

REFERENCE TITLE: state employees; activity based compensation

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

## **HB 2672**

Introduced by  
Representatives Mesnard, Forese, Proud, Stevens: Burges, Carter, Crandell,  
Harper, Judd, Seel, Ugenti, Urie, Weiers J

AN ACT

AMENDING SECTIONS 41-763 AND 41-763.01, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 4, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-765; AMENDING SECTION 41-783, ARIZONA REVISED STATUTES; RELATING TO STATE EMPLOYEE COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-763, Arizona Revised Statutes, is amended to  
3 read:

4 41-763. Powers and duties of the director relating to personnel

5 The director shall:

6 1. Appoint employees necessary to perform the duties prescribed by  
7 this article.

8 2. Have authority for developing and administering a program of  
9 personnel administration for the state service in conformance with the  
10 personnel rules.

11 3. Have authority to establish such offices as may be necessary to  
12 maintain an effective and economical program of personnel administration.

13 4. Have the power to deputize employees in various state agencies  
14 where certain of the functions of personnel administration can be performed  
15 by such deputies.

16 5. Make an annual report and recommendation to the legislature and the  
17 joint legislative budget committee as provided in section 41-763.01.

18 6. Adopt rules relating to personnel and personnel administration.

19 7. Subject to legislative appropriation, have the authority to  
20 contract for the services of consultants necessary to perform the annual  
21 salary plan, ~~and~~ THE salary plan adjustment recommendations **AND THE ACTIVITY**  
22 **BASED COMPENSATION PLAN.**

23 8. Establish a mandatory program of annual personnel management  
24 training for all state employees with supervisory or managerial  
25 responsibility that is appropriate to the nature and scope of the employees'  
26 supervisory responsibilities. The director may waive the annual mandatory  
27 training on a case by case basis. The training shall include at least the  
28 following subjects:

29 (a) Basic employee supervisory or managerial skills.

30 (b) Establishing employee objectives and performance measures.

31 (c) Measuring employee performance and the use of performance  
32 evaluation methods.

33 (d) Employee discipline training and discipline procedures.

34 (e) Other subjects as determined by the director.

35 Sec. 2. Section 41-763.01, Arizona Revised Statutes, is amended to  
36 read:

37 41-763.01. Annual report and recommendation

38 A. The director shall prepare a report on state personnel and the  
39 operation of the state personnel system.

40 B. The report shall include:

41 1. Information concerning all state employees including employees of  
42 all executive, legislative and judicial branch agencies. All agencies shall  
43 provide any information requested by the director to prepare the annual  
44 report.

45 2. Information concerning the number of employees affected by and  
46 reasons for turnover within state service.

1           3. Information concerning the compensation during the preceding year  
2 and the coming year of state employees and the compensation of other public  
3 employees and private employees.

4           4. An advisory recommendation on the salary plan, ~~and~~ adjustments to  
5 the plan **AND THE ACTIVITY BASED COMPENSATION PLAN** for employees in state  
6 service. In establishing the salary plan **AND THE ACTIVITY BASED COMPENSATION**  
7 **PLAN**, the director shall consider the relative levels of duties and  
8 responsibilities of the various classes of positions, rates paid for  
9 comparable positions elsewhere and other relevant factors.

10          5. An advisory recommendation for all positions that have been  
11 exempted from covered service pursuant to section 41-771. Salary  
12 recommendations shall not be required for elected officials. The director  
13 shall make advisory salary recommendations for specific positions in the  
14 governor's office, the legislature and the courts if requested by the  
15 respective administrative heads of these units of state government.

16          6. The overtime pay requirements of all state agencies except those  
17 agencies excluded by section 41-771.

18          7. Other information as determined by the director.

19          C. The annual report and recommendations shall be presented to the  
20 governor and the legislature on or before September 1 of each year.

21          D. Notwithstanding section 41-771, the Arizona board of regents, the  
22 department of public safety, the judicial department and the Arizona state  
23 schools for the deaf and **THE** blind shall prepare and submit an annual report  
24 on their personnel as prescribed in this section. The report shall include:

25           1. Information concerning the number of employees affected by and  
26 reasons for turnover of their employees.

27           2. Information concerning the compensation during the preceding year  
28 and the coming year of their employees and the compensation of other public  
29 employees and private employees.

30           3. An advisory recommendation on the salary plan and adjustments for  
31 their employees. In establishing the salary plan, they shall consider the  
32 relative levels of duties and responsibilities of the various classes of  
33 positions, rates paid for comparable positions elsewhere and other relevant  
34 factors.

35           4. Their overtime pay requirements.

36          Sec. 3. Title 41, chapter 4, article 5, Arizona Revised Statutes, is  
37 amended by adding section 41-765, to read:

38          **41-765. Activity based compensation plan; definition**

39          **A. THE DIRECTOR SHALL DEVELOP A SALARY PLAN IN WHICH AN EMPLOYEE**  
40 **HOLDING A POSITION IN STATE SERVICE SHALL BE REMUNERATED BASED ON ACTIVITY**  
41 **BASED COMPENSATION.**

42          **B. THE DIRECTOR MAY EXEMPT EMPLOYEES FROM THE PLAN IF THE DUTIES OF**  
43 **THE EMPLOYEE ARE SUCH THAT AN ACTIVITY BASED COMPENSATION PLAN WOULD NOT BE**  
44 **APPROPRIATE.**

45          **C. FOR THE PURPOSES OF THIS SECTION, "ACTIVITY BASED COMPENSATION"**  
46 **MEANS A METHOD OF PAYING AN EMPLOYEE FOR THE EMPLOYEE'S VALUE ADDED**

1 ACTIVITIES AND BASED ON PRESCRIBING GOALS FOR THE EMPLOYEE AND HAVING THE  
2 EMPLOYEE'S PAY FIXED TO THESE GOALS.

3 Sec. 4. Section 41-783, Arizona Revised Statutes, is amended to read:  
4 41-783. Personnel rules

5 The personnel rules shall provide for:

6 1. A position classification plan for all positions in the state  
7 service.

8 2. Competitive examinations to test the relative qualifications of  
9 applicants for positions in state service. All competitive examinations  
10 shall be given statewide. For the purposes of this paragraph, "statewide"  
11 means that a competitive examination shall be given in an office of the  
12 department of economic security in each city or town of the state in which  
13 such office is located, unless the director designates another location  
14 within such city or town.

15 3. Evaluation of performance of employees for the purpose of improving  
16 staff effectiveness.

17 4. Promotions or transfers between classes that give appropriate  
18 consideration to the applicant's qualifications, record of performance and  
19 conduct.

20 5. Establishment of eligibility lists for appointment and promotion.  
21 ~~, upon which lists shall be placed~~ The names of successful candidates **SHALL**  
22 **BE PLACED ON THIS LIST** in the order of their relative excellence in their  
23 respective examinations.

24 6. Rejection of candidates for appointment or promotion who fail to  
25 fulfill reasonable requirements.

26 7. Delivery of a list of qualified applicants to any state agency  
27 requiring it. The state agency may select and hire an employee from this  
28 list.

29 8. A minimum period of original probationary service following initial  
30 appointment. During a period of original probationary service, the  
31 probationary employee shall perform the actual duties of the position and may  
32 be discharged without cause. A period of promotional probation service shall  
33 be established by the director.

34 9. A reasonable period of provisional employment without competitive  
35 examination if there is no eligibility list available for the position.

36 10. Emergency appointments for not more than thirty days with or  
37 without examination as provided by the rules.

38 11. Temporary appointments to positions that occur, terminate and recur  
39 periodically regardless of the duration of the position.

40 12. Transfer from a position in one department to a similar position in  
41 another department involving similar qualifications, duties, responsibilities  
42 and salary ranges.

43 13. Reinstatement to an eligibility list of previous employees who have  
44 resigned in good standing or who were separated from their positions without  
45 fault on their part.

1           14. Reduction in force by reason of lack of funds or work, abolition of  
2 a position or material change in duties or organization, and for reemployment  
3 of employees separated by reduction in force as provided in section  
4 41-763.04.

5           15. The circumstances under which an employee may be suspended without  
6 pay.

7           16. Establishment of a plan for resolving employee grievances and  
8 complaints and in cases of alleged discrimination for referral to the  
9 appropriate agency if an employee is not otherwise satisfied with the final  
10 grievance resolution.

11           17. Attendance, including hours of employment, annual leave, sick leave  
12 and special leaves of absence, with or without pay or with reduced pay.  
13 Rules on hours of employment shall provide for the implementation of flexible  
14 hours of employment as an option for employees if the director of an  
15 employing agency decides, in the director's discretion, that existing  
16 services can be maintained. Rules shall provide:

17           (a) For the transfer of accumulated annual leave from one employee to  
18 another employee in the same agency and for transfer of accumulated annual  
19 leave from one employee to another employee in another agency if the  
20 employees are members of the same family. Such transfers may occur if the  
21 employee to whom the leave is transferred has a seriously incapacitating and  
22 extended illness or injury or a seriously incapacitating and extended  
23 disability that is caused by pregnancy or childbirth or a member of the  
24 employee's immediate family has a seriously incapacitating and extended  
25 illness or injury or a seriously incapacitating and extended disability that  
26 is caused by pregnancy or childbirth and the employee has exhausted all  
27 available leave balances. Transferred annual leave shall be increased or  
28 reduced proportionally by the difference in the salaries of the employees as  
29 determined by department rule. For the purposes of this subdivision,  
30 "family" means spouse, natural child, adopted child, foster child, stepchild,  
31 natural parent, stepparent, adoptive parent, grandparent, grandchild,  
32 brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law,  
33 mother-in-law, father-in-law, aunt, uncle, nephew or niece.

34           (b) That an employee who receives transferred annual leave as provided  
35 in subdivision (a) of this paragraph is limited to using six consecutive  
36 months of transferred leave per occurrence unless the employee has applied  
37 for long-term disability insurance as provided by rule.

38           (c) That if a permanent status employee is unable to work due to a  
39 non-job related, seriously incapacitating and extended illness or injury, as  
40 certified by a physician of the employee subject to confirmation by a  
41 physician chosen by the agency, and the employee has exhausted all leave  
42 balances and any leave transferred pursuant to subdivision (a) of this  
43 paragraph, the employee shall be placed on leave without pay status for up to  
44 one hundred eighty days or until able to return to work, whichever is sooner.

45           18. Development of policies and procedures for the employment of  
46 qualified disabled job applicants.

- 1           19. Establishment of a clerical pool in any locality where the demand  
2 for temporary clerical help warrants.
- 3           20. Leaves of absence to allow employees in state service to accept  
4 appointment to nonelective positions in state employment that are exempt from  
5 the terms of this article and article 5 of this chapter.
- 6           21. The adoption of special rules applicable solely to special classes  
7 of employees whose duties, as determined by the director, justify the  
8 adoption of rules applicable only to a specific class of employees.
- 9           22. The establishment of standards of ethical conduct for employees.
- 10          23. Reasonable public notice to be given of the examinations for a  
11 position and the examination dates.
- 12          24. Authorization to publish and make available to all employees a  
13 handbook outlining pertinent rules.
- 14          25. A determination as to which positions in state employment shall  
15 qualify the employee to receive overtime pay. In making this determination  
16 the director shall consider all employees who are covered under the fair  
17 labor standards act of 1938 (52 Stat. 1060; 29 United States Code sections  
18 201 through 219), as amended and interpreted, and shall exclude all employees  
19 who meet exemption requirements as defined in such act, as amended and  
20 interpreted. No overtime or compensatory time may be granted to the  
21 following positions and persons:
- 22           (a) All elected positions.
- 23           (b) All positions ~~which~~ THAT are appointed pursuant to section 38-211.
- 24           (c) All professional positions as defined by the director.
- 25           (d) Persons whose primary duty is to manage the state agency or state  
26 agency subdivisions, and:
- 27           (i) Who use discretionary powers.
- 28           (ii) Who direct the work of at least two other employees.
- 29           (iii) Who have the authority to hire and fire.
- 30          26. Compensatory time off for employees, except those employees in  
31 positions prescribed in paragraph 25 of this section.
- 32          27. Approving overtime pay for positions eligible for compensatory time  
33 off pursuant to paragraph 26 of this section because their primary duty is  
34 management when either of the following criteria is met:
- 35           (a) The practice is determined by the director to be a prevailing  
36 condition in the Arizona labor market and when pay differentials between  
37 subordinates and supervisors are reduced by overtime pay received by the  
38 nonexempt subordinates to the extent that it is no longer an incentive to  
39 remain in the supervisory position.
- 40           (b) When temporary emergency conditions arise that make it more  
41 practical to pay overtime than to grant compensatory leave.
- 42          28. Establishment of a plan for the impartial review of complaints.
- 43          29. ESTABLISHMENT OF AN ACTIVITY BASED COMPENSATION PLAN.