

REFERENCE TITLE: state personnel system; covered employees

State of Arizona
House of Representatives
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HB 2418

Introduced by
Representative Quezada, Senator Gallardo: Representatives Mendez, Otondo,
Saldate, Steele

AN ACT

AMENDING SECTIONS 15-543, 38-532, 38-610.01, 38-610.02, 38-611.01 AND 38-611.02, ARIZONA REVISED STATUTES; REPEALING TITLE 41, CHAPTER 4, ARTICLES 4 AND 5, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING NEW ARTICLES 4 AND 5; AMENDING SECTION 41-782, ARIZONA REVISED STATUTES; RENUMBERING SECTION 41-783, ARIZONA REVISED STATUTES, AS SECTION 41-785; AMENDING TITLE 41, CHAPTER 4, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 41-783; AMENDING TITLE 41, CHAPTER 4, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-784; AMENDING SECTION 41-785, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTIONS 41-1830.12 AND 41-1830.13, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 12, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1830.14; AMENDING SECTION 41-1830.15, ARIZONA REVISED STATUTES; REPEALING SECTION 41-1830.16, ARIZONA REVISED STATUTES; AMENDING SECTION 41-3505, ARIZONA REVISED STATUTES; RELATING TO THE STATE PERSONNEL SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 15-543, Arizona Revised Statutes, is amended to
3 read:

4 15-543. Appeal from decision of board

5 A. The decision of the governing board is final unless the
6 certificated teacher files, within thirty days after the date of the
7 decision, an appeal with the superior court in the county within which he was
8 employed.

9 B. The decision of the governing board may be reviewed by the court in
10 the same manner as the decision made in accordance with section ~~41-783~~
11 41-785. The proceeding shall be set for hearing at the earliest possible
12 date and shall take precedence over all other cases, except older matters of
13 the same character and matters to which special precedence is otherwise given
14 by law.

15 Sec. 2. Section 38-532, Arizona Revised Statutes, is amended to read:

16 38-532. Prohibited personnel practice; violation;
17 reinstatement; exceptions; civil penalty

18 A. It is a prohibited personnel practice for an employee who has
19 control over personnel actions to take reprisal against an employee for a
20 disclosure of information of a matter of public concern by the employee to a
21 public body that the employee reasonably believes evidences:

- 22 1. A violation of any law.
23 2. Mismanagement, a gross waste of monies or an abuse of authority.

24 B. The disclosure by an employee to a public body alleging a violation
25 of law, mismanagement, gross waste of monies or abuse of authority shall be
26 in writing and shall contain the following information:

- 27 1. The date of the disclosure.
28 2. The name of the employee making the disclosure.
29 3. The nature of the alleged violation of law, mismanagement, gross
30 waste of monies or abuse of authority.
31 4. If possible, the date or range of dates on which the alleged
32 violation of law, mismanagement, gross waste of monies or abuse of authority
33 occurred.

34 C. An employee who knowingly commits a prohibited personnel practice
35 shall be ordered by the state personnel board, a community college district
36 governing board, a school district governing board, a city or town personnel
37 board or any other appropriate independent personnel board established or
38 authorized pursuant to section 38-534 to pay a civil penalty of up to five
39 thousand dollars to the state general fund, a county general fund, a
40 community college district unrestricted general fund, a school district
41 maintenance and operation fund or a city or town general fund, whichever is
42 appropriate. The employee who committed the prohibited personnel practice,
43 not the governmental entity, shall pay the civil penalty. On a finding that
44 an employee committed a prohibited personnel practice, the employer shall
45 take appropriate disciplinary action including dismissal, except that on a

1 finding that an employee committed a prohibited personnel practice against an
2 employee who disclosed information that the employee reasonably believed
3 evidenced a violation of any law, the employee who knowingly committed the
4 prohibited personnel practice is subject to a civil penalty of up to ten
5 thousand dollars, the employer shall dismiss the employee and the employee is
6 barred from any future employment by the government entity.

7 D. An employee or former employee against whom a prohibited personnel
8 practice is committed may recover attorney fees, costs, back pay, general and
9 special damages and full reinstatement for any reprisal resulting from the
10 prohibited personnel practice as determined by the court.

11 E. An employee does not commit a prohibited personnel practice if he
12 takes reprisal against an employee if that employee discloses information in
13 a manner prohibited by law or the materials or information are prescribed as
14 confidential by law.

15 F. This section may not be used as a defense in a disciplinary action
16 where the employee is being disciplined for cause pursuant to section ~~41-773~~
17 ~~41-751~~, except in a hearing on a complaint brought pursuant to this section
18 by an employee or former employee who believes he has been the subject of a
19 prohibited personnel practice as prescribed in this section as the result of
20 a disclosure of information.

21 G. On request or at any time an employee alleges reprisal, an employer
22 shall provide an employee who is subject to disciplinary or corrective
23 action, suspension, demotion or dismissal with a copy of this section.

24 H. If an employee or former employee believes that a personnel action
25 taken against him is the result of his disclosure of information under this
26 section, he may make a complaint to an appropriate independent personnel
27 board, if one is established or authorized pursuant to section 38-534, or to
28 a community college district governing board, school district governing board
29 or city or town council. If an independent personnel board has not been
30 established or authorized, or if a school district governing board, a
31 community college district governing board or a city or town council does not
32 hear and decide personnel matters brought pursuant to this section, the
33 employee or former employee may make a complaint to the state personnel
34 board. A complaint made pursuant to this subsection shall be made within ten
35 days of the effective date of the action taken against him. The state
36 personnel board, a school district governing board, a community college
37 district governing board, a city or town council or any other appropriate
38 independent personnel board shall, pursuant to the rules governing appeals
39 under section ~~41-783~~ 41-785, make a determination concerning:

40 1. The validity of the complaint.

41 2. Whether a prohibited personnel practice was committed against the
42 employee or former employee as a result of disclosure of information by the
43 employee or former employee.

44 I. If the state personnel board, a community college district
45 governing board, a school district governing board, a city or town council or

1 any other appropriate independent personnel board established or authorized
2 pursuant to section 38-534 determines that a prohibited personnel practice
3 was committed as a result of disclosure of information by the employee or
4 former employee, it shall rescind the personnel action and order that all
5 lost pay and benefits be returned to the employee or former employee. The
6 employee, former employee, employee alleged to have committed a prohibited
7 personnel practice pursuant to subsection A of this section or employer may
8 appeal the decision of the state personnel board, a community college
9 district governing board, a school district governing board, a city or town
10 council or any other appropriate independent personnel board established or
11 authorized pursuant to section 38-534 to the superior court as provided in
12 title 12, chapter 7, article 6.

13 J. For purposes of a hearing by the state personnel board, a school
14 district governing board, a community college district governing board, a
15 city or town council or any other appropriate independent personnel board
16 conducted under this section, the employee, former employee, employee alleged
17 to have committed the prohibited personnel practice pursuant to subsection A
18 of this section and employer may be represented by counsel. In addition,
19 representation by counsel in such hearings shall meet any other requirements
20 stipulated by the state personnel board, a school district governing board, a
21 community college district governing board, a city or town council or any
22 other appropriate independent personnel board or as required by law.

23 K. An employee or former employee may also seek injunctive relief as
24 is otherwise available in civil actions. A court may award reasonable
25 attorney fees to an employee or former employee who prevails in an action
26 pursuant to this section, but the award of attorney fees shall not exceed ten
27 thousand dollars.

28 L. This section shall not be construed to limit or extend the civil or
29 criminal liability of an employee or former employee for any disclosure of
30 information or to limit an employee's right to a separate pretermination
31 hearing with the employee's employer, as provided by law.

32 M. An employee who knowingly makes a false accusation that a public
33 officer or employee who has control over personnel actions has engaged in a
34 violation of any law, mismanagement, a gross waste of monies or an abuse of
35 authority is personally subject to a civil penalty of up to twenty-five
36 thousand dollars and dismissal from employment by the employer.

37 Sec. 3. Section 38-610.01, Arizona Revised Statutes, is amended to
38 read:

39 38-610.01. Leave of absence and compensation for officers and
40 employees during active military service

41 A. If the president of the United States or the governor of this state
42 declares that a state of emergency exists, an officer or employee of this
43 state who is ordered to active military service of the United States or this
44 state as a member of the national guard, air national guard, army reserve,
45 naval reserve, marine corps reserve, air force reserve or coast guard reserve

1 and whose state employment is subject to title 41, chapter 4, article 4 or
2 who is exempt pursuant to section ~~41-742~~ 41-771, subsection ~~D~~ A, paragraph
3 1, 2, 3, 4, ~~or~~ 5, 7, 8, 9, 10, 11, 12 OR 13 OR SUBSECTION B, PARAGRAPH 1, 2,
4 3, 4, 5, 7 OR 8 is eligible for an additional leave of absence until released
5 from active duty by competent authority. During the additional leave of
6 absence, the officer or employee shall continue to receive the officer's or
7 employee's salary or compensation, less the amount of all pay and allowances
8 for military activities while on active duty.

9 B. An officer or employee who receives salary or compensation pursuant
10 to subsection A of this section is not entitled to accrue annual leave or
11 sick leave during the period of active duty. Before qualifying for the
12 compensation pursuant to subsection A of this section, the officer or
13 employee must exhaust all military leave balances by the time of activation
14 or at any time during the active duty period.

15 C. An officer or employee may receive compensation pursuant to
16 subsection A of this section for the continuous duration of the officer's or
17 employee's order.

18 D. Within sixty days after an officer or employee who receives pay
19 differential pursuant to this section completes the period of active duty,
20 the officer or employee shall provide proof that the officer or employee
21 rendered honorable service while on active duty during any period for which
22 the officer or employee received the pay differential pursuant to this
23 section. The state may seek recovery of the pay differential from any person
24 who fails to provide proof of honorable service.

25 E. The director of the department of administration shall establish
26 procedures to be used by an eligible officer or employee to receive
27 compensation pursuant to subsection A of this section.

28 Sec. 4. Section 38-610.02, Arizona Revised Statutes, is amended to
29 read:

30 38-610.02. Leave of absence and compensation for national
31 disaster medical system employment

32 A. An officer or employee of this state who is called into employment
33 to the national disaster medical system under the United States department of
34 health and human services and whose state employment is subject to title 41,
35 chapter 4, article 4 or who is exempt pursuant to section ~~41-742~~ 41-771,
36 subsection ~~D~~ A, paragraph 1, 2, 3, 4, ~~or~~ 5, 7, 8, 9, 10, 11, 12 OR 13 OR
37 SUBSECTION B, PARAGRAPH 1, 2, 3, 4, 5, 7 OR 8 is eligible for an additional
38 leave of absence until released from active duty by competent authority.
39 During the additional leave of absence, the officer or employee shall
40 continue to receive the officer's or employee's salary or compensation, less
41 the amount of all pay and allowances for activities while on active duty with
42 the national disaster medical system.

43 B. An officer or employee who receives salary or compensation pursuant
44 to subsection A of this section is not entitled to accrue annual leave or
45 sick leave during the period of active duty.

1 C. An officer or employee may receive compensation pursuant to
2 subsection A of this section for the continuous duration of the officer's or
3 employee's order.

4 D. Within sixty days after an officer or employee who receives pay
5 differential pursuant to this section completes the period of active duty,
6 the officer or employee shall provide proof that the officer or employee
7 rendered honorable service while on active duty during any period for which
8 the officer or employee received the pay differential pursuant to this
9 section. This state may seek recovery of the pay differential from any
10 person who fails to provide proof of honorable service.

11 E. The rights and duties of an officer or employee who is subject to
12 this section is subject to the uniformed services employment and reemployment
13 rights act (38 United States Code chapter 43).

14 F. The director of the department of administration shall establish
15 procedures to be used by an eligible officer or employee to receive
16 compensation pursuant to subsection A of this section.

17 Sec. 5. Section 38-611.01, Arizona Revised Statutes, is amended to
18 read:

19 38-611.01. Arizona state retirement system; incentive
20 compensation plan; special market adjustments

21 The Arizona state retirement system established by chapter 5, article 2
22 of this title:

23 1. May administer an incentive compensation plan for investment
24 related personnel established in consultation with the director of the
25 department of administration. The Arizona state retirement system shall file
26 a copy of any incentive compensation plan for investment related personnel
27 with the governor, the president of the senate, the speaker of the house of
28 representatives, the office of strategic planning and budgeting, the joint
29 legislative budget committee and the department of administration within ten
30 business days of its adoption or readoption.

31 2. Except for the incentive compensation plan for investment related
32 personnel, shall not establish any other compensation plans without the
33 approval of the director of the department of administration.

34 3. May request that the director of the department of administration
35 establish a special ~~pay-plan~~ MARKET ADJUSTMENTS SYSTEM for the Arizona state
36 retirement system director, deputy director, chief investment officer,
37 investment related personnel and fiduciary or investment counsel. The
38 director of the department of administration, pursuant to section ~~41-742,~~
39 ~~subsection C, paragraph 4~~ 41-744, shall establish the special ~~pay-plan~~ MARKET
40 ADJUSTMENTS SYSTEM after considering the recommendations of the Arizona state
41 retirement system board and using relevant market data. The director of the
42 department of administration may adopt other special ~~pay-plans~~ MARKET
43 ADJUSTMENTS SYSTEMS determined necessary for certain classes or groups of
44 Arizona state retirement system employees, taking into consideration such
45 factors as occupational patterns, economic conditions and pay ranges common

1 to government, business and industry, and shall work with the Arizona state
2 retirement system in establishing the plans.

3 Sec. 6. Section 38-611.02, Arizona Revised Statutes, is amended to
4 read:

5 38-611.02. Public safety personnel retirement system: special
6 market adjustments

7 The board of trustees of the public safety personnel retirement system
8 established by chapter 5, article 4 of this title:

9 1. May administer an incentive compensation plan for investment
10 related personnel established in consultation with the director of the
11 department of administration. The public safety personnel retirement system
12 shall file a copy of any incentive compensation plan for investment related
13 personnel with the governor, the president of the senate, the speaker of the
14 house of representatives, the office of strategic planning and budgeting, the
15 joint legislative budget committee and the department of administration
16 within ten business days of its adoption or readoption.

17 2. Except for the incentive compensation plan for investment related
18 personnel, shall not establish any other compensation plans without the
19 approval of the director of the department of administration.

20 3. May request that the director of the department of administration
21 establish a special ~~pay plan~~ MARKET ADJUSTMENTS SYSTEM for the public safety
22 personnel retirement system administrator, deputy or assistant administrator,
23 chief investment officer, investment related personnel and fiduciary or
24 investment counsel. The director of the department of administration,
25 pursuant to section ~~41-742, subsection C, paragraph 4~~ 41-744, shall establish
26 the special ~~pay plan~~ MARKET ADJUSTMENTS SYSTEM after considering the
27 recommendations of the public safety personnel retirement system board of
28 trustees, including consideration of the salary ranges recommended by an
29 independent compensation consultant and using relevant market data. The
30 director of the department of administration may adopt other special ~~pay~~
31 ~~plans~~ MARKET ADJUSTMENTS SYSTEMS determined necessary for certain classes or
32 groups of public safety personnel retirement system employees, taking into
33 consideration such factors as occupational patterns, economic conditions and
34 pay ranges common to government, business and industry, and shall work with
35 the public safety personnel retirement system in establishing the plans.

36 Sec. 7. Repeal

37 Title 41, chapter 4, articles 4 and 5, Arizona Revised Statutes, are
38 repealed.

39 Sec. 8. Title 41, chapter 4, Arizona Revised Statutes, is amended by
40 adding new articles 4 and 5, to read:

41 ARTICLE 4. STATE PERSONNEL SYSTEM

42 41-741. Definitions

43 IN THIS ARTICLE AND ARTICLES 5 AND 6, UNLESS THE CONTEXT OTHERWISE
44 REQUIRES:

45 1. "EMPLOYEE" MEANS A PERSON HOLDING A POSITION IN STATE SERVICE.

1 2. "STATE SERVICE" MEANS ALL OFFICES AND POSITIONS OF EMPLOYMENT IN
2 STATE GOVERNMENT EXCEPT OFFICES AND POSITIONS EXEMPTED BY THIS ARTICLE.
3 41-742. Powers and duties of the director
4 A. THE DIRECTOR IS RESPONSIBLE FOR DIRECTION AND CONTROL OF PERSONNEL
5 ADMINISTRATION.
6 B. THE DIRECTOR SHALL:
7 1. APPOINT EMPLOYEES NECESSARY TO PERFORM THE DUTIES PRESCRIBED BY
8 THIS ARTICLE.
9 2. HAVE AUTHORITY FOR DEVELOPING AND ADMINISTERING A PROGRAM OF
10 PERSONNEL ADMINISTRATION FOR THE STATE SERVICE IN CONFORMANCE WITH THE
11 PERSONNEL RULES.
12 3. HAVE AUTHORITY TO ESTABLISH SUCH OFFICES AS MAY BE NECESSARY TO
13 MAINTAIN AN EFFECTIVE AND ECONOMICAL PROGRAM OF PERSONNEL ADMINISTRATION.
14 4. HAVE THE POWER TO DEPUTIZE EMPLOYEES IN VARIOUS STATE AGENCIES
15 WHERE CERTAIN OF THE FUNCTIONS OF PERSONNEL ADMINISTRATION CAN BE PERFORMED
16 BY SUCH DEPUTIES.
17 5. MAKE AN ANNUAL REPORT AND RECOMMENDATION TO THE LEGISLATURE AND THE
18 JOINT LEGISLATIVE BUDGET COMMITTEE AS PROVIDED IN SECTION 41-743.
19 6. ADOPT RULES RELATING TO PERSONNEL AND PERSONNEL ADMINISTRATION.
20 7. SUBJECT TO LEGISLATIVE APPROPRIATION, HAVE THE AUTHORITY TO
21 CONTRACT FOR THE SERVICES OF CONSULTANTS NECESSARY TO PERFORM THE ANNUAL
22 SALARY PLAN AND SALARY PLAN ADJUSTMENT RECOMMENDATIONS.
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 SUPERVISORIAL 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 41-743. Annual report and recommendations
36 A. THE DIRECTOR SHALL PREPARE A REPORT ON STATE PERSONNEL AND THE
37 OPERATION OF THE STATE PERSONNEL SYSTEM.
38 B. THE REPORT SHALL INCLUDE:
39 1. INFORMATION CONCERNING ALL STATE EMPLOYEES, INCLUDING EMPLOYEES OF
40 ALL EXECUTIVE, LEGISLATIVE AND JUDICIAL BRANCH AGENCIES. ALL AGENCIES SHALL
41 PROVIDE ANY INFORMATION REQUESTED BY THE DIRECTOR TO PREPARE THE ANNUAL
42 REPORT.
43 2. INFORMATION CONCERNING THE NUMBER OF EMPLOYEES AFFECTED BY AND
44 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 FOR EMPLOYEES IN STATE SERVICE. IN ESTABLISHING THE SALARY PLAN THE
6 DIRECTOR SHALL CONSIDER THE RELATIVE LEVELS OF DUTIES AND RESPONSIBILITIES OF
7 THE VARIOUS CLASSES OF POSITIONS, RATES PAID FOR COMPARABLE POSITIONS
8 ELSEWHERE AND OTHER RELEVANT FACTORS.

9 5. AN ADVISORY RECOMMENDATION FOR ALL POSITIONS THAT HAVE BEEN
10 EXEMPTED FROM COVERED SERVICE PURSUANT TO SECTION 41-771. SALARY
11 RECOMMENDATIONS SHALL NOT BE REQUIRED FOR ELECTED OFFICIALS. THE DIRECTOR
12 SHALL MAKE ADVISORY SALARY RECOMMENDATIONS FOR SPECIFIC POSITIONS IN THE
13 GOVERNOR'S OFFICE, THE LEGISLATURE AND THE COURTS IF REQUESTED BY THE
14 RESPECTIVE ADMINISTRATIVE HEADS OF THESE UNITS OF STATE GOVERNMENT.

15 6. THE OVERTIME PAY REQUIREMENTS OF ALL STATE AGENCIES EXCEPT THOSE
16 AGENCIES EXCLUDED BY SECTION 41-771.

17 7. OTHER INFORMATION AS DETERMINED BY THE DIRECTOR.

18 C. THE ANNUAL REPORT AND RECOMMENDATIONS SHALL BE PRESENTED TO THE
19 GOVERNOR AND THE LEGISLATURE ON OR BEFORE SEPTEMBER 1 OF EACH YEAR.

20 D. NOTWITHSTANDING SECTION 41-771, THE ARIZONA BOARD OF REGENTS, THE
21 DEPARTMENT OF PUBLIC SAFETY, THE JUDICIAL DEPARTMENT AND THE ARIZONA STATE
22 SCHOOLS FOR THE DEAF AND THE BLIND SHALL PREPARE AND SUBMIT AN ANNUAL REPORT
23 ON THEIR PERSONNEL AS PRESCRIBED IN THIS SECTION. THE REPORT SHALL INCLUDE:

24 1. INFORMATION CONCERNING THE NUMBER OF EMPLOYEES AFFECTED BY AND
25 REASONS FOR TURNOVER OF THEIR EMPLOYEES.

26 2. INFORMATION CONCERNING THE COMPENSATION DURING THE PRECEDING YEAR
27 AND THE COMING YEAR OF THEIR EMPLOYEES AND THE COMPENSATION OF OTHER PUBLIC
28 EMPLOYEES AND PRIVATE EMPLOYEES.

29 3. AN ADVISORY RECOMMENDATION ON THE SALARY PLAN AND ADJUSTMENTS FOR
30 THEIR EMPLOYEES. IN ESTABLISHING THE SALARY PLAN, THEY SHALL CONSIDER THE
31 RELATIVE LEVELS OF DUTIES AND RESPONSIBILITIES OF THE VARIOUS CLASSES OF
32 POSITIONS, RATES PAID FOR COMPARABLE POSITIONS ELSEWHERE AND OTHER RELEVANT
33 FACTORS.

34 4. THEIR OVERTIME PAY REQUIREMENTS.

35 41-744. Special market adjustments; committee

36 A. THE DIRECTOR SHALL ESTABLISH A SYSTEM OF SPECIAL MARKET ADJUSTMENTS
37 TO MODIFY SALARIES OF STATE EMPLOYEES WITHIN CERTAIN IDENTIFIED JOB
38 CLASSIFICATIONS.

39 B. THE SYSTEM SHALL PROVIDE FOR SALARY ADJUSTMENTS, SUBJECT TO
40 LEGISLATIVE APPROPRIATION, FOR STATE POSITIONS AND FOR POSITIONS IN JOB
41 CLASSIFICATIONS THAT, IN THE OPINION OF THE DIRECTOR, ARE CRITICAL TO THE
42 ORDERLY CONDUCT OF THE AGENCIES IN WHICH THE POSITIONS ARE LOCATED AND THAT
43 MEET SPECIFIC COMPARATIVE CRITERIA. THESE CRITERIA INCLUDE WHETHER THE
44 POSITIONS ARE EXPERIENCING SUBSTANTIALLY ABOVE AVERAGE TURNOVER OR HAVE

1 SALARIES THAT ARE SUBSTANTIALLY BELOW COMPARABLE POSITIONS OUTSIDE STATE
2 SERVICE.

3 C. THE DIRECTOR SHALL ESTABLISH PROCEDURES TO DETERMINE THE JOB
4 CLASSIFICATIONS ELIGIBLE FOR SPECIAL MARKET ADJUSTMENTS. THE PROCEDURES
5 SHALL INCLUDE:

6 1. THE SYSTEMATIC IDENTIFICATION OF JOB CLASSIFICATIONS BASED ON
7 SPECIFIC COMPARATIVE CRITERIA INCLUDING TURNOVER AND SALARY INFORMATION.

8 2. THE CONSIDERATION OF JOB CLASSIFICATIONS IDENTIFIED BY AGENCY
9 DIRECTORS.

10 3. IN CASES IN WHICH SIGNIFICANT INCREASES ARE RECOMMENDED,
11 RECOMMENDED INCREASES MAY BE SCHEDULED OVER TWO OR MORE YEARS. IF MULTIPLE
12 YEAR INCREASES ARE RECOMMENDED, THE COST OF FUNDING THE PROPOSED ADJUSTMENTS
13 IN EACH YEAR SHALL BE INCLUDED.

14 D. A SPECIAL MARKET ADJUSTMENT COMMITTEE IS ESTABLISHED CONSISTING OF
15 THE FOLLOWING MEMBERS:

16 1. THE DIRECTOR OF THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND
17 BUDGETING OR THE DIRECTOR'S DESIGNEE.

18 2. THE ADMINISTRATIVE DIRECTOR OF THE COURTS OR THE ADMINISTRATIVE
19 DIRECTOR'S DESIGNEE.

20 3. TWO MEMBERS WHO HAVE AT LEAST TEN YEARS OF EXPERIENCE IN HUMAN
21 RESOURCES ADMINISTRATION AND WHO ARE APPOINTED BY THE DIRECTOR OF THE
22 DEPARTMENT OF ADMINISTRATION. ONE OF THESE MEMBERS SHALL BE EMPLOYED IN THE
23 PRIVATE SECTOR.

24 4. ONE MEMBER WHO IS A MEMBER OF AN EMPLOYEE ORGANIZATION THAT HAS AT
25 LEAST ONE THOUSAND MEMBERS AND WHO IS APPOINTED BY THE DIRECTOR OF THE
26 DEPARTMENT OF ADMINISTRATION.

27 5. TWO MEMBERS WHO ARE STATE AGENCY DIRECTORS, DEPUTY DIRECTORS OR
28 ASSISTANT DIRECTORS AND WHO ARE APPOINTED BY THE DIRECTOR OF THE DEPARTMENT
29 OF ADMINISTRATION.

30 E. MEMBERS OF THE SPECIAL MARKET ADJUSTMENT COMMITTEE WHO ARE
31 APPOINTED BY THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL NOT SERVE
32 MORE THAN TWO CONSECUTIVE THREE YEAR TERMS. THE DEPARTMENT SHALL PROVIDE
33 STAFF FOR THE SPECIAL MARKET ADJUSTMENT COMMITTEE.

34 F. THE SPECIAL MARKET ADJUSTMENT COMMITTEE MAY ASSIST THE DIRECTOR IN
35 DETERMINING RECOMMENDATIONS FOR THE COST OF FUNDING THE PROPOSED ADJUSTMENTS.

36 41-745. Reduction in force procedures

37 A. THE DIRECTOR SHALL ESTABLISH REDUCTION IN FORCE PROCEDURES TO BE
38 USED BY ALL STATE AGENCIES IF REDUCTIONS ARE REQUIRED BY REASON OF LACK OF
39 MONIES OR WORK, ABOLITION OF A POSITION, A MATERIAL CHANGE IN DUTIES OR
40 ORGANIZATION OR THE INTRODUCTION OF OTHER COST REDUCTION INITIATIVES AND FOR
41 REEMPLOYMENT OF EMPLOYEES SEPARATED BY REDUCTION IN FORCE.

42 B. THE PROCEDURES SHALL GIVE SUBSTANTIALLY EQUAL CONSIDERATION IN BOTH
43 REDUCTION IN FORCE AND REEMPLOYMENT TO THE PERSON'S PERFORMANCE RECORD AND
44 SENIORITY IN SERVICE. CONSIDERATION OF THE PERSON'S PERFORMANCE IS LIMITED TO
45 PERFORMANCE, AS MEASURED BY UP TO THE THREE MOST RECENT PERFORMANCE

1 EVALUATIONS CONDUCTED USING A PERFORMANCE MEASUREMENT SYSTEM APPROVED BY THE
2 DIRECTOR, DURING A PERIOD OF NOT MORE THAN THE TWO YEARS IMMEDIATELY
3 PRECEDING THE REDUCTION IN FORCE. CONSIDERATION OF THE PERSON'S SENIORITY IS
4 LIMITED TO TENURE IN THE CURRENT JOB CLASS SERIES AS DEFINED IN THE PERSONNEL
5 RULES DURING THE FIVE YEARS IMMEDIATELY PRECEDING THE REDUCTION IN FORCE.

6 C. THE PROCEDURES SHALL PROVIDE FOR A REDUCTION IN FORCE TO BE LIMITED
7 TO A SINGLE AGENCY OR ORGANIZATIONAL UNIT OF AN AGENCY OR AGENCY OPERATIONS
8 WITHIN A GEOGRAPHIC AREA.

9 D. THE PROCEDURES SHALL PROVIDE FOR AN EXPEDITED REVIEW OF ANY
10 DETERMINATIONS MADE DURING A REDUCTION IN FORCE.

11 E. THE PROCEDURES SHALL PROVIDE THAT IF, BY LEGISLATIVE ACTION OR
12 OTHERWISE, PART OR ALL OF THE FUNCTIONS OF ONE DEPARTMENT OR AGENCY ARE
13 TRANSFERRED TO ANOTHER DEPARTMENT OR AGENCY, THE AFFECTED EMPLOYEES SHALL BE
14 ACCEPTED AS TRANSFERS BY THE RECEIVING DEPARTMENT OR AGENCY AT THE SAME PAY
15 GRADE UNLESS THE RECEIVING DEPARTMENT OR AGENCY HAS NO NEED FOR THE
16 PARTICULAR POSITION OR POSITIONS. IF THIS IS TRUE THE RULES CONCERNING
17 REDUCTION IN FORCE APPLY, AND THE EMPLOYEES SHALL NOT BE TRANSFERRED TO THE
18 RECEIVING DEPARTMENT OR AGENCY WITH THE TRANSFER OF THE FUNCTION AND THESE
19 EMPLOYEES HAVE REDUCTION IN FORCE RIGHTS IN THE DEPARTMENT OR AGENCY FROM
20 WHICH THE FUNCTION HAS BEEN ABOLISHED OR TRANSFERRED.

21 41-746. Required reduction in hours

22 AN AGENCY DIRECTOR MAY REQUIRE AGENCY COVERED EMPLOYEES TO WORK REDUCED
23 HOURS IN ORDER TO COMPLY WITH ANY REDUCTION IN APPROPRIATIONS. THE DIRECTOR
24 OF THE DEPARTMENT OF ADMINISTRATION SHALL PRESCRIBE PROCEDURES TO IMPLEMENT
25 THESE REDUCTIONS.

26 41-747. Contribution of pro rata share for personnel division
27 fund

28 A. STATE SERVICE AGENCIES WITHIN THE COVERED SERVICE SHALL CONTRIBUTE
29 A PRO RATA SHARE OF THE OVERALL COST OF PERSONNEL ADMINISTRATION SERVICES
30 PROVIDED BY THE DEPARTMENT. THE PRO RATA SHARE SHALL BE PAYABLE BY PAYROLL
31 FUND SOURCE AND THE RESULTANT AMOUNT SHALL BE DEPOSITED, PURSUANT TO SECTIONS
32 35-146 AND 35-147, IN A PERSONNEL DIVISION FUND FOR APPROPRIATION BY THE
33 LEGISLATURE FOR THE PERSONNEL BOARD AND THE PERSONNEL DIVISION OF THE
34 DEPARTMENT. THE PRO RATA SHARE SHALL BE 1.10 PER CENT OF THE TOTAL PAYROLL
35 OF THE AGENCY. OF THE 1.10 PER CENT PRO RATA SHARE, 0.03 PER CENT OF TOTAL
36 PAYROLL SHALL BE DEPOSITED IN A SEPARATE SUBACCOUNT OF THE PERSONNEL DIVISION
37 FUND FOR USE BY THE PERSONNEL BOARD AND SHALL BE SUBJECT TO LEGISLATIVE
38 APPROPRIATION. TOTAL PAYROLL SHALL INCLUDE ALL FUND SOURCES, INCLUDING THE
39 STATE GENERAL FUND, FEDERAL MONIES, SPECIAL REVENUE FUNDS, INTERGOVERNMENTAL
40 REVENUE MONIES, TRUST FUNDS AND OTHER PAYROLL FUND SOURCES.

41 B. A CLAIM FOR THE PRO RATA SHARE PERCENTAGE PAYMENT SHALL BE
42 SUBMITTED ACCORDING TO THE FUND SOURCE, WITH THE ACCOMPANYING PAYROLL TO THE
43 DEPARTMENT FOR DEPOSIT IN THE PERSONNEL DIVISION FUND.

44 C. NOTWITHSTANDING SECTION 35-190, ONLY MONIES IN EXCESS OF FIVE
45 HUNDRED THOUSAND DOLLARS REVERT TO THE STATE GENERAL FUND AT THE END OF EACH

1 FISCAL YEAR. THE STATE COMPTROLLER SHALL PAY ANY MONIES DETERMINED TO BE
2 OWED TO THE FEDERAL GOVERNMENT FROM THE PERSONNEL DIVISION FUND BEFORE
3 CALCULATING THE REVERSION.

4 41-748. Agreements for services and facilities

5 THE DEPARTMENT OF ADMINISTRATION MAY ENTER INTO AGREEMENTS WITH ANY
6 MUNICIPALITY OR OTHER POLITICAL SUBDIVISION OR ANY AGENCY THEREOF TO FURNISH
7 PERSONNEL ADMINISTRATION SERVICES AND FACILITIES OF THE DEPARTMENT. UNLESS
8 FUNDS HAVE BEEN APPROPRIATED BY THE LEGISLATURE FOR SUCH PURPOSE, ANY SUCH
9 AGREEMENT SHALL PROVIDE FOR REIMBURSEMENT TO THE STATE OF THE ACTUAL COST OF
10 THE SERVICES AND FACILITIES FURNISHED, AS DETERMINED BY THE DEPARTMENT.

11 41-749. Coordination with department of economic security

12 THE DEPARTMENT OF ADMINISTRATION AND THE DEPARTMENT OF ECONOMIC
13 SECURITY MAY DEVELOP A COMPREHENSIVE AGREEMENT WHEREBY THE PERSONNEL AND
14 FACILITIES OF THE DEPARTMENT OF ECONOMIC SECURITY ARE USED TO ASSIST THE
15 DEPARTMENT IN THE PERFORMANCE OF ITS PERSONNEL ADMINISTRATION DUTIES, IF THE
16 AGREEMENT WILL:

17 1. RESULT IN MORE ECONOMICAL PERFORMANCE OF THE DUTIES OF THE
18 DEPARTMENT.

19 2. PROVIDE FOR REIMBURSEMENT TO THE DEPARTMENT OF ECONOMIC SECURITY
20 WHEREVER FEDERAL REGULATIONS SO REQUIRE.

21 41-750. Refusal of examination or certification

22 THE DIRECTOR MAY REFUSE TO EXAMINE OR, AFTER EXAMINATION, MAY REFUSE TO
23 CERTIFY AS AN ELIGIBLE OR MAY WITHDRAW FROM CERTIFICATION ANYONE WHO:

24 1. HAS PRACTICED ANY DECEPTION OR FRAUD IN HIS APPLICATION, IN HIS
25 EXAMINATION OR IN SECURING HIS ELIGIBILITY.

26 2. HAS FAILED TO REPLY WITHIN A REASONABLE TIME TO COMMUNICATIONS
27 CONCERNING HIS AVAILABILITY FOR EMPLOYMENT.

28 3. IS FOUND TO BE UNSUITED OR NOT QUALIFIED FOR EMPLOYMENT.

29 4. LACKS ANY OF THE REQUIREMENTS ESTABLISHED BY THE DIRECTOR FOR THE
30 EXAMINATION OR POSITION FOR WHICH HE APPLIES.

31 5. IS PHYSICALLY OR MENTALLY SO DISABLED AS TO BE RENDERED UNFIT TO
32 PERFORM THE DUTIES OF THE POSITION TO WHICH HE SEEKS APPOINTMENT.

33 41-751. Causes for dismissal or discipline

34 A. EACH OF THE FOLLOWING CONSTITUTES CAUSE FOR DISCIPLINE OR DISMISSAL
35 OF AN EMPLOYEE IN THE STATE SERVICE:

36 1. FRAUD IN SECURING APPOINTMENT.

37 2. INCOMPETENCY.

38 3. INEFFICIENCY.

39 4. NEGLIGENCE OF DUTY.

40 5. INSUBORDINATION.

41 6. DISHONESTY.

42 7. DRUNKENNESS ON DUTY.

43 8. ADDICTION TO THE USE OF NARCOTICS OR HABIT-FORMING DRUGS.

44 9. ABSENCE WITHOUT LEAVE.

1 10. FINAL CONVICTION OF A FELONY OR A MISDEMEANOR INVOLVING MORAL
2 TURPITUDE.

3 11. DISCOURTEOUS TREATMENT OF THE PUBLIC.

4 12. IMPROPER POLITICAL ACTIVITY.

5 13. WILFUL DISOBEDIENCE.

6 14. MISUSE OR UNAUTHORIZED USE OF STATE PROPERTY.

7 B. IN ADDITION TO THE CAUSES PRESCRIBED BY THE TERMS OF SUBSECTION A
8 OF THIS SECTION, THE DIRECTOR MAY ESTABLISH SUCH OTHER CAUSES DEEMED
9 NECESSARY.

10 C. THE DIRECTOR SHALL PRESCRIBE DEFINITIONS FOR EACH OF THE CAUSES FOR
11 DISMISSAL OR DISCIPLINE PRESCRIBED OR ESTABLISHED UNDER THIS SECTION THAT
12 SHALL BE USED BY ALL EMPLOYEES AND THE PERSONNEL BOARD IN EVALUATING
13 DISMISSALS AND DISCIPLINARY ACTIONS.

14 ARTICLE 5. PERSONNEL ADMINISTRATION

15 41-771. Exemptions

16 A. THIS ARTICLE AND ARTICLE 6 OF THIS CHAPTER DO NOT APPLY TO:

17 1. ELECTED STATE OFFICERS.

18 2. STATE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS WHO ARE
19 APPOINTED BY THE LEGISLATURE OR THE GOVERNOR, THE EMPLOYEES OF THE GOVERNOR'S
20 OFFICE, THE EMPLOYEES OF THE ARIZONA LEGISLATIVE COUNCIL AND THE EMPLOYEES OF
21 THE SUPREME COURT AND THE COURT OF APPEALS.

22 3. STATE OFFICERS AND EMPLOYEES WHO ARE APPOINTED OR EMPLOYED BY THE
23 LEGISLATURE OR EITHER HOUSE OF THE LEGISLATURE.

24 4. THE CURATOR, CURATORIAL AIDES AND TOUR GUIDES AND ANY OTHER PERSON
25 WHO IS EMPLOYED TO WORK IN THE STATE CAPITOL MUSEUM.

26 5. OFFICERS OR EMPLOYEES OF STATE UNIVERSITIES AND PERSONNEL OF THE
27 ARIZONA STATE SCHOOLS FOR THE DEAF AND THE BLIND.

28 6. PATIENTS OR INMATES WHO ARE EMPLOYED IN STATE INSTITUTIONS.

29 7. OFFICERS AND ENLISTED PERSONNEL OF THE NATIONAL GUARD OF ARIZONA.

30 8. THE SINGLE ADMINISTRATIVE OR EXECUTIVE DIRECTOR AND ONE DEPUTY
31 DIRECTOR OF EACH STATE DEPARTMENT OR AGENCY.

32 9. NOT MORE THAN TWO ASSISTANTS WHO SERVE IN THE OFFICE OF AN ELECTED
33 STATE OFFICER, IF THAT ELECTED STATE OFFICER IS THE SOLE ELECTED HEAD OF THE
34 DEPARTMENT.

35 10. ONE ADMINISTRATIVE ASSISTANT WHO SERVES A BOARD OR COMMISSION
36 ELECTED TO HEAD A STATE AGENCY, DEPARTMENT OR DIVISION, AND ONE ASSISTANT FOR
37 EACH ELECTED MEMBER OF SUCH A BOARD OR COMMISSION.

38 11. PERSONS WHO REPORT DIRECTLY TO THE GOVERNOR.

39 12. EMPLOYEES OF THE DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS WHO
40 OCCUPY ARIZONA NATIONAL GUARD POSITIONS IDENTIFIED AS MOBILIZATION ASSETS.

41 13. EXCEPT AS OTHERWISE REQUIRED BY FEDERAL LAW AND EXCEPT FOR
42 CERTIFIED PEACE OFFICERS AS DEFINED IN SECTION 38-842, CORRECTIONAL OFFICERS
43 AND JUVENILE CORRECTIONAL OFFICERS, STATE OFFICERS AND EMPLOYEES WHO ARE
44 APPOINTED OR EMPLOYED AFTER DECEMBER 31, 2006 AND WHO ARE AT A PAY GRADE OF
45 TWENTY-FOUR OR ABOVE.

1 6. ENGAGE IN ACTIVITIES TO ADVOCATE THE ELECTION OR DEFEAT OF ANY
2 CANDIDATE.

3 7. SOLICIT OR ENCOURAGE CONTRIBUTIONS TO BE MADE DIRECTLY TO
4 CANDIDATES OR CAMPAIGN COMMITTEES CONTRIBUTING TO CANDIDATES OR ADVOCATING
5 THE ELECTION OR DEFEAT OF CANDIDATES.

6 C. EXCEPT FOR EXPRESSING HIS OPINION OR PURSUANT TO SECTION 16-402, AN
7 EMPLOYEE SHALL NOT ENGAGE IN ANY ACTIVITY PERMITTED BY THIS SECTION WHILE ON
8 DUTY, WHILE IN UNIFORM OR AT PUBLIC EXPENSE.

9 D. A PERSON SHALL NOT SOLICIT ANY EMPLOYEE OR A MEMBER OF THE
10 PERSONNEL BOARD TO ENGAGE OR NOT ENGAGE IN ACTIVITIES PERMITTED BY THIS
11 SECTION WITH THE DIRECT OR INDIRECT USE OF ANY THREAT, INTIMIDATION OR
12 COERCION INCLUDING THREATS OF DISCRIMINATION, REPRISAL, FORCE OR ANY OTHER
13 ADVERSE CONSEQUENCE INCLUDING THE LOSS OF ANY BENEFIT, REWARD, PROMOTION,
14 ADVANCEMENT OR COMPENSATION.

15 E. A PERSON SHALL NOT SUBJECT ANY EMPLOYEE OR A MEMBER OF THE
16 PERSONNEL BOARD ENGAGING IN ACTIVITY PERMITTED BY THIS SECTION TO ANY DIRECT
17 OR INDIRECT DISCRIMINATION, REPRISAL, FORCE, COERCION OR INTIMIDATION OR ANY
18 OTHER ADVERSE CONSEQUENCE INCLUDING THE LOSS OF ANY BENEFIT, REWARD,
19 PROMOTION, ADVANCEMENT OR COMPENSATION.

20 F. A PERSON SHALL NOT SUBJECT ANY EMPLOYEE OR MEMBER OF THE PERSONNEL
21 BOARD WHO CHOOSES NOT TO ENGAGE IN ANY ACTIVITY PERMITTED BY THIS SECTION TO
22 ANY DIRECT OR INDIRECT DISCRIMINATION, REPRISAL, FORCE, COERCION OR
23 INTIMIDATION OR ANY OTHER ADVERSE CONSEQUENCE INCLUDING THE LOSS OF ANY
24 BENEFIT, REWARD, PROMOTION, ADVANCEMENT OR COMPENSATION.

25 G. THIS SECTION DOES NOT APPLY TO SCHOOL BOARD ELECTIONS OR COMMUNITY
26 COLLEGE DISTRICT GOVERNING BOARD ELECTIONS, AND AN EMPLOYEE MAY SERVE AS A
27 MEMBER OF THE GOVERNING BOARD OF A COMMON OR HIGH SCHOOL DISTRICT OR AS A
28 MEMBER OF A COMMUNITY COLLEGE DISTRICT GOVERNING BOARD.

29 H. AN EMPLOYEE WHO VIOLATES ANY OF THE PROVISIONS OF THIS SECTION
30 SHALL BE SUBJECT TO SUSPENSION OF NOT LESS THAN THIRTY DAYS OR DISMISSAL.

31 I. A PERSON WHO VIOLATES:

32 1. SUBSECTION D, E OR F OF THIS SECTION IS GUILTY OF A CLASS 6 FELONY.

33 2. ANY OTHER PROVISION OF THIS SECTION IS GUILTY OF A CLASS 1
34 MISDEMEANOR.

35 J. IN ADDITION TO ANY OTHER PENALTY, ANY PERSON SOLICITING OR
36 ENCOURAGING A CONTRIBUTION IN A MANNER PROHIBITED BY THIS SECTION IS SUBJECT
37 TO A CIVIL PENALTY OF UP TO THREE TIMES THE AMOUNT OF THE CONTRIBUTION
38 SOLICITED OR ENCOURAGED PLUS COSTS, EXPENSES AND REASONABLE ATTORNEY FEES.

39 K. THIS SECTION SHALL NOT BE CONSTRUED AS DENYING ANY EMPLOYEE OR
40 BOARD MEMBER HIS CIVIL OR POLITICAL LIBERTIES AS GUARANTEED BY THE UNITED
41 STATES AND ARIZONA CONSTITUTIONS.

42 L. IT IS THE PUBLIC POLICY OF THIS STATE, REFLECTED IN THIS SECTION,
43 THAT GOVERNMENT PROGRAMS BE ADMINISTERED IN AN UNBIASED MANNER AND WITHOUT
44 FAVORITISM FOR OR AGAINST ANY POLITICAL PARTY OR GROUP OR ANY MEMBER IN ORDER
45 TO PROMOTE PUBLIC CONFIDENCE IN GOVERNMENT, GOVERNMENTAL INTEGRITY AND THE

1 EFFICIENT DELIVERY OF GOVERNMENTAL SERVICES AND TO ENSURE THAT ALL EMPLOYEES
2 ARE FREE FROM ANY EXPRESS OR IMPLIED REQUIREMENT OR ANY POLITICAL OR OTHER
3 PRESSURE OF ANY KIND TO ENGAGE OR NOT ENGAGE IN ANY ACTIVITY PERMITTED BY
4 THIS SECTION. TOWARD THIS END, ANY PERSON OR ENTITY CHARGED WITH THE
5 INTERPRETATION OF THIS SECTION SHALL TAKE INTO ACCOUNT THE POLICY OF THIS
6 SECTION AND SHALL CONSTRUER ANY OF ITS PROVISIONS ACCORDINGLY.

7 41-773. Unlawful acts; violation; classification

8 A. NO PERSON MAY MAKE ANY FALSE STATEMENT, CERTIFICATE, MARK, RATING
9 OR REPORT WITH REGARD TO ANY TEST, CERTIFICATION OR APPOINTMENT MADE UNDER
10 ANY PROVISION OF THIS CHAPTER OR IN ANY MANNER COMMIT ANY FRAUD PREVENTING
11 THE IMPARTIAL EXECUTION OF THIS CHAPTER AND THE RULES.

12 B. NO PERSON MAY, DIRECTLY OR INDIRECTLY, GIVE, RENDER, PAY, OFFER,
13 SOLICIT OR ACCEPT ANY MONEY, SERVICE OR OTHER VALUABLE CONSIDERATION FOR OR
14 ON ACCOUNT OF ANY APPOINTMENT, PROPOSED APPOINTMENT, PROMOTION OR PROPOSED
15 PROMOTION TO, OR ANY ADVANTAGE IN, A POSITION IN THE STATE SERVICE.

16 C. NO EMPLOYEE OF THE DEPARTMENT, EXAMINER OR OTHER PERSON SHALL
17 OBSTRUCT ANY PERSON IN HIS RIGHT TO EXAMINATION, ELIGIBILITY, CERTIFICATION
18 OR APPOINTMENT UNDER THIS CHAPTER, OR FURNISH TO ANY PERSON ANY SPECIAL OR
19 SECRET INFORMATION FOR THE PURPOSE OF AFFECTING THE RIGHTS OR PROSPECTS OF
20 ANY PERSON WITH RESPECT TO EMPLOYMENT IN THE STATE SERVICE.

21 D. NO ELECTED OR APPOINTED OFFICIAL MAY WITH CORRUPT INTENT USE HIS
22 POLITICAL INFLUENCE OR POSITION TO CAUSE THE FIRING, PROMOTION OR DEMOTION OF
23 ANY PUBLIC EMPLOYEE OR THE HIRING OF OR FAILURE TO HIRE ANY APPLICANT FOR
24 PUBLIC EMPLOYMENT.

25 E. AN ELECTED OR APPOINTED OFFICIAL WHO KNOWINGLY AND WITH CORRUPT
26 INTENT VIOLATES SUBSECTION D OF THIS SECTION IS GUILTY OF A CLASS 2
27 MISDEMEANOR.

28 F. A CONTACT BY AN ELECTED OR APPOINTED OFFICIAL WITH A PUBLIC AGENCY
29 REGARDING THE QUALIFICATIONS OF AN APPLICANT SHALL NOT BE CONSTRUED AS
30 ILLEGALLY USING POLITICAL INFLUENCE OR POSITION.

31 41-774. Certification by division

32 A SALARY SHALL NOT BE PAID TO ANY EMPLOYEE IN THE STATE SERVICE UNLESS
33 THE DIRECTOR OR THE DIRECTOR'S DESIGNEE HAS CERTIFIED THAT THE EMPLOYMENT IS
34 IN ACCORDANCE WITH THIS ARTICLE.

35 41-775. Violation; classification

36 A. EXCEPT AS PROVIDED IN SECTION 41-772, ANY PERSON WHO KNOWINGLY
37 COMMITS ANY ACT THAT IS UNLAWFUL UNDER THIS ARTICLE OR WHO VIOLATES ANY
38 PROVISION OF THIS ARTICLE IS GUILTY OF A CLASS 2 MISDEMEANOR UNLESS ANOTHER
39 CLASSIFICATION IS SPECIFICALLY PRESCRIBED IN THIS ARTICLE.

40 B. ANY PERSON WHO IS CONVICTED OF A CLASS 2 MISDEMEANOR UNDER THIS
41 ARTICLE SHALL BE INELIGIBLE FOR APPOINTMENT TO OR EMPLOYMENT IN A POSITION IN
42 THE STATE SERVICE FOR A PERIOD OF FIVE YEARS AND, IF THE PERSON IS AN
43 EMPLOYEE OF THE STATE AT THE TIME OF CONVICTION, IS SUBJECT TO SUSPENSION FOR
44 NOT LESS THAN NINETY DAYS OR DISMISSAL.

1 41-776. State employees: mentoring
2 A. THE DIRECTOR SHALL PROVIDE IN THE PERSONNEL RULES A PROCEDURE THAT
3 ALLOWS STATE EMPLOYEES TO VOLUNTARILY ENGAGE IN ACTIVITIES THAT SUPPORT
4 MENTORING, EDUCATION AND YOUTH DEVELOPMENT OF SCHOOL AGE YOUTHS IN THIS
5 STATE.
6 B. THE RULES SHALL:
7 1. ENCOURAGE STATE EMPLOYEES TO VOLUNTEER AS MENTORS TO SCHOOL AGE
8 YOUTHS AT PUBLIC SCHOOLS, PRIVATE SCHOOLS OR HOME SCHOOLS OR THROUGH
9 FAITH-BASED ORGANIZATIONS.
10 2. INCLUDE:
11 (a) UP TO ONE HOUR OF FLEX TIME PER WEEK, NOT TO EXCEED FIVE HOURS PER
12 CALENDAR MONTH.
13 (b) PROVISIONS THAT THE FLEX TIME MUST BE MADE UP WITHIN THE SAME WORK
14 WEEK THAT IT IS TAKEN AND THAT FLEX TIME IS UNPAID, CANNOT BE ACCRUED AND
15 DOES NOT COUNT TOWARD OVERTIME HOURS.
16 Sec. 9. Section 41-782, Arizona Revised Statutes, is amended to read:
17 41-782. Powers and duties of the state personnel board
18 A. ~~Except as provided by section 41-1830.16,~~ The state personnel board
19 shall hear and review appeals as provided in this article relating to
20 dismissal ~~of a covered employee~~ from ~~covered~~ STATE service, suspension for
21 more than ~~eighty~~ FORTY working hours or ~~involuntary~~ demotion resulting from
22 disciplinary action as defined in the personnel rules ~~for an employee in~~
23 ~~covered service~~.
24 B. The state personnel board shall hear and review complaints as
25 provided in title 38, chapter 3, article 9, relating to any personnel action
26 taken against an employee or former employee of this state, except an
27 employee or former employee of a state university or the board of regents,
28 which the employee or former employee believes was taken in reprisal for the
29 employee's or former employee's disclosure of information to a public body.
30 The state personnel board shall recommend the dismissal of a supervisor or
31 other responsible person, other than an elected official, who it determines
32 committed a prohibited personnel practice.
33 C. The state personnel board may adopt rules it deems necessary for
34 the administration of hearings and the review of appeals and complaints as
35 prescribed in this section.
36 ~~D. The state personnel board shall only exercise authority that is~~
37 ~~specifically granted to the board pursuant to this article.~~
38 Sec. 10. Renumber
39 Section 41-783, Arizona Revised Statutes, is renumbered as section
40 41-785.
41 Sec. 11. Title 41, chapter 4, article 6, Arizona Revised Statutes, is
42 amended by adding a new section 41-783, to read:
43 41-783. Personnel rules
44 THE PERSONNEL RULES SHALL PROVIDE FOR:

- 1 1. A POSITION CLASSIFICATION PLAN FOR ALL POSITIONS IN THE STATE
2 SERVICE.
- 3 2. COMPETITIVE EXAMINATIONS TO TEST THE RELATIVE QUALIFICATIONS OF
4 APPLICANTS FOR POSITIONS IN STATE SERVICE. ALL COMPETITIVE EXAMINATIONS
5 SHALL BE GIVEN STATEWIDE. FOR THE PURPOSES OF THIS PARAGRAPH, "STATEWIDE"
6 MEANS THAT A COMPETITIVE EXAMINATION SHALL BE GIVEN IN AN OFFICE OF THE
7 DEPARTMENT OF ECONOMIC SECURITY IN EACH CITY OR TOWN OF THE STATE IN WHICH
8 THE OFFICE IS LOCATED, UNLESS THE DIRECTOR DESIGNATES ANOTHER LOCATION WITHIN
9 SUCH CITY OR TOWN.
- 10 3. EVALUATION OF PERFORMANCE OF EMPLOYEES FOR THE PURPOSE OF IMPROVING
11 STAFF EFFECTIVENESS.
- 12 4. PROMOTIONS OR TRANSFERS BETWEEN CLASSES THAT GIVE APPROPRIATE
13 CONSIDERATION TO THE APPLICANT'S QUALIFICATIONS, RECORD OF PERFORMANCE AND
14 CONDUCT.
- 15 5. ESTABLISHMENT OF ELIGIBILITY LISTS FOR APPOINTMENT AND PROMOTION.
16 THE NAMES OF SUCCESSFUL CANDIDATES SHALL BE PLACED ON THE LISTS IN THE ORDER
17 OF THEIR RELATIVE EXCELLENCE IN THEIR RESPECTIVE EXAMINATIONS.
- 18 6. REJECTION OF CANDIDATES FOR APPOINTMENT OR PROMOTION WHO FAIL TO
19 FULFILL REASONABLE REQUIREMENTS.
- 20 7. DELIVERY OF A LIST OF QUALIFIED APPLICANTS TO ANY STATE AGENCY
21 REQUIRING IT. THE STATE AGENCY MAY SELECT AND HIRE AN EMPLOYEE FROM THIS
22 LIST.
- 23 8. A MINIMUM PERIOD OF ORIGINAL PROBATIONARY SERVICE FOLLOWING INITIAL
24 APPOINTMENT. DURING A PERIOD OF ORIGINAL PROBATIONARY SERVICE, THE
25 PROBATIONARY EMPLOYEE SHALL PERFORM THE ACTUAL DUTIES OF THE POSITION AND MAY
26 BE DISCHARGED WITHOUT CAUSE. A PERIOD OF PROMOTIONAL PROBATION SERVICE SHALL
27 BE ESTABLISHED BY THE DIRECTOR.
- 28 9. A REASONABLE PERIOD OF PROVISIONAL EMPLOYMENT WITHOUT COMPETITIVE
29 EXAMINATION IF THERE IS NO ELIGIBILITY LIST AVAILABLE FOR THE POSITION.
- 30 10. EMERGENCY APPOINTMENTS FOR NOT MORE THAN THIRTY DAYS WITH OR
31 WITHOUT EXAMINATION AS PROVIDED BY THE RULES.
- 32 11. TEMPORARY APPOINTMENTS TO POSITIONS THAT OCCUR, TERMINATE AND RECUR
33 PERIODICALLY REGARDLESS OF THE DURATION OF THE POSITION.
- 34 12. TRANSFER FROM A POSITION IN ONE DEPARTMENT TO A SIMILAR POSITION IN
35 ANOTHER DEPARTMENT INVOLVING SIMILAR QUALIFICATIONS, DUTIES, RESPONSIBILITIES
36 AND SALARY RANGES.
- 37 13. REINSTATEMENT TO AN ELIGIBILITY LIST OF PREVIOUS EMPLOYEES WHO HAVE
38 RESIGNED IN GOOD STANDING OR WHO WERE SEPARATED FROM THEIR POSITIONS WITHOUT
39 FAULT ON THEIR PART.
- 40 14. REDUCTION IN FORCE BY REASON OF LACK OF FUNDS OR WORK, ABOLITION OF
41 A POSITION OR MATERIAL CHANGE IN DUTIES OR ORGANIZATION, AND FOR REEMPLOYMENT
42 OF EMPLOYEES SEPARATED BY REDUCTION IN FORCE AS PROVIDED IN SECTION 41-745.
- 43 15. THE CIRCUMSTANCES UNDER WHICH AN EMPLOYEE MAY BE SUSPENDED WITHOUT
44 PAY.

1 16. ESTABLISHMENT OF A PLAN FOR RESOLVING EMPLOYEE GRIEVANCES AND
2 COMPLAINTS AND IN CASES OF ALLEGED DISCRIMINATION FOR REFERRAL TO THE
3 APPROPRIATE AGENCY IF AN EMPLOYEE IS NOT OTHERWISE SATISFIED WITH THE FINAL
4 GRIEVANCE RESOLUTION.

5 17. ATTENDANCE, INCLUDING HOURS OF EMPLOYMENT, ANNUAL LEAVE, SICK LEAVE
6 AND SPECIAL LEAVES OF ABSENCE, WITH OR WITHOUT PAY OR WITH REDUCED PAY.
7 RULES ON HOURS OF EMPLOYMENT SHALL PROVIDE FOR THE IMPLEMENTATION OF FLEXIBLE
8 HOURS OF EMPLOYMENT AS AN OPTION FOR EMPLOYEES IF THE DIRECTOR OF AN
9 EMPLOYING AGENCY DECIDES, IN THE DIRECTOR'S DISCRETION, THAT EXISTING
10 SERVICES CAN BE MAINTAINED. THE RULES SHALL PROVIDE:

11 (a) FOR THE TRANSFER OF ACCUMULATED ANNUAL LEAVE FROM ONE EMPLOYEE TO
12 ANOTHER EMPLOYEE IN THE SAME AGENCY AND FOR TRANSFER OF ACCUMULATED ANNUAL
13 LEAVE FROM ONE EMPLOYEE TO ANOTHER EMPLOYEE IN ANOTHER AGENCY IF THE
14 EMPLOYEES ARE MEMBERS OF THE SAME FAMILY. SUCH TRANSFERS MAY OCCUR IF THE
15 EMPLOYEE TO WHOM THE LEAVE IS TRANSFERRED HAS A SERIOUSLY INCAPACITATING AND
16 EXTENDED ILLNESS OR INJURY OR A SERIOUSLY INCAPACITATING AND EXTENDED
17 DISABILITY THAT IS CAUSED BY PREGNANCY OR CHILDBIRTH OR A MEMBER OF THE
18 EMPLOYEE'S IMMEDIATE FAMILY HAS A SERIOUSLY INCAPACITATING AND EXTENDED
19 ILLNESS OR INJURY OR A SERIOUSLY INCAPACITATING AND EXTENDED DISABILITY THAT
20 IS CAUSED BY PREGNANCY OR CHILDBIRTH AND THE EMPLOYEE HAS EXHAUSTED ALL
21 AVAILABLE LEAVE BALANCES. TRANSFERRED ANNUAL LEAVE SHALL BE INCREASED OR
22 REDUCED PROPORTIONALLY BY THE DIFFERENCE IN THE SALARIES OF THE EMPLOYEES AS
23 DETERMINED BY DEPARTMENT RULE. FOR THE PURPOSES OF THIS SUBDIVISION,
24 "FAMILY" MEANS SPOUSE, NATURAL CHILD, ADOPTED CHILD, FOSTER CHILD, STEPCHILD,
25 NATURAL PARENT, STEPPARENT, ADOPTIVE PARENT, GRANDPARENT, GRANDCHILD,
26 BROTHER, SISTER, SISTER-IN-LAW, BROTHER-IN-LAW, SON-IN-LAW, DAUGHTER-IN-LAW,
27 MOTHER-IN-LAW, FATHER-IN-LAW, AUNT, UNCLE, NEPHEW OR NIECE.

28 (b) THAT AN EMPLOYEE WHO RECEIVES TRANSFERRED ANNUAL LEAVE AS PROVIDED
29 IN SUBDIVISION (a) OF THIS PARAGRAPH IS LIMITED TO USING SIX CONSECUTIVE
30 MONTHS OF TRANSFERRED LEAVE PER OCCURRENCE UNLESS THE EMPLOYEE HAS APPLIED
31 FOR LONG-TERM DISABILITY INSURANCE AS PROVIDED BY RULE.

32 (c) THAT IF A PERMANENT STATUS EMPLOYEE IS UNABLE TO WORK DUE TO A
33 NON-JOB RELATED, SERIOUSLY INCAPACITATING AND EXTENDED ILLNESS OR INJURY, AS
34 CERTIFIED BY A PHYSICIAN OF THE EMPLOYEE SUBJECT TO CONFIRMATION BY A
35 PHYSICIAN CHOSEN BY THE AGENCY, AND THE EMPLOYEE HAS EXHAUSTED ALL LEAVE
36 BALANCES AND ANY LEAVE TRANSFERRED PURSUANT TO SUBDIVISION (a) OF THIS
37 PARAGRAPH, THE EMPLOYEE SHALL BE PLACED ON LEAVE WITHOUT PAY STATUS FOR UP TO
38 ONE HUNDRED EIGHTY DAYS OR UNTIL ABLE TO RETURN TO WORK, WHICHEVER IS SOONER.

39 18. DEVELOPMENT OF POLICIES AND PROCEDURES FOR THE EMPLOYMENT OF
40 QUALIFIED DISABLED JOB APPLICANTS.

41 19. ESTABLISHMENT OF A CLERICAL POOL IN ANY LOCALITY WHERE THE DEMAND
42 FOR TEMPORARY CLERICAL HELP WARRANTS.

43 20. LEAVES OF ABSENCE TO ALLOW EMPLOYEES IN STATE SERVICE TO ACCEPT
44 APPOINTMENT TO NONELECTIVE POSITIONS IN STATE EMPLOYMENT THAT ARE EXEMPT FROM
45 THE TERMS OF THIS ARTICLE AND ARTICLE 5 OF THIS CHAPTER.

1 21. THE ADOPTION OF SPECIAL RULES APPLICABLE SOLELY TO SPECIAL CLASSES
2 OF EMPLOYEES WHOSE DUTIES, AS DETERMINED BY THE DIRECTOR, JUSTIFY THE
3 ADOPTION OF RULES APPLICABLE ONLY TO A SPECIFIC CLASS OF EMPLOYEES.

4 22. THE ESTABLISHMENT OF STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES.

5 23. REASONABLE PUBLIC NOTICE TO BE GIVEN OF THE EXAMINATIONS FOR A
6 POSITION AND THE EXAMINATION DATES.

7 24. AUTHORIZATION TO PUBLISH AND MAKE AVAILABLE TO ALL EMPLOYEES A
8 HANDBOOK OUTLINING PERTINENT RULES.

9 25. A DETERMINATION AS TO WHICH POSITIONS IN STATE EMPLOYMENT SHALL
10 QUALIFY THE EMPLOYEE TO RECEIVE OVERTIME PAY. IN MAKING THIS DETERMINATION
11 THE DIRECTOR SHALL CONSIDER ALL EMPLOYEES WHO ARE COVERED UNDER THE FAIR
12 LABOR STANDARDS ACT OF 1938 (52 STAT. 1060; 29 UNITED STATES CODE SECTIONS
13 201 THROUGH 219), AS AMENDED AND INTERPRETED, AND SHALL EXCLUDE ALL EMPLOYEES
14 WHO MEET EXEMPTION REQUIREMENTS AS DEFINED IN THAT ACT, AS AMENDED AND
15 INTERPRETED. NO OVERTIME OR COMPENSATORY TIME MAY BE GRANTED TO THE
16 FOLLOWING POSITIONS AND PERSONS:

17 (a) ALL ELECTED POSITIONS.

18 (b) ALL POSITIONS THAT ARE APPOINTED PURSUANT TO SECTION 38-211.

19 (c) ALL PROFESSIONAL POSITIONS AS DEFINED BY THE DIRECTOR.

20 (d) PERSONS WHOSE PRIMARY DUTY IS TO MANAGE THE STATE AGENCY OR STATE
21 AGENCY SUBDIVISIONS AND:

22 (i) WHO USE DISCRETIONARY POWERS.

23 (ii) WHO DIRECT THE WORK OF AT LEAST TWO OTHER EMPLOYEES.

24 (iii) WHO HAVE THE AUTHORITY TO HIRE AND FIRE.

25 26. COMPENSATORY TIME OFF FOR EMPLOYEES, EXCEPT THOSE EMPLOYEES IN
26 POSITIONS PRESCRIBED IN PARAGRAPH 25 OF THIS SECTION.

27 27. APPROVING OVERTIME PAY FOR POSITIONS ELIGIBLE FOR COMPENSATORY TIME
28 OFF PURSUANT TO PARAGRAPH 26 OF THIS SECTION BECAUSE THEIR PRIMARY DUTY IS
29 MANAGEMENT WHEN EITHER OF THE FOLLOWING CRITERIA IS MET:

30 (a) THE PRACTICE IS DETERMINED BY THE DIRECTOR TO BE A PREVAILING
31 CONDITION IN THE ARIZONA LABOR MARKET AND WHEN PAY DIFFERENTIALS BETWEEN
32 SUBORDINATES AND SUPERVISORS ARE REDUCED BY OVERTIME PAY RECEIVED BY THE
33 NONEXEMPT SUBORDINATES TO THE EXTENT THAT IT IS NO LONGER AN INCENTIVE TO
34 REMAIN IN THE SUPERVISORY POSITION.

35 (b) WHEN TEMPORARY EMERGENCY CONDITIONS ARISE THAT MAKE IT MORE
36 PRACTICAL TO PAY OVERTIME THAN TO GRANT COMPENSATORY LEAVE.

37 28. ESTABLISHMENT OF A PLAN FOR THE IMPARTIAL REVIEW OF COMPLAINTS.

38 Sec. 12. Title 11, chapter 4, article 6, Arizona Revised Statutes, is
39 amended by adding section 41-784, to read:

40 41-784. Nonconformity with federal regulations granting federal
41 funds

42 ANY PROVISION OF THIS ARTICLE OR ARTICLE 5 OF THIS CHAPTER THAT
43 CONFLICTS OR IS INCONSISTENT WITH FEDERAL RULES, REGULATIONS OR STANDARDS
44 GOVERNING THE GRANT OF FEDERAL FUNDS TO ANY AGENCY OR DEPARTMENT OF THE STATE
45 IS NOT APPLICABLE TO SUCH AGENCY OR DEPARTMENT. THE DIRECTOR IS AUTHORIZED TO

1 VARY THE TERMS OF THE PERSONNEL RULES AS APPLICABLE TO SUCH AGENCIES AND
2 DEPARTMENTS TO COMPLY WITH THE CONDITIONS FOR FEDERAL GRANTS.

3 Sec. 13. Section 41-785, Arizona Revised Statutes, as renumbered by
4 this act, is amended to read:

5 41-785. Appeals to the state personnel board; notice of
6 charges; hearings

7 A. ~~Except as provided by section 41-1830.16, a covered~~ ANY employee
8 who has completed the ~~covered~~ employee's original probationary period of
9 service as provided by the personnel rules may appeal to the state personnel
10 board ~~the covered employee's~~ SEEKING RELIEF FROM dismissal from ~~covered~~ STATE
11 service, suspension for more than ~~eighty~~ FORTY working hours or ~~involuntary~~
12 demotion resulting from disciplinary action. The appeal shall be filed not
13 later than ten working days after the effective date of such action. The
14 ~~covered~~ employee shall be furnished with specified charges in writing when
15 the action is taken. Such appeal shall be in writing and must state specific
16 facts relating directly to the charges on which the appeal is based and shall
17 be heard by the state personnel board within thirty days after its
18 receipt. The state personnel board shall provide the employing agency with a
19 copy of the appeal not less than twenty days in advance of the hearing.

20 B. Hearings on such appeals shall be open to the public, except in
21 cases where the ~~covered~~ employee requests a confidential hearing, and shall
22 be informal with technical rules of evidence not applying to the proceedings
23 except the rule of privilege recognized by law. Both the ~~covered~~ employee
24 and the employing agency shall be notified of any hearing or meeting date not
25 less than twenty days in advance of the hearing or not less than ten days in
26 advance of a meeting and may select representatives of their choosing,
27 present and cross-examine witnesses and give evidence before the state
28 personnel board. The state personnel board may appoint a hearing officer to
29 conduct the hearing and take evidence on behalf of the board and exercise the
30 rights prescribed by section 12-2212. The state personnel board shall
31 prepare an official record of the hearing, including all testimony recorded
32 manually or by mechanical device, and exhibits. Either party may request
33 that the record be transcribed. If a party requests that the record be
34 transcribed, an entity, other than the state personnel board, selected by the
35 requesting party shall transcribe the record at the cost of the requesting
36 party. If the disciplinary hearing would involve evidence the state is
37 prevented by law from disclosing, then a confidential hearing upon the
38 state's request shall be granted.

39 ~~C. The state personnel board:~~

- 40 ~~1. Shall determine whether the state agency has proven by a~~
41 ~~preponderance of the evidence the material facts on which the discipline was~~
42 ~~based. On such a finding, the board shall affirm the decision of the state~~
43 ~~agency head, unless the disciplinary decision was arbitrary and capricious.~~
44 ~~2. May recommend modification of a disciplinary action if the agency~~
45 ~~has not proven by a preponderance of the evidence the material facts on which~~

1 ~~the discipline was based or if a disciplinary decision is found to be~~
2 ~~arbitrary and capricious.~~

3 ~~3. Shall reverse the decision of the state agency head if the board~~
4 ~~finds that cause did not exist for any discipline to be imposed and, in the~~
5 ~~case of dismissal or demotion, return the covered employee to the same~~
6 ~~position the employee held before the dismissal or demotion with or without~~
7 ~~back pay.~~

8 ~~D. On a finding that the agency has not proven by a preponderance of~~
9 ~~the evidence the material facts on which the discipline was based, the board~~
10 ~~shall identify the material facts that the board found were not supported by~~
11 ~~a preponderance of the evidence and may recommend a proposed disciplinary~~
12 ~~action in light of the facts proven. On a finding that the disciplinary~~
13 ~~decision was arbitrary and capricious, the board shall include the board's~~
14 ~~reasons for the board's finding and may recommend a proposed disciplinary~~
15 ~~action in light of the facts proven.~~

16 C. THE STATE PERSONNEL BOARD MAY REVERSE AN AGENCY'S ACTION ON APPEAL
17 ONLY IF THE BOARD FINDS THE ACTION TO BE ARBITRARY, CAPRICIOUS OR OTHERWISE
18 CONTRARY TO LAW.

19 D. THE BOARD MAY MODIFY THE DISCIPLINARY PENALTY CHOSEN BY AN AGENCY
20 ONLY IF THE BOARD FINDS THE PENALTY TO BE DISPROPORTIONATE TO THE PROVEN
21 OFFENSE IN LIGHT OF MITIGATING CIRCUMSTANCES OR MADE FOR REASONS THAT ARE
22 ARBITRARY, CAPRICIOUS OR OTHERWISE CONTRARY TO LAW.

23 E. Within forty-five days after the conclusion of the hearing, the
24 state personnel board shall enter its decision ~~or recommendation~~ and shall at
25 the same time send a copy of the decision ~~or recommendation~~ by certified mail
26 to the employing agency and to the ~~covered~~ employee at the employee's address
27 as given at the hearing or to a representative designated by the ~~covered~~
28 employee to receive a copy of the decision ~~or recommendation~~. ~~The agency~~
29 ~~director or the director's designee shall accept, modify or reverse the~~
30 ~~board's decision or accept, modify or reject the board's recommendation~~
31 ~~within fourteen days of receipt of the findings or recommendation from the~~
32 ~~state personnel board. The decision of the agency director or director's~~
33 ~~designee is final and binding. The agency director shall send a copy of the~~
34 ~~agency's final determination to the covered employee pursuant to this~~
35 ~~section.~~

36 F. Any party may appeal the decision of the state personnel board ~~or~~
37 ~~the final decision of the agency~~ pursuant to title 12, chapter 7, article 6
38 to the superior court in the ~~covered~~ employee's county of residence on one or
39 more of the following grounds that the order was:

- 40 1. Founded on or contained error of law that shall specifically
- 41 include error of construction or application of any pertinent rules.
- 42 2. Unsupported by any evidence as disclosed by the entire record.
- 43 3. Materially affected by unlawful procedure.
- 44 4. Based on a violation of any constitutional provision.
- 45 5. Arbitrary or capricious.

1 G. An appeal shall be available to the court of appeals from the order
2 of the superior court pursuant to title 12, chapter 7, article 6 as in other
3 civil cases.

4 H. ~~A-covered~~ AN employee may represent himself or designate a
5 representative, not necessarily an attorney, before any board hearing or any
6 quasi-judicial hearing held pursuant to this section providing that no fee
7 may be charged for any services rendered in connection with such hearing by
8 any such designated representative who is not an attorney admitted to
9 practice.

10 Sec. 14. Section 41-1830.12, Arizona Revised Statutes, is amended to
11 read:

12 41-1830.12. Law enforcement merit system council; duties;
13 authority; rules; business manager; definition

14 A. The law enforcement merit system council shall:

15 1. Select a chairman and vice-chairman.

16 2. Hold meetings that are necessary to perform its duties on the call
17 of the chairman.

18 3. Adopt rules pursuant to recognized merit principles of public
19 employment it deems necessary for establishing the following for department
20 of public safety and Arizona peace officer standards and training board
21 personnel:

22 (a) A classification and compensation plan for all covered positions
23 and for establishing standards and qualifications for all classified
24 positions from a list of necessary employees that is prepared by the director
25 of the employing agency.

26 (b) A plan for fair and impartial selection, appointment, probation,
27 promotion, retention and separation or removal from service by resignation,
28 retirement, reduction in force or dismissal of all classified employees.

29 (c) A performance appraisal system for evaluating the work performance
30 of employees of the agencies.

31 (d) Procedures for the conduct of hearings of employee grievances that
32 are brought before the council relating to classification, compensation and
33 the employee appraisal system.

34 (e) Procedures for the conduct of hearings on appeals from an order of
35 the director of the employing agency in connection with suspension, demotion,
36 reduction in pay, loss of accrued leave time or dismissal of a classified
37 employee.

38 (f) For hours of employment, annual and sick leave and special leaves
39 of absence, with or without pay or with reduced pay.

40 4. Pursuant to recognized merit principles, hear and review appeals
41 from any order of the director of the employing agency in connection with
42 suspension, demotion, reduction in pay, loss of accrued leave time or
43 dismissal of a classified employee. The council's determination is ~~subject~~
44 ~~to review by the director and~~ FINAL, EXCEPT ON appeal as provided in section
45 41-1830.13.

1 B. The council may meet with the state personnel board to discuss
2 matters of mutual concern.

3 C. The rules under subsection A, paragraph 3, subdivision (f) of this
4 section shall provide for the transfer of accumulated annual leave from one
5 employee to another employee in the same agency and for the transfer of
6 accumulated annual leave from one employee to another employee of another
7 agency, department, board or commission if the employees are members of the
8 same family. The transfers may occur if the employee to whom the leave is
9 transferred has a seriously incapacitating and extended illness or injury or
10 a member of the employee's immediate family has a seriously incapacitating
11 and extended illness or injury and the employee has exhausted all available
12 leave balances. Transferred annual leave shall be increased or reduced
13 proportionally by the difference in the salaries of the employees as
14 determined by council rule. For the purposes of this subsection, "family"
15 means spouse, natural child, adopted child, foster child, stepchild, natural
16 parent, stepparent, adoptive parent, grandparent, grandchild, brother,
17 sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law,
18 mother-in-law or father-in-law.

19 ~~D. In hearing and reviewing an appeal from any order of the director~~
20 ~~of the employing agency, the council:~~

21 ~~1. Shall determine whether the employing agency has proven by a~~
22 ~~preponderance of the evidence the material facts on which the discipline was~~
23 ~~based. On such a finding, the council shall affirm the decision of the~~
24 ~~director of the employing agency, unless the disciplinary decision was~~
25 ~~arbitrary and capricious.~~

26 ~~2. May recommend modification of a disciplinary action if the director~~
27 ~~of the employing agency has not proven by a preponderance of the evidence the~~
28 ~~material facts on which the discipline was based or if a disciplinary~~
29 ~~decision is found to be arbitrary and capricious.~~

30 ~~3. Shall reverse the decision of the director of the employing agency~~
31 ~~if the council finds that cause did not exist for any discipline to be~~
32 ~~imposed and, in the case of dismissal or demotion, return the employee to the~~
33 ~~same position the employee held before the dismissal or demotion with or~~
34 ~~without back pay.~~

35 ~~E. On a finding that the director of the employing agency has not~~
36 ~~proven by a preponderance of the evidence the material facts on which the~~
37 ~~discipline was based, the council shall identify the material facts that the~~
38 ~~council found were not supported by a preponderance of the evidence and may~~
39 ~~recommend a proposed disciplinary action in light of the facts proven. On a~~
40 ~~finding that the disciplinary decision was arbitrary and capricious, the~~
41 ~~council shall include the council's reasons for the council's finding and may~~
42 ~~recommend a proposed disciplinary action in light of the facts proven.~~

43 ~~F. Within forty-five days after the conclusion of the hearing, the~~
44 ~~council shall enter its decision or recommendation and at the same time shall~~
45 ~~send a copy of the decision or recommendation by certified mail to the~~

1 ~~employing agency and to the employee at the employee's address as given at~~
2 ~~the hearing or to a representative designated by the employee to receive a~~
3 ~~copy of the decision or recommendation.~~

4 ~~G.~~ D. The council shall select and the director of the department of
5 public safety shall appoint a business manager who is a certified peace
6 officer and an employee of the department of public safety but who is not a
7 member of the council. The business manager shall perform and discharge all
8 of the powers and duties that are vested in the council, except that adoption
9 of rules, creation and adjustment of classifications and grades, compensation
10 and hearing appeals for dismissal, demotion, reduction in pay, suspensions or
11 other punitive action remain the duty of the council. Any power or duty that
12 the council may lawfully delegate to the business manager is conclusively
13 presumed to have been delegated to the business manager unless it is shown
14 that the council by an affirmative vote recorded in its minutes has
15 specifically reserved the power or duty to itself. At the request of the
16 council, the business manager may make inquiries regarding or investigate
17 infractions of council rules within the department of public safety. The
18 business manager shall report the result of the inquiry or investigation to
19 the council for appropriate action. The business manager may delegate the
20 business manager's powers and duties to the business manager's subordinates
21 unless by council rule or express provision of law the business manager is
22 specifically required to act personally.

23 ~~H.~~ E. For the purposes of this section ~~and section 41-1830.13,~~
24 "director of the employing agency" means the director of the department of
25 public safety with respect to employees of the department and the executive
26 director of the Arizona peace officer standards and training board with
27 respect to employees of the board.

28 Sec. 15. Section 41-1830.13, Arizona Revised Statutes, is amended to
29 read:

30 41-1830.13. Appeal; reinstatement

31 ~~A. Within fourteen days of receipt of the finding or recommendation by~~
32 ~~the council pursuant to section 41-1830.12, the director of the employing~~
33 ~~agency shall accept, modify or reverse the council's decision or accept,~~
34 ~~modify or reject the council's recommendation. The director shall accept the~~
35 ~~council's recommendation unless the recommendation is arbitrary or without~~
36 ~~reasonable justification. If the director does not accept the council's~~
37 ~~recommendation, the director shall state the reason or reasons for rejecting~~
38 ~~the recommendation. The decision of the director of the employing agency is~~
39 ~~final and binding. The director of the employing agency shall send a copy of~~
40 ~~the agency's final determination to the employee pursuant to section~~
41 ~~41-1830.12.~~

42 ~~B.~~ A. Except as provided in section 41-1092.08, subsection H, a
43 classified employee who is suspended, is demoted, has pay reduced, loses
44 accrued leave time or is dismissed pursuant to this article, after a fair
45 hearing and review before the law enforcement merit system council and ~~review~~

1 CONFIRMATION of the suspension, demotion, reduction in pay, loss of accrued
2 leave time or dismissal by the director of the ~~employing agency~~ DEPARTMENT OF
3 PUBLIC SAFETY, may appeal the FINAL determination of the council ~~and the~~
4 ~~final determination of the director of the employing agency~~ pursuant to title
5 12, chapter 7, article 6. ~~on one or more of the following grounds that the~~
6 ~~order was:~~

- 7 ~~1. Founded on or contained error of law that shall specifically~~
- 8 ~~include error of construction or application of any pertinent rules.~~
- 9 ~~2. Unsupported by any evidence as disclosed by the entire record.~~
- 10 ~~3. Materially affected by unlawful procedure.~~
- 11 ~~4. Based on a violation of any constitutional provision.~~
- 12 ~~5. Arbitrary or capricious.~~

13 ~~C.~~ B. In addition to the trial court's powers as prescribed in
14 section 12-911, if the court overrules the determination of the council ~~or~~
15 ~~the director of the employing agency~~, the employee shall be reinstated in the
16 employee's position and the employee shall receive full compensation for any
17 salary withheld pending the determination by the council, ~~the director of the~~
18 ~~employing agency~~ and court.

19 Sec. 16. Title 41, chapter 12, article 10, Arizona Revised Statutes,
20 is amended by adding section 41-1830.14, to read:

21 41-1830.14. Status of persons employed before merit system
22 institution

23 ALL EMPLOYEES OF THE DEPARTMENT ON NOVEMBER 22, 1948 SHALL CONTINUE IN
24 THEIR RESPECTIVE POSITIONS WITHOUT EXAMINATION, UNTIL REMOVED FROM THE
25 POSITIONS UNDER THE PROVISIONS OF THE MERIT SYSTEM ESTABLISHED PURSUANT TO
26 THIS ARTICLE.

27 Sec. 17. Section 41-1830.15, Arizona Revised Statutes, is amended to
28 read:

29 41-1830.15. Causes for dismissal or discipline; definitions

30 A. The director of the department of public safety may dismiss or
31 discipline any classified employee based on any of the following causes:

- 32 1. Fraud or misrepresentation in securing employment.
- 33 2. Incompetency.
- 34 3. Inefficiency.
- 35 4. Inexcusable neglect of duty or unauthorized absence.
- 36 5. Insubordination.
- 37 6. Dishonesty.
- 38 7. Physical or mental disability subject to the provisions of the

39 Americans with disabilities act of 1990 (42 United States Code sections 12101
40 through 12213).

- 41 8. Unauthorized drinking on duty or drunkenness on duty.

42 9. Being impaired by alcohol or drugs, as provided in title 13,
43 chapter 34, while on duty.

- 44 10. Commission of any crime classified as a felony.

- 45 11. Discourteous treatment of the public or other employees.

- 1 12. Commission of any crime involving moral turpitude.
2 13. Improper political activity as proscribed in section ~~41-752~~ 41-772.
3 14. Misuse or unauthorized use of state property.
4 15. Addiction to the illegal use of a narcotic or dangerous drug.
5 16. Any other failure of good behavior or acts either during or outside
6 of duty hours that are incompatible with or inimical to the interest of the
7 department of public safety.
8 B. For the purposes of this section:
9 1. "Incompetency" means the lack of ability or judgment, legal
10 qualifications or fitness to discharge required duties.
11 2. "Inefficiency" means the failure to produce as required for reasons
12 other than incompetency.
13 Sec. 18. Repeal
14 Section ~~41-1830.16~~, Arizona Revised Statutes, is repealed.
15 Sec. 19. Section 41-3505, Arizona Revised Statutes, is amended to
16 read:
17 ~~41-3505.~~ Information technology fund
18 A. The information technology fund is established for use by the
19 department and the committee. Monies in the fund are subject to legislative
20 appropriation.
21 B. State agencies subject to section ~~41-750~~ 41-747, all budget units
22 and the legislative and judicial branches of state government shall
23 contribute a pro rata share of the overall cost of information technology
24 services provided by the department or committee. The pro rata share is
25 payable by payroll fund source, and the resultant amount shall be deposited
26 in the information technology fund. For all budget units and the legislative
27 and judicial branches of state government, the pro rata share shall be .20
28 per cent of the total payroll. Total payroll includes all fund sources
29 including the state general fund, federal monies, special revenue funds,
30 intergovernmental revenue monies, trust funds and other payroll fund sources.
31 C. A claim for the pro rata share percentage payment shall be
32 submitted according to the fund source, with the accompanying payroll, to the
33 department of administration for deposit in the information technology fund.
34 D. Notwithstanding section 35-190, monies in the information
35 technology fund do not revert to the state general fund at the end of each
36 fiscal year.