there how long a person has to pay back that amount.

Division of Personnel Assistant Director Tari Crouse: We'll include that in the modifications that we submit to the Board at their next meeting, which would be the Agency Approved Proposed Rule.

Mr. Canfield: Which Board, our Board?

Ms. Crouse: This Board.

Mr. Canfield: Okay, that's because we're waiting for the comments, okay. I gotcha, thank you.

Chairman Ferguson: Alright, the public comment period verbal is closed, it's open tonight until midnight for mail. No other action required at this time.

Attendance for the June 19, 2008 Public Hearing on *Proposed Reimbursement of Compensation Paid to State Employees for Training, Education and Professional Development*

Personnel Board Members

Robert Ferguson, Jr., Chairman
Jack Canfield, Member
Sharon Lynch, Member
Eugene Stump, Member

Division of Personnel Employees

Debbie Anderson
Mike Campbell
Frank Chambers
Otis G. Cox
Tari McClintock Crouse
Evelyn Davis
Barbara Jarrell
Shelly Lowery
Karen Thornton
Yvonne Wilhelm

Others Present

Mike Adkins
Jewl Hammack

SIGN-IN SHEET

PUBLIC HEARING ON

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

[illegible]



west virginia department of environmental protection

Executive Office
601 57th Street SE
Charleston, West Virginia 25304
Phone: (304) 926-0440
Fax: (304) 926-0446

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

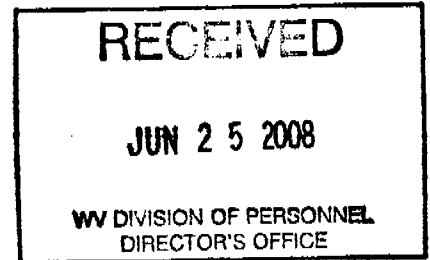
MEMORANDUM

To: Otis G. Cox, Director
WV Division of Personnel

From: Randy C. Huffman
Cabinet Secretary

Date: June 18, 2008

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



After a review of the proposed legislative rule, as cited above, the Department of Environmental Protection (DEP) would like to offer the following comments/concerns:

Section 3.2

- This section allows for a state employee to transfer to another state agency without being obligated to reimburse DEP. However, if a DEP employee resigns to accept a position in the private sector, then DEP could collect from the employee. DEP would ask that this be given further consideration due to the financial impact upon its budget as well as the budgets of other agencies who invest in their employees' education.
- Since DEP's current policy will be usurped by this rule, will current employees who are under prior employment commitments be required to fulfill their obligations or will the agreements now be void?
- If a state employee resigns for a private sector job where his/her education will not be used, he/she does not have to reimburse DEP. The language in this section is so vague that it is not practical because agencies will not be able to determine this information in order to be in compliance with the new rule. DEP requests that this clause in Section 3.2 be removed.

Thank you for allowing DEP to participate in this process and if you have any questions, please do not hesitate to contact me or Sandy Kee at 926-0499, extension 1554.



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: Randy C. Huffman, Cabinet Secretary
Department of Environmental Protection

FROM: Robert W. Ferguson, Chairman
State Personnel Board

RE: Comments on Proposed Rule

DATE: July 17, 2008

A handwritten signature in black ink, appearing to read "RWF", with a long, sweeping flourish extending to the right.

As Chairman of the State Personnel Board, I wish to thank you for taking the time to review and comment on the proposed rule regarding *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. I have attached a copy of House Bill 4094 for your information. In regard to your specific comments/concerns, I am pleased to offer the following responses.

In regard to the possibility of expanding the reimbursement provisions to transfers within State government (i.e., from one agency/department to another), we believe this would exceed our rule-making authority, as the intent of the statute is clear. The provisions of §6C-4-2.(b) unambiguously refer to any employee who "... becomes employed within one year with an entity other than the State of West Virginia...".

In regard to this rule usurping DEP's current policy, we believe that DEP would not necessarily be required by the statute nor by this rule to abandon its current policy. The statute and rule both provide that an agency "may" require a written reimbursement for "advanced professional development training." Since the reimbursement agreement is at the discretion of the agency, and since it is specific to advanced professional development training, as defined in detail in the statute, there may not be any conflict with your current policy.



Finally, we agree that, at best, it may be very difficult to apply the terms of the reimbursement agreement to employment which can occur up to twelve months after an individual leaves employment with State government. However, the rule essentially re-states the statutory provisions which we are not at liberty to change.

Again, thank you for your participation in the process to establish this rule. While we were not able to make the changes you requested, your comments led us to clarify certain provisions of the rule.

RWF:TMC/

Attachment

SUMMARY OF AMENDMENTS, 143CSR8

Amendment	Reason for Amendment
<p>FROM: 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.</p>	To clarify that the provision applies only to situations covered by a written reimbursement agreement as specified in this rule.
<p>TO: 3.2. Any employee who voluntarily leaves employment with the agency within one year after receiving advanced professional development training <u>for which s/he has entered into a written reimbursement agreement under the provisions of this rule</u>, 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.</p>	
<p>FROM: 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.</p>	To specify, within the agreement form, a time period for the repayment.
<p>TO: 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, <u>within one year of his/her employment with an entity other than the State of West Virginia</u>, 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.</p>	