

State of Colorado



John W. Hickenlooper.
Governor

Rich Djokic
Board Chair

Dana Shea-Reid
Board Director

State Personnel Board
633 17th Street, Suite 1320
Denver, Colorado 80202-3604
Phone (303) 866-3300
Fax (303) 866-5038

Meeting Minutes
January 30, 2013

JOINT PERMANENT RULEMAKING

At 1:30 P.M., the State Personnel Board and State Personnel Director met in public session at the Colorado Department of Transportation, 4201 East Arkansas Avenue, Auditorium, Denver, Colorado, for a rulemaking hearing pursuant to Article XII, sections 13 and 14 of the Colorado Constitution, the State Personnel System Act at section 24-50-101, *et seq.*, of the Colorado Revised Statutes and section 24-4-103 of the Colorado Revised Statutes.

Rich Djokic, Chair of the State Personnel Board, introduced the other Board members and staff members who were present as follows:

Anthony Marquez, Vice Chair
Garth Lucero, Board Member
Sally Yerger, Board Member
Teresa Salerno, Board Member

Dana Shea-Reid, Director of the Board
Jane Sprague, General Professional III
Catherine Shea, Assistant Attorney General.

Kathy Nesbitt, State Personnel Director, stated that she was convening the public hearing to consider adoption of administrative procedures pursuant Article XII, sections 13 and 14 of the Colorado Constitution, the State Personnel System Act at section 24-50-101, *et seq.* of the Colorado Revised Statutes, and section 24-4-103 of the Colorado Revised Statutes. Other individuals who were present for the Department of Personnel & Administration were as follows:

Kristin Rozansky, Chief Operations Officer
Skye Brunick, Acting Supervisor of Consulting Services,
Division of Human Resources
Sabrina D'Agosta, Director of Policy & Communications

Paula Manzanares, Executive Assistant
John Lizza, Senior Assistant Attorney General.

Administrative notice was taken of the following written documentation and comments (marked as numbered exhibits) which were received in the Board's or Director's office with regard to the rulemaking hearing and the matters associated with the proposed rules and procedures. On January 30, 2013, the Exhibits were numbered in their final form as follows:

NO.	Type	Author/Group	Speaker
1	Joint Notice of Proposed Rulemaking, December 31, 2012	State Personnel Board and State Personnel Director	
2	Proposed Statement of Basis and Purpose for State Personnel Board	State Personnel Board	
3	Amendment S	State Personnel Director	
4	Proposed Rules	State Personnel Board and State Personnel Director	
5	Comments – John Chase	John Chase	
6	Comments – Colorado WINS	Mark Schwane	
7	Comments – Mona Heustis	Mona Heustis, CDPHE	
8	Proposed Statement of Basis and Purpose for State Personnel Director		
9	Comments – Susie Esparza	Susie Esparza, CDOLA	

These documents, and any others submitted prior to the conclusion of the hearing, in conjunction with the oral comments provided, were reviewed and considered prior to either the Director or Board rendering a decision on the adoption of the proposed rules and/or procedures. Exhibit 9 was submitted in person by Peggy Valdez Olivas of CDOLA on January 30, 2013.

All those in attendance recorded their name, complete address, and any affiliation or agency for which they may be speaking on a roster. The rulemaking hearing was recorded.

Skye Brunick and Dana Shea-Reid made their staff presentations of proposed rules, followed by public testimony. There was no public testimony or comment and the comment portion of the joint rulemaking hearing was therefore closed.

Mr. Djokic announced that the rules and procedures would be filed at the Office of the Secretary of State with a request for an Attorney General opinion on the constitutionality and legality of the rules. On or before the 20th day following the adoption of the regulations, the regulations will be filed with the Office of the Secretary of State for

publication in the Code of Colorado Regulations. On or before the 20th day following the adoption of the rules, the rules will be filed with the Legislative Legal Services as required by law. The rules are to become effective on March 30, 2013. The public hearing was then concluded.

At 2:25 P.M., the Board began deliberations of the proposed rules. Reviewing each chapter of revisions, the Board discussed and reviewed the proposed rules. Ms. Nesbitt clarified the intent of some of the changes in response to questions by Board members. The Board also examined the written comments, Exhibits 5, 6, 7 and 9, with reference to the rules cited in the comments. The Board made the following decisions affirming their decisions made in the Temporary/Emergency Rulemaking:

- For Board Rule 4-1, the first sentence beginning with “Qualified applicants“ was revised to read, “State residents and otherwise qualified applicants.”
- For Board Rule 4-9, a third sentence was added to the suggested language, inserting the original language of the residency waiver rule, as follows: “In its review of the request, the Board may grant the residency waiver if the department can show there is an insufficient applicant pool, including, but not limited to, consideration of the following factors:
 - A. The position(s) involved requires special education or training; or
 - B. The position(s) involved requires special professional or technical qualifications; and
 - C. It is not feasible to train and hire from within.”
- In Chapter 8, in its consideration of the new Board Rule 8-46.1 concerning comparative analysis, the Board agreed to add statutory language of section 24-50-112.5(4)(e) at the end of the proposed language, as follows: “The Board shall review and summarily grant or deny a petition within 120 days of receipt of the petition. Any petition granted shall be determined in accordance with § 24-50-125.4.”

Mr. Djokic then stated he would entertain a motion to amend Board Rules, as follows: to repeal Board Rules 1-38.2, 1-43, 1-46, 1-54, 1-55, 1-56.1, 1-62.2, 1-62.3, 1-62.4, 1-64.1, 2-13, and 8-42; to amend Board Rules 1-56, 1-61, 8-46, and 8-53; to adopt Board Rule 8-46.1; and to repeal and readopt Chapters 4 and 7 in their entirety, effective on March 30, 2013, as published, the statement of basis and purpose, and the Preamble to the rules. He said that the motion must state the following findings by the Board:

- the record of the rulemaking proceeding demonstrates the need for the rules;
- the proper statutory authority exists for the rules;
- to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any party required to comply with the rules;
- the rules do not conflict with other provisions of the law; and
- the duplication or overlapping of the rules are explained by the Board unless none exists.

Mr. Marquez moved to adopt the following proposed rules, and amendments made related thereto, and the accompanying statements of basis and purpose:

- to repeal Board Rules 1-38.2, 1-43, 1-46, 1-54, 1-55, 1-56.1, 1-62.2, 1-62.3, 1-62.4, 1-64.1, 2-13, and 8-42;
- to amend Board Rules 1-56, 1-61, 8-46, and 8-53;
- to adopt Board Rule 8-46.1, as amended;
- and to repeal and readopt Chapters 4 and 7 in their entirety and amendments to Board Rules 4-1 and 4-9.

The specific authority of the State Personnel Board to promulgate these rules is found at Article XII, sections 13 and 14 of the Colorado Constitution; the State Personnel System Act, section 24-50-101, *et seq.*, C.R.S.; and section 24-4-103, 105 and 106, C.R.S.; *Spahn v. State Department of Personnel*, 615 P.2d 66 (1980) and *CAPE v. Lamm*, 677 P.2d 1350 (Colo. 1984).

The purpose for adopting and revising these rules is:

- (a) clarification for the state personnel system stakeholders (including the general public);
- (b) notice to applicants for positions within the state personnel system; and
- (c) amendment of rules consistent with Amendment S's changes to the state personnel system.

The Board finds, as required by section 24-4-103(4)(b), C.R.S., that the record of the rulemaking proceedings demonstrates the need for the rules; the proper statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated; the rules do not conflict with other provisions of law; and any duplication or overlapping was explained.

Mr. Lucero seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Salerno, Ms. Yerger and Mr. Djokic.

Ms. Nesbitt then recognized those who were very involved in the rulemaking process and thanked them for their efforts, as follows: Board Director Dana Shea-Reid, Terry Campbell of the Colorado State Patrol, and Mark Schwane of Colorado WINS.

DATED THIS 19th DAY OF FEBRUARY, 2013.

Rich Djokic, Board Chair

Anthony Marquez, Board Vice Chair

Garth Lucero, Member

Teresa Salerno, Member

Sally Yerger, Member