

REFERENCE TITLE: law enforcement merit system; determinations

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2377

Introduced by
Representatives Borrelli, Andrade, Boyer, Cardenas, Finchem, Kern, Thorpe,
Senators Burges, Contreras, McGuire, Smith: Representatives Campbell,
Cobb, Larkin, Lawrence, Mach, Pratt, Shope, Townsend, Senator Ward

AN ACT

AMENDING SECTION 41-1830.12, ARIZONA REVISED STATUTES; REPEALING SECTION 41-1830.13, ARIZONA REVISED STATUTES; AMENDING SECTION 41-1830.16, ARIZONA REVISED STATUTES; RELATING TO THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-1830.12, Arizona Revised Statutes, is amended to
3 read:
4 41-1830.12. Law enforcement merit system council; duties;
5 authority; rules; business manager; definitions
6 A. The law enforcement merit system council shall:
7 1. Select a chairman and vice-chairman.
8 2. Hold meetings that are necessary to perform its duties on the call
9 of the chairman.
10 3. Adopt rules pursuant to recognized merit principles of public
11 employment it deems necessary for establishing the following for department
12 of public safety and Arizona peace officer standards and training board
13 personnel:
14 (a) A classification and compensation plan for all covered positions
15 and for establishing standards and qualifications for all classified
16 positions from a list of necessary employees that is prepared by the director
17 of the employing agency.
18 (b) A plan for fair and impartial selection, appointment, probation,
19 promotion, retention and separation or removal from service by resignation,
20 retirement, reduction in force or dismissal of all classified employees.
21 (c) A performance appraisal system for evaluating the work performance
22 of employees of the agencies.
23 (d) Procedures for the conduct of hearings of employee grievances that
24 are brought before the council relating to classification, compensation and
25 the employee appraisal system.
26 (e) Procedures for the conduct of hearings on appeals from an order of
27 the director of the employing agency in connection with suspension, demotion,
28 reduction in pay, loss of accrued leave time or dismissal of a classified
29 employee.
30 (f) For hours of employment, annual and sick leave and special leaves
31 of absence, with or without pay or with reduced pay.
32 4. Pursuant to recognized merit principles, hear and review appeals
33 from any order of the director of the employing agency in connection with
34 suspension, demotion, reduction in pay, loss of accrued leave time or
35 dismissal of a classified employee. The council's determination is ~~subject~~
36 ~~to review by the director and appeal as provided in section 41-1830.13~~ FINAL
37 AND BINDING UNLESS APPEALED BY THE DIRECTOR OF THE EMPLOYING AGENCY OR THE
38 AFFECTED EMPLOYEE PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.
39 B. The council may meet with the state personnel board to discuss
40 matters of mutual concern.
41 C. The rules under subsection A, paragraph 3, subdivision (f) of this
42 section shall provide for the transfer of accumulated annual leave from one
43 employee to another employee in the same agency and for the transfer of
44 accumulated annual leave from one employee to another employee of another
45 agency, department, board or commission if the employees are members of the

1 same family. The transfers may occur if the employee to whom the leave is
2 transferred has a seriously incapacitating and extended illness or injury or
3 a member of the employee's immediate family has a seriously incapacitating
4 and extended illness or injury and the employee has exhausted all available
5 leave balances. Transferred annual leave shall be increased or reduced
6 proportionally by the difference in the salaries of the employees as
7 determined by council rule. For the purposes of this subsection, "family"
8 means spouse, natural child, adopted child, foster child, stepchild, natural
9 parent, stepparent, adoptive parent, grandparent, grandchild, brother,
10 sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law,
11 mother-in-law or father-in-law.

12 D. In hearing and reviewing an appeal from any order of the director
13 of the employing agency, the council:

14 1. Shall determine whether the employing agency has proven by a
15 preponderance of the evidence ~~the material facts on which the discipline was~~
16 ~~based. On such a finding, the council shall affirm the decision of the~~
17 ~~director of the employing agency, unless the disciplinary decision was~~
18 ~~arbitrary and capricious~~ THAT THE EMPLOYING AGENCY HAD JUST CAUSE TO
19 DISCIPLINE THE EMPLOYEE.

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

24 ~~3.~~ 2. Shall reverse the decision of the director of the employing
25 agency if the council finds that JUST cause did not exist ~~for any discipline~~
26 ~~to be imposed~~ and, in the case of dismissal or demotion, return the employee
27 to the same position the employee held before the dismissal or demotion with
28 or without back pay. IF THE DECISION OF THE DIRECTOR OF THE EMPLOYING AGENCY
29 IS REVERSED, THE COUNCIL MAY IMPOSE APPROPRIATE DISCIPLINE.

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

38 ~~F. Within forty five days after the conclusion of the hearing, the~~
39 ~~council shall enter its decision or recommendation and at the same time shall~~
40 ~~send a copy of the decision or recommendation by certified mail to the~~
41 ~~employing agency and to the employee at the employee's address as given at~~
42 ~~the hearing or to a representative designated by the employee to receive a~~
43 ~~copy of the decision or recommendation.~~

44 ~~G.~~ E. The council shall select and the director of the department of
45 public safety shall appoint a business manager who is a certified peace

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

18 ~~H. F.~~ For the purposes of this section: ~~and section 41-1830.13,~~

19 1. "Director of the employing agency" means the director of the
20 department of public safety with respect to employees of the department and
21 the executive director of the Arizona peace officer standards and training
22 board with respect to employees of the board.

23 2. "JUST CAUSE" HAS THE SAME MEANING PRESCRIBED IN SECTION 38-1101.

24 Sec. 2. Repeal

25 Section 41-1830.13, Arizona Revised Statutes, is repealed.

26 Sec. 3. Section 41-1830.16, Arizona Revised Statutes, is amended to
27 read:

28 41-1830.16. Law enforcement merit system council duties;
29 authority; appeals of covered full authority
30 peace officers employed by agencies in the state
31 personnel system; definitions

32 A. The law enforcement merit system council shall adopt rules the
33 council deems necessary for the administration of hearings and the review of
34 appeals as prescribed in this section.

35 B. A covered employee in the state personnel system who is a full
36 authority peace officer as certified by the Arizona peace officer standards
37 and training board, is appointed to a position that requires such a
38 certification in the covered service and who has completed the employee's
39 original probationary period of service as provided by the personnel rules
40 may appeal to the law enforcement merit system council the covered employee's
41 dismissal from covered service, suspension for more than forty working hours
42 or involuntary demotion resulting from disciplinary action. The covered
43 employee shall file the appeal no later than ten working days after the
44 effective date of the action. The covered employee shall be furnished with
45 specified charges in writing when the action is taken. The appeal shall be

1 in writing and must state specific facts relating directly to the charges on
2 which the appeal is based. Notwithstanding section 41-1092.05, subsection D,
3 the law enforcement merit system council shall hear the appeal within thirty
4 days after the council's receipt. The law enforcement merit system council
5 shall provide the employing agency with a copy of the appeal not less than
6 twenty days in advance of the hearing.

7 C. In hearing and reviewing an appeal, the council:

8 1. Shall determine whether the employing agency has proven by a
9 preponderance of the evidence ~~the material facts on which the discipline was~~
10 ~~based. On such a finding the council shall affirm the decision of the state~~
11 ~~agency head unless the disciplinary decision was arbitrary and capricious~~
12 **THAT THE EMPLOYING AGENCY HAD JUST CAUSE TO DISCIPLINE THE EMPLOYEE.**

13 ~~2. May recommend modification of a disciplinary action if the state~~
14 ~~agency head has not proven by a preponderance of the evidence the material~~
15 ~~facts on which the discipline was based or if a disciplinary decision is~~
16 ~~found to be arbitrary and capricious.~~

17 ~~3.~~ 2. Shall reverse the decision of the state agency head if the
18 council finds that **JUST** cause did not exist ~~for any discipline to be imposed~~
19 and, in the case of dismissal or demotion, return the employee to the same
20 position the employee held before the dismissal or demotion with or without
21 back pay. **IF THE DECISION OF THE DIRECTOR OF THE STATE AGENCY IS REVERSED,**
22 **THE COUNCIL MAY IMPOSE APPROPRIATE DISCIPLINE.**

23 ~~D. On a finding that the state agency head has not proven by a~~
24 ~~preponderance of the evidence the material facts on which the discipline was~~
25 ~~based, the council shall identify the material facts that the council found~~
26 ~~were not supported by a preponderance of the evidence and may recommend a~~
27 ~~proposed disciplinary action in light of the facts proven. On a finding that~~
28 ~~the disciplinary decision was arbitrary and capricious, the council shall~~
29 ~~include the council's reasons for the council's finding and may recommend a~~
30 ~~proposed disciplinary action in light of the facts proven.~~

31 ~~E. Within forty five days after the conclusion of the hearing, the~~
32 ~~council shall enter its decision or recommendation and shall at the same time~~
33 ~~send a copy of the decision or recommendation by certified mail to the~~
34 ~~employing agency and to the employee at the employee's address as given at~~
35 ~~the hearing or to a representative designated by the employee to receive a~~
36 ~~copy of the decision or recommendation. The state agency head or the agency~~
37 ~~head's designee shall accept, modify or reverse the council's decision or~~
38 ~~accept, modify or reject the council's recommendation within fourteen days of~~
39 ~~receipt of the findings or recommendation from the law enforcement merit~~
40 ~~system council. The state agency head or the agency head's designee shall~~
41 ~~accept the council's recommendation unless the recommendation is arbitrary or~~
42 ~~without reasonable justification. If the state agency head or the agency~~
43 ~~head's designee does not accept the council's recommendation, the state~~
44 ~~agency head or the agency head's designee shall state the reasons for~~
45 ~~rejecting the recommendation. The decision of the agency head or agency~~

1 ~~head's designee is final and binding. The agency head shall send a copy of~~
2 ~~the agency's final determination to the covered employee pursuant to this~~
3 ~~section.~~

4 ~~F. D. Any party may appeal the decision of the law enforcement merit~~
5 ~~system council or the final decision of the agency~~ THE DETERMINATION OF THE
6 COUNCIL IS FINAL AND BINDING UNLESS APPEALED BY THE DIRECTOR OF THE EMPLOYING
7 AGENCY OR THE AFFECTED EMPLOYEE pursuant to title 12, chapter 7, article 6 to
8 the superior court in the covered employee's county of residence. ~~on one or~~
9 ~~more of the following grounds that the order was:~~

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

16 ~~G. E.~~ E. An appeal shall be available to the court of appeals from the
17 order of the superior court pursuant to title 12, chapter 7, article 6 as in
18 other civil cases.

19 ~~H. F.~~ F. For the purposes of this section:

- 20 1. "Covered employee" has the same meaning prescribed in section
21 41-741.
22 2. "Covered service" has the same meaning prescribed in section
23 41-741.
24 3. "Employing agency" means the agency in the state personnel system
25 where the covered employee is or, in the case of dismissal, was employed.
26 4. "Full authority peace officer" means a peace officer whose
27 authority to enforce the laws of this state is not limited by the rules
28 adopted by the Arizona peace officer standards and training board.
29 5. "JUST CAUSE" HAS THE SAME MEANING PRESCRIBED IN SECTION 38-1101.
30 ~~5.~~ 6. "Original probationary period" has the same meaning prescribed
31 in section 41-741.
32 ~~6.~~ 7. "Personnel rules" means the rules adopted by the department of
33 administration, human resources division.
34 ~~7.~~ 8. "State agency head" means the chief executive officer of the
35 employing agency.
36 ~~8.~~ 9. "State personnel system" has the same meaning prescribed in
37 section 41-741.