

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: June 22, 2016

DATE OF REQUEST: June 3, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Derek Baxter, (512) 239-2613

CAPTION: Docket No. 2016-0336-RUL. Consideration for publication of, and hearing on, amended Sections 9.11 - 9.13 and 9.15 - 9.17 of 30 Texas Administrative Code (TAC) Chapter 9, Training.

The proposed rulemaking would implement House Bill 3337, 84th Texas Legislature, 2015, Regular Session, by updating training and education procedures for agency administrators and employees. (Yen Tran, Amber Kaskie) (Rule Project No. 2015-039-009-AD)

John Racanelli
Deputy Director

Melissa Applegate
Division Director

Derek Baxter
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 3, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: John Racanelli, Deputy Director
Office of Administrative Services

Docket No.: 2016-0336-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 9, Training
HB 3337: Education and Training
Rule Project No. 2015-039-009-AD

Background and reason(s) for the rulemaking:

House Bill (HB) 3337, 84th Texas Legislature, 2015, requires the Texas Commission on Environmental Quality (TCEQ, agency, or commission) to adopt rules requiring that before an agency administrator or employee may be reimbursed for tuition expenses, the Executive Director must authorize the tuition reimbursement payment (Texas Government Code, §656.048). HB 3337, which became effective September 1, 2015, was intended to provide the appropriate executive-level oversight for authorizing payments for potentially costly reimbursements. Along with revisions to agency policy, 30 Texas Administrative Code (TAC) Chapter 9, Subchapter B, Employee Training and Education, will also need to be updated to reflect the changes of HB 3337.

Scope of the rulemaking:

In addition to updating §9.15, Reimbursement, the proposed rulemaking will also update other areas of Chapter 9 to improve clarity and reflect current TCEQ training procedures.

Agency staff proposes amending §9.11, Definitions, and §9.12, Scope, to reduce repetition in the existing rules.

Additionally, Office of Administrative Services, Human Resources and Staff Services (HRSS) Division has recently removed outdated program language and clarified the functions of the Training Unit in its revisions to Operating Policies and Procedures (OPP) 16.01, Training and Development. Section §9.13, Eligibility, and §9.16, Training Records, will be revised accordingly.

Lastly, TCEQ proposes amending §9.17, At-Will Employment Status, to clarify that participation in the agency's training and education programs does not affect an employee's at-will status.

A.) Summary of what the rulemaking will do:

The rulemaking will reflect the legislative-mandated changes, employ HRSS updated training language, and clean up the rule language overall.

B.) Scope required by federal regulations or state statutes:

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Effective September 1, 2015, HB 3337 requires the commission to adopt rules requiring that before an agency administrator or employee may be reimbursed for tuition expenses, the Executive Director must authorize the tuition reimbursement payment (Texas Government Code, §656.048).

C.) Additional staff recommendations that are not required by federal rule or state statute:

In addition to updating §9.15, revisions are proposed to other sections of Chapter 9 to improve clarity and reflect current changes to TCEQ training practices.

Statutory authority:

- House Bill 3337
- Texas Government Code, §656.041 *et seq.* (State Employee's Training Act) and §2001.004
- Texas Water Code, §5.103 and §5.105

Effect on the:

A.) Regulated community:

No direct impact is anticipated.

B.) Public:

No direct impact is anticipated.

C.) Agency programs:

Internal forms, policies, and procedure were changed to comply with the statute, and all tuition reimbursement has been approved by the Deputy Executive Director since the effective date of the statutory change, September 1, 2015. Instead of division directors approving reimbursements, employees will need the recommendation of their division director and approval of the Executive Director. The HRSS Division is responsible for mirroring existing changes to TCEQ Training and Development.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing will be held on August 2, 2016, in Austin.

Potential controversial concerns and legislative interest:

HB 3337 was passed to address the practice in state government of allowing staff-level state employees to authorize advance payments for graduate degree program costs for certain high-level employees without appropriate executive-level oversight.

Will this rulemaking affect any current policies or require development of new policies?

The relevant language in OPP 16.01, Employee Training Program, and OPP 16.02, Education Assistance Program, have already been updated as of September 1, 2015.

Commissioners

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What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If the rulemaking does not go forward, the TAC will not reflect the legislative changes to the reimbursement processes nor will it reflect updates with how training is administered by the HRSS Division. Additionally, we will also not be in compliance with Texas Government Code, §656.048.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: June 22, 2016

Anticipated *Texas Register* publication date: July 8, 2016

Anticipated public hearing date (if any): August 2, 2016

Anticipated public comment period: July 8 - August 8, 2016

Anticipated adoption date: November 2, 2016

Agency contacts:

Amber Kaskie, Rule Project Manager, Human Resources & Staff Services Division, (512) 239-0137

Yen Tran, Staff Attorney, General Law Division, (512) 239-4610

Derek Baxter, Texas Register Coordinator, General Law Division, (512) 239-2613

Attachments

HB 3337

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Amber Kaskie
Sarah Calder
Yen Tran
Derek Baxter

AN ACT

relating to training and education for state agency administrators and employees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 656.043, Government Code, is amended to read as follows:

Sec. 656.043. DEFINITION. In this subchapter, "state agency" means a department, agency, or institution of the executive, legislative, or judicial branch of [this] state government, including an institution of higher education as defined by Section 61.003, Education Code.

SECTION 2. Section 656.047, Government Code, is amended to read as follows:

Sec. 656.047. PAYMENT OF PROGRAM EXPENSES. (a) Except as provided by this section or other law, a [A] state agency may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

(b) For an administrator or employee of a state agency who seeks reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education as defined by Section 61.003, Education Code, the agency may only pay the tuition expenses for a

1 program course successfully completed by the administrator or
2 employee at an accredited institution of higher education.

3 SECTION 3. Section 656.048, Government Code, is amended by
4 adding Subsection (b) to read as follows:

5 (b) A state agency shall adopt rules requiring that before
6 an administrator or employee of the agency may be reimbursed under
7 Section 656.047(b), the executive head of the agency must
8 authorize the tuition reimbursement payment.

9 SECTION 4. Section 656.101, Government Code, is amended by
10 amending Subdivision (1) and adding Subdivision (1-a) to read as
11 follows:

12 (1) "State agency" has the meaning assigned by Section
13 656.043.

14 (1-a) "State [~~and "state~~] employee" has the meaning
15 [~~have the meanings~~] assigned by Section 572.002 [~~except that the~~
16 ~~terms do not include a river authority or an employee of a river~~
17 ~~authority~~].

18 SECTION 5. Section 656.102, Government Code, is amended to
19 read as follows:

20 Sec. 656.102. AGENCY POLICY. (a) Before a state agency
21 spends any money on training for a state employee, the state agency
22 must adopt a policy governing the training of employees, in
23 addition to the rules required by Section 656.048, that requires
24 training to relate to an employee's duties following the training.

25 (b) The policy must:

26 (1) provide clear and objective guidelines to govern
27 tuition reimbursement for an administrator or employee of a state

1 agency who is enrolled in training for which the administrator or
2 employee seeks reimbursement from this state; and

3 (2) address tuition reimbursement for nontraditional
4 training, including online courses or courses not credited towards
5 a degree.

6 (c) The state agency shall post the policy adopted under
7 this section on the employment section of the agency's Internet
8 website.

9 SECTION 6. The changes in law made by this Act apply only to
10 training and education expenses paid by a state agency on or after
11 the effective date of this Act.

12 SECTION 7. This Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I certify that H.B. No. 3337 was passed by the House on May 5, 2015, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3337 was passed by the Senate on May 20, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§9.11 - 9.13 and 9.15 - 9.17.

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 3337, 84th Texas Legislature, 2015, requires the commission to adopt rules requiring that before an agency administrator or employee may be reimbursed for tuition expenses, the executive director must authorize the tuition reimbursement payment (Texas Government Code, §656.048). HB 3337, which became effective September 1, 2015, was intended to provide the appropriate executive-level oversight for authorizing payments for potentially costly reimbursements. Along with revisions to agency policy, Chapter 9, Subchapter B, Employee Training and Education, will also need to be updated to reflect the changes of HB 3337.

In addition to updating §9.15, Reimbursement, revisions are proposed to other areas of Chapter 9, to improve clarity and reflect current TCEQ training practices.

Section by Section Discussion

The commission proposes to amend §9.11, Definitions, in order to reduce repetition in the existing rule. Additionally, the commission proposes to amend the title of §9.11 from "Definition" to "Definition of Training."

The commission proposes to amend §9.12, Scope, in order to reduce repetition in the

existing rule. Additionally, the commission proposes to amend the title of §9.12 from "Scope" to "Training Components."

The commission proposes to amend §9.13, Eligibility, to remove outdated program language and to clarify the functions of the Training Unit to mirror updates to agency policy (OPP 16.01, Training and Development).

The commission proposes to amend §9.15, Reimbursement, to implement HB 3337, which requires the commission to adopt rules requiring that before an agency administrator or employee may be reimbursed for tuition expenses, the executive director must authorize the tuition reimbursement payment (Texas Government Code, §656.048). Additionally, the commission proposes to amend §9.15 to remove outdated program language and to clarify the functions of the Training Unit to mirror updates to agency policy (OPP 16.01, Training and Development).

The commission proposes to amend §9.16, Training Records, to remove outdated program language and to clarify the functions of the Training Unit to mirror updates to agency policy (OPP 16.01, Training and Development).

The commission proposes to amend §9.17, At-Will Employment Status, to clarify that participation in the agency's training and education programs does not affect an employee's at-will status.

Fiscal Note: Costs to State and Local Government

Maribel Montalvo, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would implement HB 3337 and require an agency executive director to authorize tuition reimbursement payments thereby ensuring appropriate executive-level oversight of potentially costly reimbursements to an agency administrator or employee for tuition expenses.

HB 3337 requires that an agency adopt rules to implement the bill by September 1, 2015. Along with revisions to agency policy, Chapter 9, Subchapter B, Employee Training and Education, will also need to be updated to reflect the changes of HB 3337. There are no costs expected for the agency or any other unit of state or local government to implement or administer the proposed rules.

Public Benefits and Costs

Ms. Montalvo has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be a greater oversight through executive level authorization

of the agency's tuition reimbursement payments. The agency currently has a policy in place for reimbursement; HB 3337 added another level of approvals; however, it does not require additional resources to implement it.

No fiscal implications are anticipated for businesses or individuals due to implementation or administration of the proposed rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the

proposed rules are in effect.

Draft Regulatory Impact Analysis Determination [if full RIA not required]

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

A “major environmental rule” means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and revises procedures concerning how training reimbursements are approved, the rulemaking does not meet the definition of a “major environmental rule.”

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking action and performed a preliminary analysis of whether the proposed rulemaking is subject to Texas Government Code, Chapter 2007. The primary purpose of the proposed rulemaking is to revise TCEQ rules regarding the approval process for reimbursing trainings and to reflect current changes to how TCEQ conducts training. Promulgation and enforcement of the rules will not burden private real property. Further, the proposed rulemaking does not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the proposed rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this

preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 2, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference

Rule Project Number 2015-039-009-AD. The comment period closes on August 8, 2016.

Copies of the proposed rulemaking can be obtained from the TCEQ's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Amber Kaskie, Staffing, Classification and Organizational Development, Human Resources & Staff Services Division, at (512) 239-0137 or Yen Tran, Employment Law and Ethics Section, General Law Division, at (512) 239-4610.

SUBCHAPTER B: EMPLOYEE TRAINING AND EDUCATION

§§9.11 - 9.13 AND 9.15 - 9.17

Statutory Authority

The amendments are proposed under the authority of the Texas Government Code, §656.048, concerning Rules Relating to Training and Education, which provides the commission authority to adopt rules requiring that before an administrator or employee of the agency may be reimbursed under Texas Government Code, §656.047(b), the executive head of the agency must authorize the tuition reimbursement payment; and Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules.

Additionally, the amendments are proposed under the Texas Water Code (TWC), §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission.

The proposed amendments implement House Bill 3337, Texas Government Code, §656.041 *et seq.* (State Employee's Training Act), and TWC, §5.103, Rules.

§9.11. Definition of Training [Definitions].

"Training" means instruction, teaching, or other education received by an employee that is designed to enhance the ability of the employee to perform the employee's job. Training can include job-oriented training that is provided within the agency by staff, other state entities, federal organizations, or private vendors. It can also include workshops, seminars, institutes, training sessions, college courses, and other programs or activities offered outside the agency. [The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) Education assistance--Reimbursement of specific costs for job-related learning opportunities provided by universities, colleges, or other institutions of higher learning.]

[(2) In-service training and education—Job-oriented training that is provided within the agency by staff, other state entities, federal organizations, or private vendors.]

[(3) Out-of-agency staff development--Workshops, seminars, institutes, training sessions, college courses, and other programs or activities offered outside the agency either within or outside the state.]

§9.12. Training Components [Scope].

Employee training and education consists of [includes two components: the] employee training opportunities [program] and the education assistance program.

(1) Employees are offered [The employee training program includes the full range of] training opportunities [provided] through in-house [in-service] training and education as well as out-of-agency staff development opportunities.

(A) In-house training is job-oriented training that is provided within the agency by staff, other state entities, federal organizations, or private vendors. In-house training can include [In-service training includes, but is not limited to,] core courses identified by the executive director, technical courses, computer training (from basic to advanced courses), staff development courses, and management development courses. [:]

[i] core curricula courses identified by the executive director for completion by all employees to ensure compliance with federal and state mandates, as well as critical agency policies and procedures;]

[(ii) technical courses that satisfy technical knowledge and skill requirements for effective job performance in a specific classification series;]

[(iii) computer-related basic and advanced courses for desktop applications, as well as advanced courses for information technology professionals and other staff who use advanced computer applications;]

[(iv) staff development courses that satisfy general knowledge and skill requirements for effective job performance in diverse classification series; and]

[(v) management development courses that satisfy knowledge and skill requirements for effective job performance in supervisory, managerial, and executive positions.]

(B) Out-of-agency staff development is offered outside the agency either within or outside the state and includes [, but is not limited to,] workshops, seminars, institutes, training sessions, and other programs or activities [offered outside the agency either within or outside the state].

[(C) The employee training program encompasses training delivered via a variety of media including, but not limited to, computer-based, videotape, Internet-based, satellite-broadcast, webcast, and instructor-led.]

(2) The education assistance program provides external learning [out-of-agency staff development] opportunities to enhance job-related knowledge and skills. It includes courses provided by an accredited [through a] university, college, or other institution of higher learning delivered through [via] a variety of different [delivery] media, such as instructor-led courses, online courses, and courses not credited towards a degree [or Internet-based].

§9.13. Eligibility.

(a) Employee training opportunities [program]. Employees are eligible to participate in the agency's training opportunities [program] to increase their job-related knowledge and skills, without regard to race, color, religion, sex, sexual orientation, age, national origin, disability, or veteran status.

(b) Education assistance program. Employees [Full-time employees] may participate in the agency's education assistance program without regard to the employee's race, color, religion, sex, sexual orientation, age, national origin, disability,

or veteran status. To qualify for reimbursement, employees must [, if they] meet the following eligibility requirements as set forth in the agency's policies:

(1) full-time employment requirement;

(2) [(1)] tenure requirement;

(3) [(2)] performance requirements; and

(4) [(3)] conduct requirements.

§9.15. Reimbursement.

(a) Employee training opportunities [program].

(1) Funding for employee training is provided by [through] the Human Resources and Staff Services Division [agency's central training account] or the employee's [respective] division.

(2) The employee's [respective] division also funds travel-related expenses for training participation.

(b) Education assistance program. Upon the recommendation of the employee's division director and with approval of the executive director, the [The] employee's respective division funds may be used to reimburse the employee for [reimbursement of] specific tuition-related expenses that have been approved by the division director. To qualify for reimbursement, the employee must successfully complete the [courses] requested course at [by the employee must be provided through] an accredited institution of higher education, [learning] and the course must be:

(1) directly related to improving specific knowledge and skills pertinent

[;]

[(2) related] to essential job functions of the current or prospective position;

(2) [(3)] needed for a special job assignment; or

(3) [(4)] required for a career ladder promotion.

§9.16. Training Records.

(a) The Human Resources and Staff Services Division maintains [Training Academy shall maintain] training records for all agency employees using [via] an electronic learning [automated training] management system.

(b) Employees can choose to place a copy of their training records in their personnel file. [Supervisors shall maintain individual training records for their employees that include training not provided through the Training Academy.]

§9.17. At-Will Employment Status.

Approval to participate in the agency's training and education programs does [shall] not in any way affect an employee's at-will status. Participation in these programs does [shall] not constitute a guarantee or indication of future employment in a current or prospective position.