

### TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control No. \_\_\_\_\_ Department or Agency State Personnel Board  
Rule No. 670-X-18  
Rule Title: Separations from Service  
\_\_\_\_\_ 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](http://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-18  
SEPARATIONS FROM SERVICE**

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**670-X-18-.01**    **Layoffs.**

(1)            An appointing authority may lay off an employee whenever it is deemed necessary by reason of shortage of work or funds, or the abolition of a position or other material change in duties or organization. The order in which ~~an employees~~ is are to be laid off in the classified service shall be determined by the appointing authority in accordance with these rules.

(2)            The appointing authority shall submit a plan for the layoff to the ~~State Personnel~~ Director, where possible at least fifteen (15) working days in advance of the effective date, who shall review the plan to ensure that:

(a)            A statement of the circumstances requiring the layoff is made.

(b)            The plan includes:

~~1.            The list of employees in each class in order of retention showing computation of the efficiency ratings.~~

~~2.            The~~ the scope of the competitive area determined by the certification from which the affected employees were appointed, i.e., local, county, option, or statewide employment registers.

(3)            The appointing authority shall certify to the Director that the layoff is not discreditable to the employee. Under no circumstances is a layoff to be used as a disciplinary action against an employee.

(4)            Competition shall be among all employees holding positions of a particular class governed by the manner in which they were appointed. If the reduction in

force is to apply to more than one class, each class shall be treated separately, except where reductions are to be made in ~~a class of positions which is one of a series of classes (e.g., Clerk I, Clerk II, Clerk III~~ ASA I, ASA II, ASA III).

(5) A permanent employee may displace another employee in the same classification by a process called bumping. When a job position is being abolished, all departmental employees in the ~~competitive~~ class can compete to determine which employee ~~is in the lowest category~~ has the lowest score and should therefore be laid off. The person occupying the abolished position then has the opportunity of moving to the position occupied by an employee with a ~~lowest~~ lower efficiency rating, with the consent of the appointing authority.

(6) At the discretion of the appointing authority and with the approval of the Director, A permanent employee may also bump another employee in a lower class in the same series in which he formerly held status. ~~At the discretion of a department head and with the approval of the Director, a permanent employee may be allowed to bump another employee in a lower class in a related series in which he formerly held status if such option is specified as part of the layoff plan.~~ Seniority and performance appraisal scores attained in the higher class shall be included in the computation of the efficiency rating in the lower class. The Director shall make a determination about the relationship between classes for layoff purposes upon request of the appointing authority.

(7) Employees who are temporary, provisional, or probationary are considered to be nonstatus. Before permanent status employees in a job class are laid off or demoted, all nonstatus employees in the job class must be separated, except when retention is specified by law.

(8) A classified position may not be abolished if there is an individual or individuals employed by the agency outside the State Merit System performing similar duties. The non-merit employee will be separated prior to the merit employee being laid off; however, if the laid off employee is unwilling to accept the duties and conditions of the non-merit employee, this shall not apply.

(9) Employees who are conditional and the condition is affected by the layoff will be separated prior to the permanent merit employees in the same class. Employees who are conditional but the conditional reason is not affected by the layoff plan will comply with the normal layoff procedure.

(§ 10) Efficiency ratings shall be based upon the total length of continuous service and the performance appraisals earned in the department in the class or class series affected by the layoff.

(a) Performance Appraisal Score - Average the last three performance appraisal ratings, or fewer if three are not recorded. An employee who has never received a performance appraisal and has received permanent status shall receive a score computed from the final probationary performance appraisal rating.

(b) Seniority Score - Seventy (70) points shall be allowed for completion of probation in the class. One-fourth (1/4) point shall be credited for each additional full month or major fraction thereof for continuous state service in the class or classes affected by the layoff. (Fifteen (15) days or more will be considered as one month; ~~less than fifteen (15) days will be disregarded.~~)

(c) Continuous State service for the purpose of layoff means employment in the class in the department affected by the layoff without a payroll break not covered by an approved leave of absence with or without pay provided, however, that an employee laid off shall not be considered to have a break in service when reemployed within two years.

(9 11) Efficiency ratings shall be computed by multiplying the sum of points for performance by ~~fifty (50)~~ sixty (60) percent and the sum of points for seniority by ~~fifty (50)~~ forty (40) percent and combining the sum of both factors. The efficiency ratings so computed shall constitute an employee's "efficiency rating" as that term is used in Code of Ala. 1975, §36-26-15(b).

(~~10~~ 12) The order of the layoff of permanent employees in each class shall be governed by the employees' respective efficiency ratings (computed in the manner just



described) and veteran's preference. The layoff lists will be prepared by placing the employee with the highest efficiency rating at the top of the list, and the employee with the lowest efficiency rating at the bottom of the list. Layoff will be in inverse order beginning at the bottom of the list and the total number of positions in the class to be abolished will determine the number of employees to be laid off. Should two or more employees have the same efficiency rating, the order of layoff will be determined by giving preference for retention in the following sequence:

- (a) A veteran shall have preference over a non-veteran.
- (b) The employee with the longest service in the class.
- (c) The employee with the longest departmental service.
- (d) In case of further ties, the Director shall make a determination consistent with these rules.

~~(11 13)~~ Employees laid off ~~in good standing~~ will be placed on the layoff reemployment register for two years. Further, during this time period the department involved may not hire persons in the class from any register, or provisionally, as long as one available employee laid off by the department is on the layoff reemployment register for the class, provided, however, that a person who refuses an offers of reemployment shall forfeit such rights to subsequent placements ~~as provided under Rule 670 X 9 .02, Subsection 5; Removal of Names from the Register. (See last paragraph of this section for provisions of Act No. 83-493, 1983 Regular Session, Alabama State Legislature.)~~ In addition to any rights currently provided to state employees, any permanent state employee who is laid off from a position under the State Merit System shall have priority for any other position in the same class filled from an open competitive register by an appointing authority in accordance with rules adopted by the Board.

~~(12 14)~~ Any laid off person who is reemployed within the prescribed two year period from the layoff reemployment register shall not be required to serve a probationary

period if reemployed in the ~~Department~~ department and the job class from which laid off.

(~~13~~ 15) An employee who bumps to a lower class in a ~~related~~ the series as a result of layoff shall be reinstated to the former higher class with permanent status and at the pay step that the employee would have attained had he remained in the class, as long as it is within the two year period and the appointing authority chooses to fill it. ~~whenever a vacancy occurs in such higher class within the department, provided, however, that a~~ An employee who accepts a voluntary demotion in the department in lieu of a layoff and who, within two years, is subsequently promoted to the class from which the employee was voluntarily demoted in lieu of layoff may be promoted returned with permanent status to the pay step that the employee would have attained had he remained in that class at the discretion of the ~~department head~~ appointing authority. Such ~~promotion~~ appointment shall be considered a return to former status and does not entitle the employee to a promotional raise or a probationary raise.

(~~14~~ 16) The appointing authority must give the employee(s) to be laid off written notice which includes reasons: ~~For example i.e.,~~ shortage of work or funds, abolition of a position, or material change in duties or organizations. Reasonable advance notice should take into consideration the needs of the employee as well as the agency; however, where possible should be at least ten (10) working days. In addition, the appointing authority shall make all reasonable effort to provide the following information to each employee both orally and/or in writing:

(a) Benefits to which employees may be entitled, i.e., unemployment compensation procedure, employment rights, options available for health insurance, retirement.

(b) Efforts toward alternative jobs.

(~~15~~ 17) The plan as adopted by the appointing authority shall be available upon written request for perusal by an employee or former employee adversely affected.

~~In addition to any rights currently provided to state employees, any permanent state employee who is laid off from a position under the state merit system shall~~

~~have priority for any other position in the same class filled from an open competitive register by any appointing authority in accordance with rules adopted by the State Personnel Board. Revised by Act No. 83-493, 1983 Regular Session of Alabama State Legislature.~~

(18) An agency or appointing authority may enact a voluntary furlough plan for employees if the voluntary furlough plan is approved by the Department. Any furlough plan adopted by an agency or appointing authority shall be applicable to the entire agency affected and shall be voluntary at the sole discretion of the employee. The employee shall remain whole, including, but not limited to, his state retirement, state insurance, including, but not limited to, family coverage, other state benefits, leave, time of service, and status.

**Author:**

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

**History:** Filed September 29, 1981. **Amended:** Filed February 23, 1983; effective March 30, 1983. Amended by virtue of Legislative Act. No. 83-493; Amendment adopted April 21, 1993, effective June 15, 1993. **Amended:** March 19, 2015, effective\_\_\_\_\_.

**670-X-18-.02 Dismissals.**

(1) An appointing authority may dismiss a classified employee whenever he considers the good of the service will be served thereby, for reasons which shall be stated in writing, served on the affected employee and a copy furnished to the Director, which action shall become a public record.

(2) The dismissed employee may, within 10 days after receipt of written notice, appeal from the action of the appointing authority by filing with the Board and the appointing authority a written answer to the charges. The Board shall, if demand is made in writing by the dismissed employee within 10 days after receipt of written notice of discharge, order a public hearing and, if the charges are proved unwarranted, order the reinstatement of the employee under such conditions as the Board may determine. Upon a majority vote of the Board, the Board may impose a punishment other than termination including but not limited

to a reinstatement with forfeiture of back wages and benefits between the date of termination and the date of the Board's order reinstating the employee, or a suspension up to and including 30 calendar days. (For hearing procedure, see Rule 670-X-5-.08.)

(3) In addition to removal by an appointing authority, persons in the classified service may be removed or disciplined in the manner described in this subsection. Charges may be filed by any officer, citizen or taxpayer of the state with the Director who shall, within five days, cause a copy to be served upon the person complained against and shall set a day not less than 10 nor more than 20 days after such charges have been served on such employee for a public hearing of such charges. This hearing may be before the Director, a special agent appointed for the purpose by the Director or the Board itself. If before the Director or a special agent, the Director or special agent shall take testimony offered in support and denial of such charges and from the same submit to the Board, within five days, a finding of facts and law involved and a recommended decision. The Board at its next regular or special meeting shall consider said report and modify, alter, set aside or affirm said report and certify its findings to the appointing authority who shall forthwith put the same into effect. If the Board hears said charges directly or requires the transcribing and submission of the testimony taken before the Director or special agent, it shall make up and file its own findings and decision. The decision of the Board based upon its records and the testimony shall be final. (For hearing procedure, see Rule 670-X-5-.08.)

(4) In proceedings under this section, it shall be no defense or excuse for a forbidden act or for an omission to observe the laws or rules that such act or omission was directed by a superior, unless a written direction or order from such superior to that effect is proved. If any employee in the state service shall willfully refuse or fail to appear before any court or judge, any legislative committee or any officer, board or body authorized to conduct any hearing or inquiry or, having appeared, shall refuse to testify or answer any question relating to the affairs or government of the state or the conduct of any state officer or employee on the ground that his testimony or answers would tend to incriminate him or shall refuse to waive immunity from

prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry, such conduct shall be cause for removal.

(5) In all cases, before dismissing a permanent employee, the appointing authority shall consider the previous disciplinary and performance history of the employee and any progressive discipline received.

**Author:**

**Statutory Authority:** Code of Ala. 1975, §§36-26-27, 36-26-29.

**History:** Filed September 29, 1981. **Amended:** March 19, 2015, effective\_\_\_\_\_.

**670-X-18-.03     Suspensions.**

(1) An appointing authority from time to time may peremptorily suspend any employee without pay or other compensation as punishment for improper behavior, but such suspension or total suspension of the person by the appointing authority ~~of the person~~ shall not exceed thirty calendar days in any year of service. Such suspension with loss of pay may be effected only by service upon the employee by the appointing authority of written charges setting out clearly the delinquency for which the suspension was made, a copy of which must be at the same time mailed or delivered to the Director. The suspended employee shall have a right to file with the appointing authority a written answer or explanation of such charges.

(2) The suspended employee may within 10 days after notice pursuant to this section file a written notice of appeal from the suspension. If the suspended employee gives notice of appeal from the suspension, the appointing authority shall have the discretion of whether to stay the suspension pending the disposition of the appeal or proceed with the suspension and provide the employee with a post-suspension review subject to the time frames prescribed herein.

(a) If a timely notice of appeal is filed, the appointing authority shall elect between one of the following methods of reviewing the claim. The appointing authority shall, within ten (10) days after receipt of the appeal, do one of the following:

(i) Appoint a panel as provided for in subsection (3) to decide questions of fact, conclusions of law, and make recommendations to the appointing authority.

(ii) Appoint a designated hearing officer as provided for in subsection (4) who will decide questions of fact, conclusions of law and make recommendations to the appointing authority.

(b) This subsection shall apply only to a department or agency of the state that has 25 or more employees for each working day during each of 20 or more calendar weeks in the current or preceding calendar year.

(3) In instances where the appointing authority elects to appoint a panel, the panel shall consist of three individuals, two of whom shall be in the same or equivalent classification as the suspended employee. The panel, by majority vote, may recommend to the appointing authority, after a hearing, either of the following:

(a) That the charges are unwarranted and that the suspension be revoked.

(b) That the charges are warranted and that the suspension be upheld.

(4) In instances where an appointing authority elects to appoint a hearing officer, the hearing officer shall be selected from a ~~jointly approved~~ list of individuals ~~agreed upon~~ maintained by the Alabama State Employees Association and the respective department or agency Department. This process shall be repeated annually. The appointed hearing officer may be employed by the appointing authority, but shall be independent of the division or area in which the employee works. Any challenge to the appointment of an independent hearing officer shall be made to the Director within five days of notification of the appointment. However, a hearing officer may also be appointed from the Governmental Hearing Officer register, which is compiled and maintained by the Department.

(5) Irrespective of which method the appointing authority selects for adjudicating a suspension appeal hearing, all hearings shall be conducted in accordance with the notions of due process.

(6) The burden of proof shall lie with the appointing authority to prove the charges forming the basis of the suspension.

(7) Those departments or agencies that, by August 1, 2001, already had in place an existing process for suspension hearings may continue to use the existing process, provided that they observe tenets of due process including that the burden of proof shall lie with the appointing authority.

(8) This rule shall not apply to any department which employed, as of August 1, 2001, and continues to employ as a standard practice in such cases a pre-disciplinary hearing before an independent hearing officer who makes a recommendation for disciplinary action to the appointing authority based upon a fair hearing of the matter.

(9) This rule shall not apply to any department which currently employs and continues to employ as a standard practice in such cases an appeal hearing before an in-house hearing officer independent of the division or area in which the employee works. Said hearing officer shall be selected from an approved list of individuals ~~who shall be jointly agreed upon by the Alabama State Employees Association and the respective department or agency maintained by the Department. This process shall be repeated annually.~~

**Author:** Jackie B. Graham, State Personnel Director  
**Statutory Authority:** Code of Ala. 1975, §§36-26-9, 36-26-28.

**History:** Filed September 29, 1981. **Amended:** Filed June 17, 1983; effective May 24, 1985. **Amended:** Filed May 22, 2006; effective June 26, 2006. **Amended:** March 19, 2015, effective \_\_\_\_\_.

670-X-18-.04 Resignations.

(1) Upon voluntary separation from the classified service, an employee shall submit to his appointing authority a letter of resignation. Within ten days of receipt of such letter of resignation, the appointing authority or his designee shall enter thereon his acceptance and shall give such letter to the Director or his designee, together with a certificate that the employee's services have or have not been satisfactory and that the employee is or is not recommended for placement on a reemployment list.

(2) An employee's actions may be deemed a resignation when he has abandoned his job for three days of unexcused, unreported absence.

(~~2~~ 3) Any person who has served satisfactorily as a permanent employee of the classified service, and who has been separated therefrom by written resignation which is approved by the Director as constituting a separation from the service in good standing may request the Director to place his name on a reemployment list. Such request shall be made in writing within two years of the date of resignation. The Director shall review the circumstances of separation and may place the name of such person on the reemployment list he deems appropriate. ~~Provided,~~ provided that the resigned employee has not participated in any activities which would have been grounds for dismissal had he remained in the state service during the interim.

**Author:**

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

**History:** Filed September 29, 1981. **Amended:** March 19, 2015  
March 19, 2015, effective\_\_\_\_\_.