

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

**CHAPTER 213**  
**HOUSE BILL 2377**

AN ACT

AMENDING SECTIONS 41-1830.12, 41-1830.13 AND 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.  
37 B. The council may meet with the state personnel board to discuss  
38 matters of mutual concern.  
39 C. The rules under subsection A, paragraph 3, subdivision (f) of this  
40 section shall provide for the transfer of accumulated annual leave from one  
41 employee to another employee in the same agency and for the transfer of  
42 accumulated annual leave from one employee to another employee of another  
43 agency, department, board or commission if the employees are members of the  
44 same family. The transfers may occur if the employee to whom the leave is  
45 transferred has a seriously incapacitating and extended illness or injury or  
46 a member of the employee's immediate family has a seriously incapacitating

1 and extended illness or injury and the employee has exhausted all available  
2 leave balances. Transferred annual leave shall be increased or reduced  
3 proportionally by the difference in the salaries of the employees as  
4 determined by council rule. For the purposes of this subsection, "family"  
5 means spouse, natural child, adopted child, foster child, stepchild, natural  
6 parent, stepparent, adoptive parent, grandparent, grandchild, brother,  
7 sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law,  
8 mother-in-law or father-in-law.

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

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

17 2. May recommend modification of a disciplinary action if the director  
18 of the employing agency has not proven by a preponderance of the evidence ~~the~~  
19 ~~material facts on which the discipline was based or if a disciplinary~~  
20 ~~decision is found to be arbitrary and capricious~~ THAT THE EMPLOYING AGENCY  
21 HAD JUST CAUSE TO DISCIPLINE THE EMPLOYEE.

22 3. Shall reverse the decision of the director of the employing agency  
23 if the council finds that JUST cause did not exist for any discipline to be  
24 imposed and, in the case of dismissal or demotion, return the employee to the  
25 same position the employee held before the dismissal or demotion with or  
26 without back pay.

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

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

42 G. The council shall select and the director of the department of  
43 public safety shall appoint a business manager who is a certified peace  
44 officer and an employee of the department of public safety but who is not a  
45 member of the council. The business manager shall perform and discharge all  
46 of the powers and duties that are vested in the council, except that adoption

1 of rules, creation and adjustment of classifications and grades, compensation  
2 and hearing appeals for dismissal, demotion, reduction in pay, suspensions or  
3 other punitive action remain the duty of the council. Any power or duty that  
4 the council may lawfully delegate to the business manager is conclusively  
5 presumed to have been delegated to the business manager unless it is shown  
6 that the council by an affirmative vote recorded in its minutes has  
7 specifically reserved the power or duty to itself. At the request of the  
8 council, the business manager may make inquiries regarding or investigate  
9 infractions of council rules within the department of public safety. The  
10 business manager shall report the result of the inquiry or investigation to  
11 the council for appropriate action. The business manager may delegate the  
12 business manager's powers and duties to the business manager's subordinates  
13 unless by council rule or express provision of law the business manager is  
14 specifically required to act personally.

15 H. For the purposes of this section and section 41-1830.13: ~~—~~

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

20 2. "JUST CAUSE" HAS THE SAME MEANING PRESCRIBED IN TITLE 38, CHAPTER  
21 8, ARTICLE 1.

22 Sec. 2. Section 41-1830.13, Arizona Revised Statutes, is amended to  
23 read:

24 41-1830.13. Review of council decision by agency director;  
25 appeal; reinstatement

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

37 B. Except as provided in section 41-1092.08, subsection H, a  
38 classified employee who is suspended, is demoted, has pay reduced, loses  
39 accrued leave time or is dismissed pursuant to this article, after a fair  
40 hearing and review before the law enforcement merit system council and review  
41 of the suspension, demotion, reduction in pay, loss of accrued leave time or  
42 dismissal by the director of the employing agency, may appeal the  
43 determination of the council and the final determination of the director of  
44 the employing agency pursuant to title 12, chapter 7, article 6 ~~on one or~~  
45 ~~more of the following grounds that the order was:~~

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

7 C. In addition to the trial court's powers as prescribed in section  
8 12-911, if the court overrules the determination of the council or the  
9 director of the employing agency, the employee shall be reinstated in the  
10 employee's position and the employee shall receive full compensation for any  
11 salary withheld pending the determination by the council, the director of the  
12 employing agency and court.

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

15 41-1830.16. Law enforcement merit system council duties;  
16 authority; appeals of covered full authority  
17 peace officers employed by agencies in the state  
18 personnel system; definitions

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

22 B. A covered employee in the state personnel system who is a full  
23 authority peace officer as certified by the Arizona peace officer standards  
24 and training board, is appointed to a position that requires such a  
25 certification in the covered service and who has completed the employee's  
26 original probationary period of service as provided by the personnel rules  
27 may appeal to the law enforcement merit system council the covered employee's  
28 dismissal from covered service, suspension for more than forty working hours  
29 or involuntary demotion resulting from disciplinary action. The covered  
30 employee shall file the appeal no later than ten working days after the  
31 effective date of the action. The covered employee shall be furnished with  
32 specified charges in writing when the action is taken. The appeal shall be  
33 in writing and must state specific facts relating directly to the charges on  
34 which the appeal is based. Notwithstanding section 41-1092.05, subsection D,  
35 the law enforcement merit system council shall hear the appeal within thirty  
36 days after the council's receipt. The law enforcement merit system council  
37 shall provide the employing agency with a copy of the appeal not less than  
38 twenty days in advance of the hearing.

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

40 1. Shall determine whether the employing 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 council shall affirm the decision of the state~~  
43 ~~agency head unless the disciplinary decision was arbitrary and capricious~~  
44 **THAT THE EMPLOYING AGENCY HAD JUST CAUSE TO DISCIPLINE THE EMPLOYEE.**

45 2. May recommend modification of a disciplinary action if the state  
46 agency head has not proven by a preponderance of the evidence ~~the material~~

1 ~~facts on which the discipline was based or if a disciplinary decision is~~  
2 ~~found to be arbitrary and capricious~~ THAT THE EMPLOYING AGENCY HAD JUST CAUSE  
3 TO DISCIPLINE THE EMPLOYEE.

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

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

17 E. Within forty-five days after the conclusion of the hearing, the  
18 council shall enter its decision or recommendation and shall at the same time  
19 send a copy of the decision or recommendation by certified mail to the  
20 employing agency and to the employee at the employee's address as given at  
21 the hearing or to a representative designated by the employee to receive a  
22 copy of the decision or recommendation. The state agency head or the agency  
23 head's designee shall accept, modify or reverse the council's decision or  
24 accept, modify or reject the council's recommendation within fourteen days of  
25 receipt of the findings or recommendation from the law enforcement merit  
26 system council. The state agency head or the agency head's designee shall  
27 accept the council's recommendation unless the recommendation is arbitrary or  
28 without reasonable justification. If the state agency head or the agency  
29 head's designee does not accept the council's recommendation, the state  
30 agency head or the agency head's designee shall state the reasons for  
31 rejecting the recommendation. The decision of the agency head or agency  
32 head's designee is final and binding. The agency head shall send a copy of  
33 the agency's final determination to the covered employee pursuant to this  
34 section.

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

- 39 ~~1. Founded on or contained error of law that shall specifically~~  
40 ~~include error of construction or application of any pertinent rules.~~  
41 ~~2. Unsupported by any evidence as disclosed by the entire record.~~  
42 ~~3. Materially affected by unlawful procedure.~~  
43 ~~4. Based on a violation of any constitutional provision.~~  
44 ~~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. For the purposes of this section:
- 5           1. "Covered employee" has the same meaning prescribed in section  
6 41-741.
- 7           2. "Covered service" has the same meaning prescribed in section  
8 41-741.
- 9           3. "Employing agency" means the agency in the state personnel system  
10 where the covered employee is or, in the case of dismissal, was employed.
- 11           4. "Full authority peace officer" means a peace officer whose  
12 authority to enforce the laws of this state is not limited by the rules  
13 adopted by the Arizona peace officer standards and training board.
- 14           5. "JUST CAUSE" HAS THE SAME MEANING PRESCRIBED IN TITLE 38, CHAPTER  
15 8, ARTICLE 1.
- 16           ~~5-~~ 6. "Original probationary period" has the same meaning prescribed  
17 in section 41-741.
- 18           ~~6-~~ 7. "Personnel rules" means the rules adopted by the department of  
19 administration, human resources division.
- 20           ~~7-~~ 8. "State agency head" means the chief executive officer of the  
21 employing agency.
- 22           ~~8-~~ 9. "State personnel system" has the same meaning prescribed in  
23 section 41-741.

APPROVED BY THE GOVERNOR APRIL 6, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2015.