

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control No. _____ Department or Agency State Personnel Board
Rule No. 670-X-11
Rule Title: Hours of Work
_____ New Amend _____ Repeal _____ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? No

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Jacqui Graham
Date 3/19/15

(DATE FILED)
(STAMP)

APA-2
07/04

ALABAMA STATE PERSONNEL BOARD

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama State Personnel Board

RULE NO. & TITLE:

670-X-1: Organization
670-X-2: Application of Policy and Rules
670-X-3: Definitions
670-X-4: Prohibition of Discrimination
670-X-5: Meetings, Minutes and Hearing Procedure
670-X-6: Responsibilities of the State Personnel Director
670-X-7: Position Classification Plan
670-X-8: Pay Plan and Pay Administration
670-X-9: Personnel Selection Procedures
670-X-10: The Working Test (Probationary) Period
670-X-11: Hours of Work
670-X-12: Holidays
670-X-13: Annual Leave (Vacation)
670-X-14: Sick Leave
670-X-15: Other Types of Leave
670-X-16: Performance (Service) Ratings
670-X-17: Records and Reports
670-X-18: Separations from Service
670-X-19: Employee Work Rules

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION:

670-X-1: Organization

The changes are not substantive and are only grammatical.

670-X-2: Application of Policy and Rules

The change will mirror the statutory language of Ala. Code, 1975, § 36-26-9.

670-X-3: Definitions

The changes are clarification changes, such as adding the definitions of job abandonment, separation during probation, and retirement.

670-X-4: Prohibition of Discrimination

The changes are simply updates to terminology.

670-X-5: Meetings, Minutes and Hearing Procedure

There are minor changes that reference statutory authority or clarify the hearing procedure. One addition was made to allow the hearing officer to dismiss an appeal should the employee fail to prosecute his or her case. Also, if the employee fails to attend the hearing, he or she forfeits his or her right to oral argument before the Board.

670-X-6: Responsibilities of the State Personnel Director

The changes are simple language clarifications.

670-X-7: Position Classification Plan

There are minor word changes throughout. There is an addition that the Governor must approve new classes and pay range changes. There will be a change under 670-X-7-.06 to increase the time that an incumbent must perform the duties for the reallocated classification from three months to one year. There is also an addition that an employee that is reallocated will be given permanent status in the new class and will not be eligible for a promotional or probationary increase. Paragraphs 6 and 7 under 670-X-7-.06 will be deleted.

670-X-8: Pay Plan and Pay Administration

There are minor wording changes throughout the chapter. There is an addition to 670-X-8-.01 that the State fiscal officer will be consulted on all of the maintenance and administration of the pay plan. Delete the archaic "impossibility" language in 670-X-8-.02. Also, there is an addition that an above the minimum appointment will be based on the employee's prior salary or experience of the new employee or competitive market. Under 670-X-8-.04(2), there is clarification of the procedures in the event raises are frozen. Also, there will be a cap of two steps for annual merit raises. There is a complete revision of demotions. There is a provision added to allow an employee to voluntarily diminish his or her salary under 670-X-8-.09(b). Under 670-X-8-.11, there is a provision that an employee will not receive a salary increase upon a transfer to a new agency.

670-X-9: Personnel Selection Procedures

There are wording and clarification changes throughout the chapter. Under 670-X-9-.01, an applicant must certify the truthfulness of his or her application. Any falsification may result in removal and bar from any and all employment registers. Under 670-X-9-.02, a probationary employee that is laid off will have to finish his or her probationary period upon reemployment. An applicant may request to be placed inactive on a register rather than be removed from the register. Limited tenure has been added under 670-X-9-.03. Under 670-X-9-.04, the State Personnel Director will be allowed to place an employee in a comparable classification for demotion purposes. Also, the rule is redefined to be more specific as to the rights of classified employees appointed to unclassified and exempt positions.

670-X-10: The Working Test (Probationary) Period

Clarification changes were made. Rule 670-X-10-.03 is deleted due to duplication in a previous rule.

670-X-11: Hours of Work

There are wording and clarification changes throughout the chapter. The requirement of the same number of hours for all positions in a classification is being deleted. The additions are as follows: (1) that FLSA exempt employees do not earn paid overtime or compensatory time without the approval of the State Personnel Board; (2) that the employee will be liable for any repayment of time improperly credited or paid; (3) that compensatory time may not be taken to work a second job during his or her regular work schedule; and (4) that subsistence for authorized law enforcement officers will be prorated in accordance with the actual time that the employee performs his or her duties as a law enforcement officer.

670-X-12: Holidays

The changes bring the chapter into statutory compliance with Ala. Code, 1975, § 1-3-8.

670-X-13: Annual Leave (Vacation)

There are statutory updates throughout this chapter. The additions are as follows: that employment time where leave was not accumulated in accordance with these rules will not be used in length of service calculations, and that an employee may not use annual leave to work a second job during his or her regular work schedule. There are clarification that an employee will be paid a maximum of 480 hours of accumulated annual leave in his or her career, and that an employee may not return to State service until he or she has been absent from State service for longer than the payment of annual leave.

670-X-14: Sick Leave

There are wording and clarification changes as well as changes to bring the chapter into statutory compliance. There is an addition that an employee will only be compensated for a maximum of 600 hours of accumulated sick leave in his or her career. There is an addition that an appointing authority may require an employee to maintain a minimum number of sick leave hours.

670-X-15: Other Types of Leave

There are wording and clarification changes as well as changes to bring the chapter into statutory compliance. One addition states that leave without pay may not be used for the employee to work during his or her regular work schedule.

670-X-16: Performance (Service) Ratings

The changes are clarification changes.

670-X-17: Records and Reports

The changes bring the chapter into statutory compliance.

670-X-18: Separations from Service

There are clarification and statutory changes throughout this chapter. There are additional changes that at the discretion of the appointing authority, an employee in an abolished position may move to a position in a lower classification and that at the discretion of the appointing authority and the approval of the State Personnel Director, a permanent employee may bump another employee during a layoff. Another change adds that an employee who abandons his or her position will have his or her action treated as a voluntary resignation.

670-X-19: Employee Work Rules

The changes remove outdated work rules, add new work rules, and move some work rules to the section that allows for suspension or discharge on the first offense, including “conduct unbecoming a State employee.”

TIME, PLACE, MANNER OF PRESENTING VIEWS:


Comments can be presented at the public hearing scheduled at 9:00 am on Thursday, April 30, 2015 at the Alabama State Personnel Department located at the Folsom Administrative Building, 64 North Union Street, Room 319, Montgomery, Alabama 36130. Written comments may be addressed to the Tara Hetzel, Alabama State Personnel Department, at the same address or at www.personnel.alabama.gov. Written comments must be received by the close of business on Tuesday, May 5, 2015.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, May 5, 2015

CONTACT PERSON AT AGENCY:

Tara Hetzel, General Counsel
334-353-0046



(Signature of officer authorized to
promulgate and adopt rules)

**CHAPTER 670-X-11
HOURS OF WORK**

TABLE OF CONTENTS

670-X-11-.01	Uniform Regulations
670-X-11-.02	Employee Compliance
670-X-11-.03	Pay Status
670-X-11-.04	Regular Work Week
670-X-11-.05	Nonwork Days Not Counted Toward Leave Computations
670-X-11-.06	Attendance Reports Required.
670-X-11-.07	Compensatory Time
670-X-11-.08	<u>Subsistence</u>

670-X-11-.01 **Uniform Regulations.** The Director shall administer regulations for maintaining uniform and equitable hours of work required of all employees in the state service, as adopted by the Board, and approved by the Governor. ~~The number of hours shall be uniform for all whose positions are allocated to the same class, unless specifically provided otherwise by action of the Board, and recorded in its minutes, together with its reason for each exception; but the hours for different classes may be different.~~

Author:

Statutory Authority: Code of Ala. 1975, §36-26-9.

History: Filed September 29, 1981. **Amended:** March 19, 2015, effective_____.

670-X-11-.02 **Employee Compliance.** All employees in the state service shall be in attendance at their work in accordance with the rules regarding hours of work, holidays and annual, sick, military and special leaves of absence with or without pay, as provided in these rules.

Author:

Statutory Authority: Code of Ala. 1975, §36-26-9.

History: Filed September 29, 1981.

670-X-11-.03 **Pay Status.** Employees shall be in pay status when actually working, when on authorized leave, and on ~~Sundays,~~ holidays, and other nonwork days coming between days when they are otherwise in "pay status."

Author:

Statutory Authority: Code of Ala. 1975, §36-26-9.

History: Filed September 29, 1981. **Amended:** March 19, 2015, effective_____.

670-X-11-.04 **Regular Work Week.** A 40-hour week shall be used for the purpose of calculating the pay of employees paid on a semi-monthly basis. A work day is the set schedule for which work is to be performed.

Author: Jackie B. Graham, State Personnel Director

Statutory Authority: Code of Ala. 1975, §§36-6-1(c), (d), 36-26-9.

History: Filed September 29, 1981. **Emergency Rule:** Filed October 19, 1982. **Amended:** Filed February 23, 1983.

Amended: May 22, 2006; effective June 26, 2006. **Amended:** March 19, 2015, effective_____.

670-X-11-.05 **Nonwork Days Not Counted Toward Leave Computations.** In computing annual, sick, educational, military, and other leaves for employees continuing in the state service, with or without pay, ~~Sundays,~~ holidays, or other nonwork days shall not be counted. Leave taken for less than a full day shall be computed ~~on an hourly basis~~ in no less than fifteen minute increments.

Author:

Statutory Authority: Code of Ala. 1975, §36-26-9.

History: Filed September 29, 1981. **Amended:** March 19, 2015, effective_____.

670-X-11-.06 **Attendance Reports Required.** All departments shall ~~submit regular reports of attendance to the Director in the form and on the dates he shall specify~~ maintain accurate and current time and leave records in the official time and attendance/payroll/personnel system.

Author:

Statutory Authority: Code of Ala. 1975, §36-26-9.

History: Filed September 29, 1981. **Amended:** March 19, 2015, effective_____.

670-X-11-.07 Compensatory Time.

(1) Notwithstanding any departmental policy to the contrary, it shall be the policy of the State of Alabama to use compensatory time, rather than wages paid overtime to compensate employees subject to the provisions of the Fair Labor Standards Act for performing overtime work. Departmental overtime policies contrary to the overall state policy must be approved by the State Personnel Board. Approval by the State Personnel Board may be made in those cases where compelling reasons are cited by the appointing authority. Overtime, overtime compensation, and compensatory time are defined by the terms as used in the Fair Labor Standards Act.

(2) Payment for Accumulated Compensatory Time Upon Separation from State Service. Upon separation from state service a nonexempt employee, as defined by the Fair Labor Standards Act, is entitled to be paid for accumulated compensatory time. Employees other than persons designated as law enforcement officers by the Code of Alabama and persons designated as seasonal workers by the State Personnel Department are entitled to be paid for accumulated compensatory time earned but in no event for an amount greater than 240 hours. Those persons defined as law enforcement officers or seasonal employees are entitled to payment for earned accumulated compensatory time upon separation from state service but in no event an amount greater than 480 hours. Under no circumstance shall Fair Labor Standards Act exempt employees be entitled to compensatory time or paid overtime without the approval of the Board. Any employee found to violate this rule may be liable for the repayment of the time improperly credited or paid.

(3) Accumulated compensatory time obligations are not transferable from department to department. Any accumulated compensatory time obligation must be liquidated by the department in which the obligation was incurred, prior to the transfer.

(4) Exempt employees, as defined by the Fair Labor Standards Act, are not entitled to ~~payment for accumulated~~ compensatory time, unless specified by law or approved by the Board. ~~upon separation from state service or upon transfer within state service.~~

(5) Use of Compensatory Time. Accumulated compensatory time shall be used before annual leave is used. ~~This rule shall not be interpreted to require the loss of accumulated annual leave as prescribed by Rule 670 x 13 .05.~~ Supervisors may require employees to use compensatory time. However, compensatory time may not be granted in order for an employee to engage in any other employment during his scheduled working hours.

Author:

Statutory Authority: Code of Ala. 1975, §36-26-9.

History: Filed March 19, 1986. **Emergency Rule:** Filed March 19, 1986. **Amended:** March 19, 2015, effective_____.

670-X-11-.08 Subsistence. Those law enforcement officers that earn subsistence shall receive a subsistence allowance for each working day of a pay period while engaged in the performance of the duties as law enforcement officers. This subsistence amount shall be prorated in accordance with the actual time physically worked by the law enforcement officer.

Author: Jackie B. Graham, State Personnel Director

Statutory Authority: Code of Ala. 1975, § 36-21-2. **History:** March 19, 2015, effective_____.