

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control No. _____ Department or Agency State Personnel Board
Rule No. 670-X-5
Rule Title: Meetings, Minutes and Hearing Procedure
_____ 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 Jackie 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-5
STATE PERSONNEL BOARD:
MEETINGS, MINUTES AND HEARING PROCEDURE

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670-X-5-.01 Regular Meetings. Regular meetings of the Board shall be held ~~monthly, on the second Wednesday of each month,~~ in the offices of the Department, provided that the chairman may change the date or location of any meeting when deemed necessary, in accordance with the Open Meetings Act.

Author:

Statutory Authority: Code of Ala. 1975, § 36-26-6.

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

670-X-5-.02 Special Meetings. Special meetings of the Board may be called by any member, by the Governor, or by the Director upon giving ~~reasonable advance notice in writing to each member of the Board and the Director~~ such notice as required by the Open Meetings Act.

Author:

Statutory Authority: Code of Ala. 1975, § 36-26-6.

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

670-X-5-.03 Public Meetings. All regular meetings of the Board shall be open to the public.

Author:

Statutory Authority: Code of Ala. 1975, § 36-26-6.

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

670-X-5-.04 Rules of Order. Meetings of the Board may be informal, subject to such rules of order as may be promulgated by the chairman of the Board. A member of the Board may record in the minutes his approval of or dissent from any act of the Board, together with his reasons therefor, if so desired.

Author:

Statutory Authority: Code of Ala. 1975, § 36-26-6.

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

670-X-5-.05 Quorum. ~~Two~~ Three members of the Board shall constitute a quorum for the transaction of business.

Author:

Statutory Authority: Code of Ala. 1975, § 36-26-5.

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

670-X-5-.06 Minutes. The Director shall attend all meetings of the Board, act as its secretary, and records its official actions in the minutes. The time and place of each meeting of the Board, names of the Board members present, all official acts of the Board, the votes of each Board member except when the acts are unanimous, and when requested a Board member's dissent, with his reasons if so requested, shall be recorded in the minutes. ~~The Director shall cause the minutes to be transcribed and presented for approval or amendment at the next regular meeting.~~ The minutes or a true copy thereof, ~~certified by a majority of the Board,~~ shall be open to public inspection.

Author:

Statutory Authority: Code of Ala. 1975, §§ 36-26-8, 36-26-9.

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

670-X-5-.07 Appeals To The Board.

~~(1) Any officer, employee or citizen who feels that the rules are working or are apt to work an unnecessary hardship upon him, or that the efficiency of the state service can be improved by amendment of the rules may appear before the Board at any of its regular meetings and shall have the right to a complete hearing upon the matter provided that a request for a hearing on such a matter must be filed in writing with the Director at least five days prior to the Board meeting. At least six signed copies of such requests must be filed, whereupon it shall be the duty of the Director immediately to transmit a copy of the request to each Board member and to the Governor.~~

If an officer, employee or citizen feels that any of these rules are working or apt to work a hardship upon him, or that the efficiency of state service may be improved by an amendment to these rules, then the person may request a hearing upon the matter and then appear before the Board at its regular meeting. This written request will be made to the Director.

(2) The Board shall, if demand is made in writing by an employee within ten days after notice of discharge, order a public hearing. The hearing shall be before a special agent (hereinafter called Hearing Officer) appointed for the purpose by the Director. ~~The Hearing Officer shall first order a pre hearing conference to crystallize issues, exchange witness lists and documents, and set the date for hearing.~~ The Hearing Officer may enter a default for the agency based upon the employee's failure to prosecute his case should the employee fail to appear. The hearing shall be recorded either by the mechanized means or by a qualified ~~shorthand~~ court reporter. At the hearing, the Hearing Officer shall take testimony offered in support and denial of the reasons for dismissal and from the same submit to the Board a finding of facts and law involved and a recommended decision in the form of a proposed order.

(3) The proposed order shall be furnished to each party. If either party feels he is adversely affected by the proposed order, he may file with the Director exceptions to the proposed order within five days of his receipt thereof. Such exceptions may include a request for presentation of briefs and oral arguments before the Board. The exceptions shall be made a part of the report to be considered by the

Board. Briefs shall be limited to no more than 10 pages, ~~8 1/2 x 11, double spaced, and shall be delivered to the Director no later than the day preceding the next Board meeting.~~ If a party requests oral argument, he must file written exceptions. Oral argument shall be limited to ten minutes for each side. Should the Board, in its sole discretion, decide to hear the appeal itself, or to read the transcript of the Hearing Officer proceedings, then the provision of this paragraph would not be applicable. The parties, by written stipulation, may waive compliance with this paragraph.

(4) The Board at its next regular or special meeting shall consider said ~~report~~ proposed order and modify, alter, set aside or affirm said ~~report~~ proposed order, and if the charges are proved unwarranted, order the reinstatement of the employee under such conditions as the Board may determine.

(5) In the event funds are not available to retain Hearing Officers and/or court reporters for appeals under the foregoing provisions, the Director shall have the authority to assign any or all appeals for hearing before the Board, which shall follow the hearing procedure authorized in Rule 670-X-5-.08 below where applicable.

(6) An employee in the classified service may also be removed or awarded lesser discipline on the basis of charges filed by any officer, citizen or taxpayer of the state. Within five days of receiving such charges, the Director shall have a copy served on the employee concerned and shall set a public, hearing on the charges not less than ten nor more than twenty days after they are served on the employee. The hearing may be before the Director, a special agent designated by the Director, or the Board itself. If the Director or a special agent hears the matter, he shall, after taking testimony, report to the Board within five days a finding of facts and law and a recommended decision. At its next regular or special meeting, the Board shall consider this report, which it may modify, alter, set aside or affirm. The Board shall then certify its decision to the appointing authority who shall forthwith put it into effect. If the Board hears such charges directly or reviews the record of testimony taken before another, it shall make up and file its own findings and decision.

Author:

Statutory Authority: Code of Ala. 1975, §§ 36-26-6, 36-26-9, 36-26-27.

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

670-X-5-.08 Hearing Procedure.

(1) Conduct of Hearings. Hearings on employee appeals from dismissal and on charges brought against employees shall be open to the public and shall be informal. The employee, the appointing authority, and all others concerned shall be given reasonable notice of the time and place of hearing. The parties shall have the right to have subpoenas issued, present witnesses and give testimony. A hearing before a Hearing Officer is intended solely for the purpose of receiving evidence either to refute or to substantiate specific charges. It shall not be made ~~on~~ an occasion for irresponsible accusations, unrelated attacks upon the character or conduct of the employer or employee or others, or other derogatory matters having no bearing on the charges under investigation. Any request by a party for a Board member or a Hearing Officer as designated by the Board to recuse ~~themselves~~ himself shall be made in writing ~~with to the Director not later than five work days prior to the date upon which the hearing is scheduled~~ immediately. The written request must cite reasons and the legal basis for the recusal. (See Rules 670-X-18-.02 and 670-X-18-.03 for dismissal and suspension procedure.)

(2) Witnesses. The Hearing Officer shall examine the list of proposed witnesses submitted by each of the parties and shall determine the justification for the calling of each witness. Any witness whose testimony is not material, is not relevant or is cumulative of other testimony shall not be required to testify. The Hearing Officer shall examine any objection filed by or on behalf of any witness claiming that the testimony of that witness is not material, is not relevant, is cumulative or if the witness claims a total lack of knowledge of the matter in question. The Hearing Officer shall make a determination of the relevancy, materiality, cumulative nature or lack of knowledge on the part of the witness prior to the commencement of the hearing. The determination to allow or disallow the testimony of a witness shall be based upon an offer of proof by the party offering the testimony of the witness.

(3) Pre-Hearing Conference. The ~~Director shall designate a person~~ Hearing Officer shall ~~to~~ conduct a pre-hearing conference. The ~~person so designated~~ Hearing Officer shall have the authority to require the parties to act in furtherance of the hearing process⁷, to include but not limited to:

- (a) Setting of an appropriate schedule for the conduct of the hearing;
- (b) The crystallization of issues to be presented at the hearing;
- (c) The production of documents;
- (d) The attendance of witnesses;
- (e) The specification of issues and charges;
- (f) To issue a pre-hearing conference order which shall be binding on all the parties and shall be amended only upon a showing of good cause;
- (g) A Hearing Officer may review pre-hearing issues ruled upon at the pre-hearing conference;
- (h) Such other authority as may be necessary for the conduct of the hearing.

(4) Sanctions. Sanctions shall be defined as used in the Alabama Rules of Civil Procedure. The Hearing Officer may recommend to the Board that sanctions be imposed against a party who has:

- (a) Failed to comply with the pre-hearing conference order;
- (b) Failed to appear;
- (c) Failed to prosecute his case;
- (d) Failed to comply with orders issued by the Hearing Officer;
- (e) Acted in bad faith.

(5) Testimony and Evidence. In taking testimony and in considering the evidence, the Hearing Officer shall follow

accepted legal procedure insofar as is practicable, but shall not be bound by the technical ~~rules~~ Rules of evidence Evidence observed in courts of law. The Hearing Officer may listen to hearsay testimony and may accept depositions and affidavits if such testimony is material and relevant to the issues. The Hearing Officer may also accept the results of lie-detector tests, if such results are material and relevant to the issues.

(6) Counsel or Representation. Parties to a hearing before a Hearing Officer may have representatives of their own choosing. In the event they do not choose such counsel or representatives, they may themselves request the issuance of subpoenas, examine and cross-examine witnesses, make statements, summarize testimony, and otherwise conduct their own hearing.

(7) Procedure. A hearing before a Hearing Officer shall be conducted in accordance with the following order:

(a) Reading of the dismissal action or other charges against the employee and of other pertinent information from the employee's record. The record shall be available to all parties for reference in connection with the hearing.

(b) Presentation of charges against the employee, including testimony of witnesses and other evidence. The employee or his counsel and the Hearing Officer may examine the witnesses.

(c) Presentation of the employee's answer to the charges, including testimony of his witnesses. The parties and the Hearing Officer may also examine these witnesses.

(d) Summation by the parties, if desired by them.

(8) Findings and Decisions. On the basis of testimony and evidence and oral arguments and briefs, if any, the Hearing Officer may recommend that the dismissal of an employee be sustained or may recommend his reinstatement with or without loss of pay, less any interim earnings. Where an employee is found guilty of charges brought against him by an officer, citizen, or taxpayer, and such charges warrant disciplinary action, the Board may order the dismissal of the employee or may order lesser penalties. Where an

employee does not appear for his hearing, he has forfeited his right to oral argument before the Board.

Author:

Statutory Authority: Code of Ala. 1975, §§ 36-26-6, 36-26-7, 36-26-9, 36-26-27.

History: Filed September 29, 1981. **Amended:** Filed March 19, 1986; April 23, 1986. **Amended:** March 19, 2015, effective_____.

670-X-5-.09 Re-Hearings.

(1) The Board shall entertain requests for reconsideration of its decision rendered in an appeal hearing by either party to the hearing if timely submitted within thirty days from the rendition of said decision.

(2) The request ~~should~~ shall only be based upon newly discovered evidence which would justify relief from the decision rendered.

(3) Such requests should include, by written memorandum or brief, the detailed basis for such reconsideration. The opposing party shall have the opportunity to present a written reply memorandum or brief challenging such basis.

(4) The Board shall then review the written reply in executive session, and based upon such review, shall either sustain its previous decision or grant such relief from the decision as may be appropriate. In reviewing the request, the Board, at its sole discretion, may hear further oral argument, hear new testimony, or suggest supplemental responses.

(5) The filing of the request for reconsideration shall be at the option of the parties, and should not be deemed as a prerequisite to, or hindrance of, either ~~parties'~~ party's right to judicial review of a Board decision.

Author:

Statutory Authority: Code of Ala. 1975, §§ 36-26-6, 36-26-9.

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