



June 24, 2009

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: Proposed Rules of Minnesota Management & Budget Governing Consideration of Applicants for State Jobs, Governor's Tracking #AR 461

Dear Librarian:

Minnesota Management & Budget intends to adopt rules governing consideration of applicants for state jobs. We plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the June 22, 2009, State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library a copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-259-3620.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Hansen".

Laurie Hansen
Minnesota Management & Budget

Enclosure: Statement of Need and Reasonableness

SONAR made available for public review June 24, 2009.

Minnesota Department of Management and Budget

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing State Employment, Minnesota Rules, 3900.

INTRODUCTION

Personnel Rules, chapter 3900, supplement and clarify the provisions of Minnesota Statutes, chapter 43A, which generally affect the rights of or processes available to the general public, or to state employees of the executive branch when the employees participate in any process that is available to the general public. The proposed amendment will modify a specific requirement in the state's hiring process that requires state agencies to search the resume database and, if qualified candidates are found, add those candidates to the existing names of applicants who have actually applied for the vacancy.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Laurie M. Hansen at the Department of Management and Budget, 658 Cedar Street, St. Paul, MN 5515, phone (651) 259-3620, FAX (651) 296-8919. TTY user may call the Minnesota Relay Service at 711 or 1-800-627-3529.

STATUTORY AUTHORITY

This rulemaking is an amendment of rules and so Minnesota Statutes, section 14.125, does not apply.

The Department's statutory authority to adopt the rules is set forth in Minnesota Statutes, section 43A.04, subdivision 3, which provides:

The commissioner shall adopt rules under the Administrative Procedure Act to implement the provisions of this chapter that directly affect the rights of or processes available to the general public. The rules have the force and effect of law and may include but are not limited to:

(1) the processes for determining the extent of competition for filling vacancies, for recruiting applicants, for conducting selection procedures and for making appointments of individuals who are not employees of the civil service;

(2) the process for effecting noncompetitive and qualifying appointments;

(3) the process for temporary designation of positions in the unclassified service and for effecting appointments to the unclassified service;

(4) a statewide affirmative action program to include requirements for agency affirmative action plans, statewide policies and procedures, reporting requirements, accountability and responsibility of employees in the executive branch, and overall objectives of the program;

(5) conditions under which moving and other expenses may be authorized and paid prior to appointment to persons who have accepted state employment;

(6) procedures for administration of the code of ethics for employees of the executive branch;

(7) examination procedures for candidates with disabilities as described in section 43A.15, subdivision 14; and

(8) procedures or policies that affect the operation of or participation in the public employees insurance program.

Under this statute, the Department has the necessary statutory authority to adopt the proposed amendments to the rules.

REGULATORY ANALYSIS

"(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule"

The general public, state employees who are participating in processes available to the general public, state agency managers and supervisors, and human resource office employees will be affected by this rule amendment. Costs of implementation of this rule change are limited to staff time needed to change information on the Careers web site. All affected persons will benefit from the proposed amendment.

"(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues"

The estimated cost to update the Careers web site is \$800.00. There will be no additional costs to other state agencies to implement and enforce the proposed amendments to these rules. There will be no impact on state revenues.

"(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule"

The purpose of the proposed amendment is to clarify the selection process as it applies to the general public. There are no other appropriate methods for accomplishing this.

"(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule"

State agency Human Resource Directors and their staff participated in a number of focus groups during 2007 and 2008 regarding the need to update the state's selection process. Policy changes that could be implemented were made. This proposed amendment to the rule is being made as a result of those focus group meetings.

"(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals"

There will be no cost to comply with the proposed rule change.

"(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals"

If the proposed rule amendment is not adopted, the consequences that have already been identified are in added staff time in state agencies to review and process additional resumes that were searched from the resume database. An increased number of candidates adds time to the vacancy filling process. The consequence of adding time to the vacancy filling process means that candidates may no longer be available for an interview because they have already found a new position. Applicant consequences that have already been identified are in the form of confusion regarding contact from a state agency about a position to which they have never applied and mixed information regarding how to apply for a state position.

"(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference"

The proposed amendments to the rules are no in contradiction to any existing federal regulations.

PERFORMANCE-BASED RULES

The Department of Management and Budget held focus groups with state human resources staff involved in the hiring process and identified that this provision of the current rules lacks flexibility and is too prescriptive. The rule, in its current form, prescribes that state agencies search the resume database and add additional qualified candidates to the list of candidates who actually applied to the position. Without the rule change, state agencies incur additional costs in the form of staff time to review additional resumes in addition to the time needed to notify the individuals searched from the resume database of the details of the vacancy and to identify candidate interest in the position. Performance measures tracked include the time to fill vacancies, the number of

days vacancies are open for application, the number of vacancies filled by state agencies and the number of resumes received for each vacancy.

ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a March 30, 2009, letter by Administrative Law Judge Eric Lipman.

The Department will provide additional notice in the following manner to ensure that interested and affected parties are informed of the proposed amendment to the rules:

1. Post the Notice of Intent to Adopt Rules without a Public Hearing, the proposed amendment to the rules and the Statement of Need and Reasonableness on the home pages of both the Department's general web site and the state's employment web site where the documents are accessible to state employees and the general public who are seeking employment with the state.
2. E-mail the Notice of Intent to Adopt Rules without a Public Hearing, the proposed amendment to the rules and the Statement of Need and Reasonableness to exclusive representatives of state employees.
3. E-mail the Notice of Intent to Adopt Rules without a Public Hearing, the proposed amendment to the rules and the Statement of Need and Reasonableness to the state's human resources directors/designees.
4. E-mail the Notice of Intent to Adopt Rules without a Public Hearing, the proposed amendment to the rules and the Statement of Need and Reasonableness to members of the Alliance for Cooperation and Collaboration in Employment and State Services (ACCESS) Partnership consisting of state diversity and affirmative action officers/designees.

Our Notice Plan also includes giving notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

CONSULT WITH DEPARTMENT OF MANAGEMENT AND BUDGET ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 4.131, the Department has consulted with the Commissioner of Management and Budget. We did this by sending to the Commissioner of Management and Budget copies of the documents sent to the Governor's Office for review and approval by the Governor's Office prior to the Department publishing the Notice of Intent to Adopt. We sent the copies on March 18, 2009. The documents included the Governor's Office Proposed Rule and SONAR Form; draft rules; and almost final SONAR. The Department of Management and Budget sent a letter dated March 26, 2009, with its comments. Based on its analysis, the Department of Management and Budget believes the amended rule will have no fiscal impact on local units of government.

Since this rule change specifically affects the state employment process, there is no fiscal impact or benefits of the proposed rule on local governments.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The Department has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR on pages 2-3.

RULE-BY-RULE ANALYSIS

3900.4200 CONSIDERATION OF APPLICANTS FOR INDIVIDUAL VACANCIES

This revision is needed to update the current state selection system, which was first implemented in 2002 and uses an electronic, online system. The state had previously used a "pencil and paper" process and stakeholders were concerned that job seekers might have difficulty adapting to the new electronic system and could miss out on vacancy announcements if they did not check for them on a regular basis. There was also a concern that the state might not meet its responsibility to provide public notice of permanent, classified state job vacancies.

In response to those concerns, the current version of the rule was adopted to require state agencies to search the resume database for each vacancy, regardless of the number of resumes received by applicants applying directly to the vacancy.

There are many instances where the state agency has a need to search the resume database: 1) the number of resumes received directly from applicants is insufficient or 2) they wish to look for exceptionally qualified applicants who meet the job requirements. However, when more than a sufficient number of qualified resumes are received in response to a vacancy announcement, the state agency may have no need to search the resume database. There are times when several hundred resumes are received directly from applicants who indicate in interest in response to a vacancy announcement. The rule change would allow state agencies to search the resume database for candidates to supplement those resumes received by direct application from job seekers at their discretion.

Since the current state selection was first implemented, the world of searching and applying for jobs has changed greatly. Electronic, online systems are the norm rather than the exception and job seekers are much more savvy about using that technology. It is clear that job seekers are making full use of the web-based automated job notification option available in the system and also by applying directly to vacancies that meet their career interests, and that the requirement for public notice is being met.

Adding additional resumes to an already large number of resumes received as a result of applicants directly applying to a vacant position, takes away from the purpose of the entire hiring process, which is to fill the vacancy with a qualified candidate in a timely manner. When human resource staff spend additional time searching the resume database, reviewing additional resumes, and communicating with additional job seekers when they already have a large number of applications, the hiring process can be significantly, and unnecessarily delayed.

Job seekers who are contacted as a result of the resume database search are often confused because they have not applied to that particular vacancy. Further, creating the expectation that job seekers will automatically be referred to any vacancy they may qualify for, as a result of the resume database search is somewhat misleading. In creating a general resume, qualifications specific to a particular vacancy many not be adequately reflected and, as a result, the resume will not be identified in a resume database search. Experience with the state's selection system has shown that job seekers understand that they might not be found in a resume search, over 80% of the resumes in the database are currently tracked to a particular vacancy and further, do not assume that their resume will be referred to a specific vacancy unless they actually directly apply to the vacancy. Clarifying that the purpose of the resume database is for job seekers to create and store their resumes so they can use them to apply to specific vacancies and that the state agency uses the database to supplement resumes received when necessary will result in a more understandable system to job seekers. Job seekers will find it more reasonable that the system requires direct application to a job vacancy that meets their career interests than to allow their resumes to rest in the resume database and assume that they will be found during a resume database search.

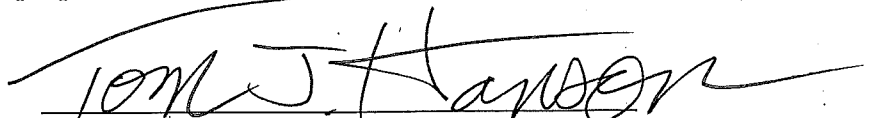
The resume database is - and will continue to be - a very important part of the state selection process. The database allows applicants who are interested in job vacancies to submit a resume immediately and then apply for a variety of specific positions quickly and easily. There are many instances when the state has difficulty attracting qualified applicants for a variety of reasons; the state agency then has the ability to search the resume database for additional resumes and can contact job seekers to determine whether they are interested. Having a process whereby job seekers can create and store resumes provides the state with an important and valuable recruitment and search tool. The proposed rule change allows the state to use that tool in an efficient and effective way.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

6-23-09

[Date]



Tom J. Hanson, Commissioner

Minnesota Department of Management and Budget