

REFERENCE TITLE: state personnel system; covered

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1462

Introduced by
Senators Hobbs: Dalessandro, Otondo, Peshlakai; Representative Alston

AN ACT

AMENDING SECTIONS 15-543, 18-401, 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; PROVIDING FOR RENUMBERING; 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; AMENDING SECTIONS 41-1233, 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 41-2517, 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 ~~the~~
8 **THE TEACHER** was employed.

9 B. The decision of the governing board may be reviewed by the court
10 in 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
13 of the same character and matters to which special precedence is otherwise
14 given by law.

15 Sec. 2. Section 18-401, Arizona Revised Statutes, is amended to
16 read:

17 18-401. 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
20 legislative appropriation.

21 B. State agencies subject to section ~~41-750~~ **41-747**, all budget
22 units 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
26 deposited in the information technology fund. For all budget units and
27 the legislative and judicial branches of state government, the pro rata
28 share shall be .20 ~~per cent~~ **PERCENT** of the total payroll. Total payroll
29 includes all fund sources including the state general fund, federal
30 monies, special revenue funds, intergovernmental revenue monies, trust
31 funds and other payroll fund sources.

32 C. A claim for the pro rata share percentage payment shall be
33 submitted according to the fund source, with the accompanying payroll, to
34 the department of administration for deposit in the information technology
35 fund.

36 D. Notwithstanding section 35-190, monies in the information
37 technology fund do not revert to the state general fund at the end of each
38 fiscal year.

39 Sec. 3. Section 38-532, Arizona Revised Statutes, is amended to
40 read:

41 38-532. Prohibited personnel practice; violation;
42 reinstatement; exceptions; civil penalty

43 A. It is a prohibited personnel practice for an employee who has
44 control over personnel actions to take reprisal against an employee for a

1 disclosure of information of a matter of public concern by the employee to
2 a public body that the employee reasonably believes evidences:

3 1. A violation of any law.

4 2. Mismanagement, a gross waste of monies or an abuse of authority.

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

8 1. The date of the disclosure.

9 2. The name of the employee making the disclosure.

10 3. The nature of the alleged violation of law, mismanagement, gross
11 waste of monies or abuse of authority.

12 4. If possible, the date or range of dates on which the alleged
13 violation of law, mismanagement, gross waste of monies or abuse of
14 authority occurred.

15 C. An employee who knowingly commits a prohibited personnel
16 practice shall be ordered by the state personnel board, a community
17 college district governing board, a school district governing board, a
18 city or town personnel board or any other appropriate independent
19 personnel board established or authorized pursuant to section 38-534 to
20 pay a civil penalty of up to five thousand dollars to the state general
21 fund, a county general fund, a community college district unrestricted
22 general fund, a school district maintenance and operation fund or a city
23 or town general fund, whichever is appropriate. The employee who
24 committed the prohibited personnel practice, not the governmental entity,
25 shall pay the civil penalty. On a finding that an employee committed a
26 prohibited personnel practice, the employer shall take appropriate
27 disciplinary action including dismissal, except that on a finding that an
28 employee committed a prohibited personnel practice against an employee who
29 disclosed information that the employee reasonably believed evidenced a
30 violation of any law, the employee who knowingly committed the prohibited
31 personnel practice is subject to a civil penalty of up to ten thousand
32 dollars, the employer shall dismiss the employee and the employee is
33 barred from any future employment by the government entity.

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

39 E. An employee does not commit a prohibited personnel practice if
40 he takes reprisal against an employee if that employee discloses
41 information in a manner prohibited by law or the materials or information
42 are prescribed as confidential by law.

43 F. This section may not be used as a defense in a disciplinary
44 action where the employee is being disciplined for cause pursuant to
45 section ~~41-773~~ 41-751, except in a hearing on a complaint brought pursuant

1 to this section by an employee or former employee who believes he has been
2 the subject of a prohibited personnel practice as prescribed in this
3 section as the result of a disclosure of information.

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

8 H. If an employee or former employee believes that a personnel
9 action taken against him is the result of his disclosure of information
10 under this section, he may make a complaint to an appropriate independent
11 personnel board, if one is established or authorized pursuant to section
12 38-534, or to a community college district governing board, school
13 district governing board or city or town council. If an independent
14 personnel board has not been established or authorized, or if a school
15 district governing board, a community college district governing board or
16 a city or town council does not hear and decide personnel matters brought
17 pursuant to this section, the employee or former employee may make a
18 complaint to the state personnel board. A complaint made pursuant to this
19 subsection shall be made within ten days of the effective date of the
20 action taken against him. The state personnel board, a school district
21 governing board, a community college district governing board, a city or
22 town council or any other appropriate independent personnel board shall,
23 pursuant to the rules governing appeals under section ~~41-783~~ 41-785, make
24 a determination concerning:

25 1. The validity of the complaint.

26 2. Whether a prohibited personnel practice was committed against
27 the employee or former employee as a result of disclosure of information
28 by the employee or former employee.

29 I. If the state personnel board, a community college district
30 governing board, a school district governing board, a city or town council
31 or any other appropriate independent personnel board established or
32 authorized pursuant to section 38-534 determines that a prohibited
33 personnel practice was committed as a result of disclosure of information
34 by the employee or former employee, it shall rescind the personnel action
35 and order that all lost pay and benefits be returned to the employee or
36 former employee. The employee, former employee, employee alleged to have
37 committed a prohibited personnel practice pursuant to subsection A of this
38 section or employer may appeal the decision of the state personnel board,
39 a community college district governing board, a school district governing
40 board, a city or town council or any other appropriate independent
41 personnel board established or authorized pursuant to section 38-534 to
42 the superior court as provided in title 12, chapter 7, article 6.

43 J. For purposes of a hearing by the state personnel board, a school
44 district governing board, a community college district governing board, a
45 city or town council or any other appropriate independent personnel board

1 conducted under this section, the employee, former employee, employee
2 alleged to have committed the prohibited personnel practice pursuant to
3 subsection A of this section and employer may be represented by
4 counsel. In addition, representation by counsel in such hearings shall
5 meet any other requirements stipulated by the state personnel board, a
6 school district governing board, a community college district governing
7 board, a city or town council or any other appropriate independent
8 personnel board or as required by law.

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

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

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

23 Sec. 4. Section 38-610.01, Arizona Revised Statutes, is amended to
24 read:

25 38-610.01. Leave of absence and compensation for officers and
26 employees during active military service

27 A. If the president of the United States or the governor of this
28 state declares that a state of emergency exists, an officer or employee of
29 this state who is ordered to active military service of the United States
30 or this state as a member of the national guard, air national guard, army
31 reserve, naval reserve, marine corps reserve, air force reserve or coast
32 guard reserve and whose state employment is subject to title 41, chapter
33 4, article 4 or who is exempt pursuant to section ~~41-742~~ 41-771,
34 subsection ~~A~~, paragraph 1, 2, 3, 4, ~~or~~ 5, 7, 8, 9, 10, 11, 12 OR 13 OR
35 **SUBSECTION B, PARAGRAPH 1, 2, 3, 4, 5, 7 OR 8** is eligible for an
36 additional leave of absence until released from active duty by competent
37 authority. During the additional leave of absence, the officer or
38 employee shall continue to receive the officer's or employee's salary or
39 compensation, less the amount of all pay and allowances for military
40 activities while on active duty.

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

1 or employee must exhaust all military leave balances by the time of
2 activation or at any time during the active duty period.

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

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

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

16 Sec. 5. Section 38-610.02, Arizona Revised Statutes, is amended to
17 read:

18 38-610.02. Leave of absence and compensation for national
19 disaster medical system employment

20 A. An officer or employee of this state who is called into
21 employment to the national disaster medical system under the United States
22 department of health and human services and whose state employment is
23 subject to title 41, chapter 4, article 4 or who is exempt pursuant to
24 section ~~41-742~~ 41-771, subsection ~~D~~ A, paragraph 1, 2, 3, 4, ~~or~~ 5, 7, 8,
25 9, 10, 11, 12 OR 13 OR SUBSECTION B, PARAGRAPH 1, 2, 3, 4, 5, 7 OR 8 is
26 eligible for an additional leave of absence until released from active
27 duty by competent authority. During the additional leave of absence, the
28 officer or employee shall continue to receive the officer's or employee's
29 salary or compensation, less the amount of all pay and allowances for
30 activities while on active duty with the national disaster medical system.

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

34 C. An officer or employee may receive compensation pursuant to
35 subsection A of this section for the continuous duration of the officer's
36 or employee's order.

37 D. Within sixty days after an officer or employee who receives pay
38 differential pursuant to this section completes the period of active duty,
39 the officer or employee shall provide proof that the officer or employee
40 rendered honorable service while on active duty during any period for
41 which the officer or employee received the pay differential pursuant to
42 this section. This state may seek recovery of the pay differential from
43 any person who fails to provide proof of honorable service.

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

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

7 Sec. 6. Section 38-611.01, Arizona Revised Statutes, is amended to
8 read:

9 38-611.01. Arizona state retirement system; incentive
10 compensation plan; special market adjustments

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

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

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

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

39 Sec. 7. Section 38-611.02, Arizona Revised Statutes, is amended to
40 read:

41 38-611.02. Public safety personnel retirement system; special
42 market adjustments

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

1 1. May administer an incentive compensation plan for investment
2 related personnel established in consultation with the director of the
3 department of administration. The public safety personnel retirement
4 system shall file a copy of any incentive compensation plan for investment
5 related personnel with the governor, the president of the senate, the
6 speaker of the house of representatives, the office of strategic planning
7 and budgeting, the joint legislative budget committee and the department
8 of administration within ten business days of its adoption or readoption.

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

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

30 Sec. 8. Repeal

31 Title 41, chapter 4, articles 4 and 5, Arizona Revised Statutes, are
32 repealed.

33 Sec. 9. Title 41, chapter 4, Arizona Revised Statutes, is amended
34 by adding new articles 4 and 5, to read:

35 ARTICLE 4. STATE PERSONNEL SYSTEM

36 41-741. Definitions

37 IN THIS ARTICLE AND ARTICLES 5 AND 6 OF THIS CHAPTER, UNLESS THE
38 CONTEXT OTHERWISE REQUIRES:

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

40 2. "STATE SERVICE" MEANS ALL OFFICES AND POSITIONS OF EMPLOYMENT IN
41 STATE GOVERNMENT EXCEPT OFFICES AND POSITIONS EXEMPTED BY THIS ARTICLE.

42 41-742. Powers and duties of the director

43 A. THE DIRECTOR IS RESPONSIBLE FOR THE DIRECTION AND CONTROL OF
44 PERSONNEL ADMINISTRATION.

45 B. THE DIRECTOR SHALL:

- 1 1. APPOINT EMPLOYEES NECESSARY TO PERFORM THE DUTIES PRESCRIBED BY
2 THIS ARTICLE.
- 3 2. HAVE AUTHORITY FOR DEVELOPING AND ADMINISTERING A PROGRAM OF
4 PERSONNEL ADMINISTRATION FOR THE STATE SERVICE IN CONFORMANCE WITH THE
5 PERSONNEL RULES.
- 6 3. HAVE AUTHORITY TO ESTABLISH THOSE OFFICES AS MAY BE NECESSARY TO
7 MAINTAIN AN EFFECTIVE AND ECONOMICAL PROGRAM OF PERSONNEL ADMINISTRATION.
- 8 4. HAVE THE POWER TO DEPUTIZE EMPLOYEES IN VARIOUS STATE AGENCIES
9 WHERE CERTAIN OF THE FUNCTIONS OF PERSONNEL ADMINISTRATION CAN BE
10 PERFORMED BY THOSE DEPUTIES.
- 11 5. MAKE AN ANNUAL REPORT AND RECOMMENDATION TO THE LEGISLATURE AND
12 THE JOINT LEGISLATIVE BUDGET COMMITTEE AS PROVIDED IN SECTION 41-743.
- 13 6. ADOPT RULES RELATING TO PERSONNEL AND PERSONNEL ADMINISTRATION.
- 14 7. SUBJECT TO LEGISLATIVE APPROPRIATION, HAVE THE AUTHORITY TO
15 CONTRACT FOR THE SERVICES OF CONSULTANTS NECESSARY TO PERFORM THE ANNUAL
16 SALARY PLAN AND SALARY PLAN ADJUSTMENT RECOMMENDATIONS.
- 17 8. ESTABLISH A MANDATORY PROGRAM OF ANNUAL PERSONNEL MANAGEMENT
18 TRAINING FOR ALL STATE EMPLOYEES WITH SUPERVISORY OR MANAGERIAL
19 RESPONSIBILITY THAT IS APPROPRIATE TO THE NATURE AND SCOPE OF THE
20 EMPLOYEES' SUPERVISORIAL RESPONSIBILITIES. THE DIRECTOR MAY WAIVE THE
21 ANNUAL MANDATORY TRAINING ON A CASE BY CASE BASIS. THE TRAINING SHALL
22 INCLUDE AT LEAST THE FOLLOWING SUBJECTS:
 - 23 (a) BASIC EMPLOYEE SUPERVISORY OR MANAGERIAL SKILLS.
 - 24 (b) EMPLOYEE OBJECTIVES.
 - 25 (c) EMPLOYEE PERFORMANCE MEASURES AND THE USE OF PERFORMANCE
26 EVALUATION METHODS.
 - 27 (d) EMPLOYEE DISCIPLINE TRAINING AND DISCIPLINE PROCEDURES.
 - 28 (e) OTHER SUBJECTS AS DETERMINED BY THE DIRECTOR.
- 29 41-743. Annual report and recommendations
- 30 A. THE DIRECTOR SHALL PREPARE A REPORT ON STATE PERSONNEL AND THE
31 OPERATION OF THE STATE PERSONNEL SYSTEM.
- 32 B. THE REPORT SHALL INCLUDE:
 - 33 1. INFORMATION CONCERNING ALL STATE EMPLOYEES, INCLUDING EMPLOYEES
34 OF ALL EXECUTIVE, LEGISLATIVE AND JUDICIAL BRANCH AGENCIES. ALL AGENCIES
35 SHALL PROVIDE ANY INFORMATION REQUESTED BY THE DIRECTOR TO PREPARE THE
36 ANNUAL REPORT.
 - 37 2. INFORMATION CONCERNING THE NUMBER OF EMPLOYEES AFFECTED BY AND
38 REASONS FOR TURNOVER WITHIN STATE SERVICE.
 - 39 3. INFORMATION CONCERNING THE COMPENSATION DURING THE PRECEDING
40 YEAR AND THE COMING YEAR OF STATE EMPLOYEES AND THE COMPENSATION OF OTHER
41 PUBLIC EMPLOYEES AND PRIVATE EMPLOYEES.
 - 42 4. AN ADVISORY RECOMMENDATION ON THE SALARY PLAN AND ADJUSTMENTS TO
43 THE PLAN FOR EMPLOYEES IN STATE SERVICE. IN ESTABLISHING THE SALARY PLAN
44 THE DIRECTOR SHALL CONSIDER THE RELATIVE LEVELS OF DUTIES AND

1 RESPONSIBILITIES OF THE VARIOUS CLASSES OF POSITIONS, RATES PAID FOR
2 COMPARABLE POSITIONS ELSEWHERE AND OTHER RELEVANT FACTORS.

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

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

11 7. OTHER INFORMATION AS DETERMINED BY THE DIRECTOR.

12 C. THE DIRECTOR SHALL PRESENT THE ANNUAL REPORT AND RECOMMENDATIONS
13 TO THE GOVERNOR AND THE LEGISLATURE ON OR BEFORE SEPTEMBER 1 OF EACH YEAR.

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

19 1. INFORMATION CONCERNING THE NUMBER OF EMPLOYEES AFFECTED BY AND
20 REASONS FOR TURNOVER OF THEIR EMPLOYEES.

21 2. INFORMATION CONCERNING THE COMPENSATION DURING THE PRECEDING
22 YEAR AND THE COMING YEAR OF THEIR EMPLOYEES AND THE COMPENSATION OF OTHER
23 PUBLIC EMPLOYEES AND PRIVATE EMPLOYEES.

24 3. AN ADVISORY RECOMMENDATION ON THE SALARY PLAN AND ADJUSTMENTS
25 FOR THEIR EMPLOYEES. IN ESTABLISHING THE SALARY PLAN, THEY SHALL CONSIDER
26 THE RELATIVE LEVELS OF DUTIES AND RESPONSIBILITIES OF THE VARIOUS CLASSES
27 OF POSITIONS, RATES PAID FOR COMPARABLE POSITIONS ELSEWHERE AND OTHER
28 RELEVANT FACTORS.

29 4. THEIR OVERTIME PAY REQUIREMENTS.

30 41-744. Special market adjustments; committee

31 A. THE DIRECTOR SHALL ESTABLISH A SYSTEM OF SPECIAL MARKET
32 ADJUSTMENTS TO MODIFY SALARIES OF STATE EMPLOYEES WITHIN CERTAIN
33 IDENTIFIED JOB CLASSIFICATIONS.

34 B. THE SYSTEM SHALL PROVIDE FOR SALARY ADJUSTMENTS, SUBJECT TO
35 LEGISLATIVE APPROPRIATION, FOR STATE POSITIONS AND FOR POSITIONS IN JOB
36 CLASSIFICATIONS THAT, IN THE OPINION OF THE DIRECTOR, ARE CRITICAL TO THE
37 ORDERLY CONDUCT OF THE AGENCIES IN WHICH THE POSITIONS ARE LOCATED AND
38 THAT MEET SPECIFIC COMPARATIVE CRITERIA. THESE CRITERIA INCLUDE WHETHER
39 THE POSITIONS ARE EXPERIENCING SUBSTANTIALLY ABOVE AVERAGE TURNOVER OR
40 HAVE SALARIES THAT ARE SUBSTANTIALLY BELOW COMPARABLE POSITIONS OUTSIDE
41 STATE SERVICE.

42 C. THE DIRECTOR SHALL ESTABLISH PROCEDURES TO DETERMINE THE JOB
43 CLASSIFICATIONS ELIGIBLE FOR SPECIAL MARKET ADJUSTMENTS. THE PROCEDURES
44 SHALL INCLUDE:

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

3 2. THE CONSIDERATION OF JOB CLASSIFICATIONS IDENTIFIED BY AGENCY
4 DIRECTORS.

5 3. IN CASES IN WHICH SIGNIFICANT INCREASES ARE RECOMMENDED,
6 RECOMMENDED INCREASES MAY BE SCHEDULED OVER TWO OR MORE YEARS. IF
7 MULTIPLE YEAR INCREASES ARE RECOMMENDED, THE COST OF FUNDING THE PROPOSED
8 ADJUSTMENTS IN EACH YEAR SHALL BE INCLUDED.

9 D. A SPECIAL MARKET ADJUSTMENT COMMITTEE IS ESTABLISHED CONSISTING
10 OF THE FOLLOWING MEMBERS:

11 1. THE DIRECTOR OF THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND
12 BUDGETING OR THE DIRECTOR'S DESIGNEE.

13 2. THE ADMINISTRATIVE DIRECTOR OF THE COURTS OR THE ADMINISTRATIVE
14 DIRECTOR'S DESIGNEE.

15 3. TWO MEMBERS WHO HAVE AT LEAST TEN YEARS OF EXPERIENCE IN HUMAN
16 RESOURCES ADMINISTRATION AND WHO ARE APPOINTED BY THE DIRECTOR OF THE
17 DEPARTMENT OF ADMINISTRATION. ONE OF THESE MEMBERS SHALL BE EMPLOYED IN
18 THE PRIVATE SECTOR.

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

22 5. TWO MEMBERS WHO ARE STATE AGENCY DIRECTORS, DEPUTY DIRECTORS OR
23 ASSISTANT DIRECTORS AND WHO ARE APPOINTED BY THE DIRECTOR OF THE
24 DEPARTMENT OF ADMINISTRATION.

25 E. MEMBERS OF THE SPECIAL MARKET ADJUSTMENT COMMITTEE WHO ARE
26 APPOINTED BY THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL NOT
27 SERVE MORE THAN TWO CONSECUTIVE THREE YEAR TERMS. THE DEPARTMENT SHALL
28 PROVIDE STAFF FOR THE SPECIAL MARKET ADJUSTMENT COMMITTEE.

29 F. THE SPECIAL MARKET ADJUSTMENT COMMITTEE MAY ASSIST THE DIRECTOR
30 IN DETERMINING RECOMMENDATIONS FOR THE COST OF FUNDING THE PROPOSED
31 ADJUSTMENTS.

32 41-745. Reduction in force procedures

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

38 B. THE PROCEDURES SHALL GIVE SUBSTANTIALLY EQUAL CONSIDERATION IN
39 BOTH REDUCTION IN FORCE AND REEMPLOYMENT TO THE PERSON'S PERFORMANCE
40 RECORD AND SENIORITY IN SERVICE. CONSIDERATION OF THE PERSON'S
41 PERFORMANCE IS LIMITED TO PERFORMANCE, AS MEASURED BY UP TO THE THREE MOST
42 RECENT PERFORMANCE EVALUATIONS CONDUCTED USING A PERFORMANCE MEASUREMENT
43 SYSTEM APPROVED BY THE DIRECTOR, DURING A PERIOD OF NOT MORE THAN THE TWO
44 YEARS IMMEDIATELY PRECEDING THE REDUCTION IN FORCE. CONSIDERATION OF THE
45 PERSON'S SENIORITY IS LIMITED TO TENURE IN THE CURRENT JOB CLASS SERIES AS

1 DEFINED IN THE PERSONNEL RULES DURING THE FIVE YEARS IMMEDIATELY PRECEDING
2 THE REDUCTION IN FORCE.

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

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

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

18 41-746. Required reduction in hours

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

23 41-747. Contribution of pro rata share for personnel division fund

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

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

41 C. NOTWITHSTANDING SECTION 35-190, ONLY MONIES IN EXCESS OF FIVE
42 HUNDRED THOUSAND DOLLARS REVERT TO THE STATE GENERAL FUND AT THE END OF
43 EACH FISCAL YEAR. THE STATE COMPTROLLER SHALL PAY ANY MONIES DETERMINED
44 TO BE OWED TO THE FEDERAL GOVERNMENT FROM THE PERSONNEL DIVISION FUND
45 BEFORE CALCULATING THE REVERSION.

1 41-748. Agreements for services and facilities

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

9 41-749. Coordination with department of economic security

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

- 15 1. RESULT IN MORE ECONOMICAL PERFORMANCE OF THE DUTIES OF THE
16 DEPARTMENT.
- 17 2. PROVIDE FOR REIMBURSEMENT TO THE DEPARTMENT OF ECONOMIC SECURITY
18 WHENEVER FEDERAL REGULATIONS SO REQUIRE.

19 41-750. Refusal of examination or certification

20 THE DIRECTOR MAY REFUSE TO EXAMINE OR, AFTER EXAMINATION, MAY REFUSE
21 TO CERTIFY AS ELIGIBLE OR MAY WITHDRAW FROM CERTIFICATION ANYONE WHO:

- 22 1. HAS PRACTICED ANY DECEPTION OR FRAUD IN HIS APPLICATION, IN HIS
23 EXAMINATION OR IN SECURING HIS ELIGIBILITY.
- 24 2. HAS FAILED TO REPLY WITHIN A REASONABLE TIME TO COMMUNICATIONS
25 CONCERNING HIS AVAILABILITY FOR EMPLOYMENT.
- 26 3. IS FOUND TO BE UNSUITED OR NOT QUALIFIED FOR EMPLOYMENT.
- 27 4. LACKS ANY OF THE REQUIREMENTS ESTABLISHED BY THE DIRECTOR FOR
28 THE EXAMINATION OR POSITION FOR WHICH HE APPLIES.
- 29 5. IS PHYSICALLY OR MENTALLY SO DISABLED AS TO BE RENDERED UNFIT TO
30 PERFORM THE DUTIES OF THE POSITION TO WHICH HE SEEKS APPOINTMENT.

31 41-751. Causes for dismissal or discipline

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

- 34 1. FRAUD IN SECURING APPOINTMENT.
- 35 2. INCOMPETENCY.
- 36 3. INEFFICIENCY.
- 37 4. NEGLIGENCE OF DUTY.
- 38 5. INSUBORDINATION.
- 39 6. DISHONESTY.
- 40 7. DRUNKENNESS ON DUTY.
- 41 8. ADDICTION TO THE USE OF NARCOTICS OR HABIT-FORMING DRUGS.
- 42 9. ABSENCE WITHOUT LEAVE.
- 43 10. FINAL CONVICTION OF A FELONY OR A MISDEMEANOR INVOLVING MORAL
44 TURPITUDE.
- 45 11. DISCOURTEOUS TREATMENT OF THE PUBLIC.

- 1 12. IMPROPER POLITICAL ACTIVITY.
- 2 13. WILFUL DISOBEDIENCE.
- 3 14. MISUSE OR UNAUTHORIZED USE OF STATE PROPERTY.
- 4 15. ANY OTHER CAUSE THAT THE DIRECTOR DEEMS NECESSARY AND
- 5 ESTABLISHES.

6 B. THE DIRECTOR SHALL PRESCRIBE DEFINITIONS FOR EACH OF THE CAUSES
7 FOR DISMISSAL OR DISCIPLINE PRESCRIBED OR ESTABLISHED UNDER THIS SECTION
8 THAT SHALL BE USED BY ALL EMPLOYEES AND THE PERSONNEL BOARD IN EVALUATING
9 DISMISSALS AND DISCIPLINARY ACTIONS.

10 ARTICLE 5. PERSONNEL ADMINISTRATION

11 41-771. Exemptions

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

- 13 1. ELECTED STATE OFFICERS.
- 14 2. STATE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS WHO ARE
- 15 APPOINTED BY THE LEGISLATURE OR THE GOVERNOR, THE EMPLOYEES OF THE
- 16 GOVERNOR'S OFFICE, THE EMPLOYEES OF THE ARIZONA LEGISLATIVE COUNCIL AND
- 17 THE EMPLOYEES OF THE SUPREME COURT AND THE COURT OF APPEALS.
- 18 3. STATE OFFICERS AND EMPLOYEES WHO ARE APPOINTED OR EMPLOYED BY
- 19 THE LEGISLATURE OR EITHER HOUSE OF THE LEGISLATURE.
- 20 4. THE CURATOR, CURATORIAL AIDES AND TOUR GUIDES AND OTHER PERSONS
- 21 WHO ARE EMPLOYED TO WORK IN THE STATE CAPITOL MUSEUM.
- 22 5. OFFICERS OR EMPLOYEES OF STATE UNIVERSITIES AND PERSONNEL OF THE
- 23 ARIZONA STATE SCHOOLS FOR THE DEAF AND THE BLIND.
- 24 6. PATIENTS OR INMATES WHO ARE EMPLOYED IN STATE INSTITUTIONS.
- 25 7. OFFICERS AND ENLISTED PERSONNEL OF THE NATIONAL GUARD OF
- 26 ARIZONA.
- 27 8. THE SINGLE ADMINISTRATIVE OR EXECUTIVE DIRECTOR AND ONE DEPUTY
- 28 DIRECTOR OF EACH STATE DEPARTMENT OR AGENCY.
- 29 9. NOT MORE THAN TWO ASSISTANTS WHO SERVE IN THE OFFICE OF AN
- 30 ELECTED STATE OFFICER, IF THAT ELECTED STATE OFFICER IS THE SOLE ELECTED
- 31 HEAD OF THE DEPARTMENT.
- 32 10. ONE ADMINISTRATIVE ASSISTANT WHO SERVES A BOARD OR COMMISSION
- 33 ELECTED TO HEAD A STATE AGENCY, DEPARTMENT OR DIVISION, AND ONE ASSISTANT
- 34 FOR EACH ELECTED MEMBER OF THAT BOARD OR COMMISSION.
- 35 11. PERSONS WHO REPORT DIRECTLY TO THE GOVERNOR.
- 36 12. EMPLOYEES OF THE DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS
- 37 WHO OCCUPY ARIZONA NATIONAL GUARD POSITIONS IDENTIFIED AS MOBILIZATION
- 38 ASSETS.
- 39 13. EXCEPT AS OTHERWISE REQUIRED BY FEDERAL LAW AND EXCEPT FOR
- 40 CERTIFIED PEACE OFFICERS AS DEFINED IN SECTION 38-842, CORRECTIONAL
- 41 OFFICERS AND JUVENILE CORRECTIONAL OFFICERS, STATE OFFICERS AND EMPLOYEES
- 42 WHO ARE APPOINTED OR EMPLOYED AFTER DECEMBER 31, 2006 AND WHO ARE AT A PAY
- 43 GRADE OF TWENTY-FOUR OR ABOVE.
- 44 14. ANY OTHER POSITION EXEMPTED BY LAW.

1 B. EXCEPT FOR SECTION 41-772, SUBSECTIONS D, E AND F, THIS ARTICLE
2 AND ARTICLE 6 OF THIS CHAPTER DO NOT APPLY TO THOSE POSITIONS DETERMINED
3 BY THE DIRECTOR TO MEET ANY OF THE FOLLOWING CRITERIA:

4 1. TOP LEVEL POSITIONS IN A DEPARTMENT OR AGENCY THAT DETERMINE AND
5 PUBLICLY ADVOCATE SUBSTANTIVE PROGRAM POLICY. THIS INCLUDES THOSE PERSONS
6 WHO ARE ENGAGED IN THE DIRECTION OF LINE OPERATIONS IF THEY REPORT
7 DIRECTLY TO THE DIRECTOR OR DEPUTY DIRECTOR OF THE AGENCY AND IN LARGE
8 MULTIPROGRAM AGENCIES THOSE PERSONS WHO REPORT DIRECTLY TO THE HEAD OF A
9 PRIMARY COMPONENT OF THE DEPARTMENT OR AGENCY.

10 2. THOSE PERSONS WHO ARE REQUIRED TO MAINTAIN A DIRECT CONFIDENTIAL
11 WORKING RELATIONSHIP WITH AN EXEMPT OFFICIAL.

12 3. PERSONS WHO PROVIDE LEGAL COUNSEL.

13 4. POSITIONS THAT ARE PART TIME.

14 5. POSITIONS THAT ARE TEMPORARY AND THAT ARE ESTABLISHED FOR THE
15 PURPOSE OF CONDUCTING A SPECIAL PROJECT, STUDY OR INVESTIGATION.

16 6. POSITIONS THAT ARE ESSENTIALLY FOR REHABILITATION PURPOSES.

17 7. POSITIONS THAT ARE DETERMINED BY THE DIRECTOR TO BE DIRECTLY OR
18 INDIRECTLY ENGAGED IN ESTABLISHING POLICY OR ENFORCEMENT STANDARDS.

19 8. DIRECTORS OF ALL INSTITUTIONS THAT MAINTAIN SUPERVISION OR CARE
20 ON A TWENTY-FOUR HOUR PER DAY BASIS OTHER THAN HALFWAY HOUSES OR GROUP
21 HOMES.

22 41-772. Prohibitions; violation; classification; civil
23 penalty; protection of civil or political liberties

24 A. AN EMPLOYEE SHALL NOT:

25 1. USE A POLITICAL ENDORSEMENT IN CONNECTION WITH AN APPOINTMENT TO
26 A POSITION IN THE STATE SERVICE.

27 2. USE OR PROMISE TO USE ANY OFFICIAL AUTHORITY OR INFLUENCE FOR
28 THE PURPOSE OF INFLUENCING THE VOTE OR POLITICAL ACTION OF ANY PERSON OR
29 FOR ANY CONSIDERATION.

30 B. AN EMPLOYEE OR MEMBER OF THE PERSONNEL BOARD SHALL NOT BE A
31 MEMBER OF ANY NATIONAL, STATE OR LOCAL COMMITTEE OF A POLITICAL PARTY, AN
32 OFFICER OR CHAIRMAN OF A COMMITTEE OF A PARTISAN POLITICAL CLUB OR A
33 CANDIDATE FOR NOMINATION OR ELECTION TO ANY PAID PUBLIC OFFICE, SHALL NOT
34 HOLD ANY PAID, ELECTIVE PUBLIC OFFICE OR SHALL NOT TAKE ANY PART IN THE
35 MANAGEMENT OR AFFAIRS OF ANY POLITICAL PARTY OR IN THE MANAGEMENT OF ANY
36 PARTISAN OR NONPARTISAN CAMPAIGN OR RECALL EFFORT, EXCEPT THAT AN EMPLOYEE
37 MAY:

38 1. EXPRESS THE EMPLOYEE'S OPINION.

39 2. ATTEND MEETINGS FOR THE PURPOSE OF BECOMING INFORMED CONCERNING
40 THE CANDIDATES FOR PUBLIC OFFICE AND THE POLITICAL ISSUES.

41 3. CAST THE EMPLOYEE'S VOTE AND SIGN NOMINATION OR RECALL
42 PETITIONS.

43 4. MAKE CONTRIBUTIONS TO CANDIDATES, POLITICAL PARTIES OR CAMPAIGN
44 COMMITTEES CONTRIBUTING TO CANDIDATES OR ADVOCATING THE ELECTION OR DEFEAT
45 OF CANDIDATES.

1 5. CIRCULATE CANDIDATE NOMINATION PETITIONS OR RECALL PETITIONS.

2 6. ENGAGE IN ACTIVITIES TO ADVOCATE THE ELECTION OR DEFEAT OF A
3 CANDIDATE.

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

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

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

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

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

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

30 H. AN EMPLOYEE WHO VIOLATES THIS SECTION IS SUBJECT TO SUSPENSION
31 OF NOT LESS THAN THIRTY DAYS OR DISMISSAL.

32 I. A PERSON WHO VIOLATES:

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

35 2. ANY OTHER PROVISION OF THIS SECTION IS GUILTY OF A CLASS 1
36 MISDEMEANOR.

37 J. IN ADDITION TO ANY OTHER PENALTY, A PERSON WHO SOLICITS OR
38 ENCOURAGES A CONTRIBUTION IN A MANNER PROHIBITED BY THIS SECTION IS
39 SUBJECT TO A CIVIL PENALTY OF UP TO THREE TIMES THE AMOUNT OF THE
40 CONTRIBUTION SOLICITED OR ENCOURAGED PLUS COSTS, EXPENSES AND REASONABLE
41 ATTORNEY FEES.

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

1 L. IT IS THE PUBLIC POLICY OF THIS STATE, REFLECTED IN THIS
2 SECTION, THAT GOVERNMENT PROGRAMS BE ADMINISTERED IN AN UNBIASED MANNER
3 AND WITHOUT FAVORITISM FOR OR AGAINST ANY POLITICAL PARTY OR GROUP OR ANY
4 MEMBER IN ORDER TO PROMOTE PUBLIC CONFIDENCE IN GOVERNMENT, GOVERNMENTAL
5 INTEGRITY AND THE EFFICIENT DELIVERY OF GOVERNMENTAL SERVICES AND TO
6 ENSURE THAT ALL EMPLOYEES ARE FREE FROM ANY EXPRESS OR IMPLIED REQUIREMENT
7 OR ANY POLITICAL OR OTHER PRESSURE OF ANY KIND TO ENGAGE OR NOT ENGAGE IN
8 ANY ACTIVITY PERMITTED BY THIS SECTION. TOWARD THIS END, ANY PERSON OR
9 ENTITY CHARGED WITH THE INTERPRETATION OF THIS SECTION SHALL TAKE INTO
10 ACCOUNT THE POLICY OF THIS SECTION AND SHALL CONSTRUER ANY OF ITS
11 PROVISIONS ACCORDINGLY.

12 41-773. Unlawful acts; violation; classification

13 A. A PERSON MAY NOT MAKE ANY FALSE STATEMENT, CERTIFICATE, MARK,
14 RATING OR REPORT WITH REGARD TO ANY TEST, CERTIFICATION OR APPOINTMENT
15 MADE UNDER THIS CHAPTER OR IN ANY MANNER COMMIT ANY FRAUD PREVENTING THE
16 IMPARTIAL EXECUTION OF THIS CHAPTER AND THE RULES.

17 B. A PERSON MAY NOT, DIRECTLY OR INDIRECTLY, GIVE, RENDER, PAY,
18 OFFER, SOLICIT OR ACCEPT ANY MONEY, SERVICE OR OTHER VALUABLE
19 CONSIDERATION FOR OR ON ACCOUNT OF ANY APPOINTMENT, PROPOSED APPOINTMENT,
20 PROMOTION OR PROPOSED PROMOTION TO, OR ANY ADVANTAGE IN, A POSITION IN THE
21 STATE SERVICE.

22 C. AN EMPLOYEE OF THE DEPARTMENT, EXAMINER OR OTHER PERSON SHALL
23 NOT OBSTRUCT ANY PERSON IN THAT PERSON'S RIGHT TO EXAMINATION,
24 ELIGIBILITY, CERTIFICATION OR APPOINTMENT UNDER THIS CHAPTER, OR FURNISH
25 TO ANY PERSON ANY SPECIAL OR SECRET INFORMATION FOR THE PURPOSE OF
26 AFFECTING THE RIGHTS OR PROSPECTS OF ANY PERSON WITH RESPECT TO EMPLOYMENT
27 IN THE STATE SERVICE.

28 D. AN ELECTED OR APPOINTED OFFICIAL MAY NOT WITH CORRUPT INTENT USE
29 THE OFFICIAL'S POLITICAL INFLUENCE OR POSITION TO CAUSE THE FIRING,
30 PROMOTION OR DEMOTION OF A PUBLIC EMPLOYEE OR THE HIRING OF OR FAILURE TO
31 HIRE AN APPLICANT FOR PUBLIC EMPLOYMENT. AN ELECTED OR APPOINTED OFFICIAL
32 WHO KNOWINGLY AND WITH CORRUPT INTENT VIOLATES THIS SUBSECTION IS GUILTY
33 OF A CLASS 2 MISDEMEANOR.

34 E. A CONTACT BY AN ELECTED OR APPOINTED OFFICIAL WITH A PUBLIC
35 AGENCY REGARDING THE QUALIFICATIONS OF AN APPLICANT SHALL NOT BE CONSTRUED
36 AS ILLEGALLY USING POLITICAL INFLUENCE OR POSITION.

37 41-774. Certification by division

38 A SALARY SHALL NOT BE PAID TO AN EMPLOYEE IN THE STATE SERVICE
39 UNLESS THE DIRECTOR OR THE DIRECTOR'S DESIGNEE CERTIFIES THAT THE
40 EMPLOYMENT IS IN ACCORDANCE WITH THIS ARTICLE.

41 41-775. Violation; classification

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

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

6 41-776. State employees; mentoring

7 A. THE DIRECTOR SHALL PROVIDE IN THE PERSONNEL RULES A PROCEDURE
8 THAT ALLOWS STATE EMPLOYEES TO VOLUNTARILY ENGAGE IN ACTIVITIES THAT
9 SUPPORT MENTORING, EDUCATION AND YOUTH DEVELOPMENT OF SCHOOL AGE YOUTHS IN
10 THIS STATE.

11 B. THE RULES SHALL:

12 1. ENCOURAGE STATE EMPLOYEES TO VOLUNTEER AS MENTORS TO SCHOOL AGE
13 YOUTHS AT PUBLIC SCHOOLS, PRIVATE SCHOOLS OR HOME SCHOOLS OR THROUGH
14 FAITH-BASED ORGANIZATIONS.

15 2. INCLUDE:

16 (a) UP TO ONE HOUR OF FLEX TIME PER WEEK, NOT TO EXCEED FIVE HOURS
17 PER CALENDAR MONTH.

18 (b) PROVISIONS THAT THE FLEX TIME MUST BE MADE UP WITHIN THE SAME
19 WORK WEEK THAT IT IS TAKEN AND THAT FLEX TIME IS UNPAID, CANNOT BE ACCRUED
20 AND DOES NOT COUNT TOWARD OVERTIME HOURS.

21 Sec. 10. Section 41-782, Arizona Revised Statutes, is amended to
22 read:

23 41-782. Powers and duties of the state personnel board

24 A. ~~Except as provided by section 41-1830.16,~~ The state personnel
25 board shall hear and review appeals as provided in this article relating
26 to dismissal ~~of a covered employee~~ from ~~covered~~ STATE service, suspension
27 for more than ~~eighty~~ FORTY working hours or ~~involuntary~~ demotion resulting
28 from disciplinary action as defined in the personnel rules ~~for an employee~~
29 ~~in covered service.~~

30 B. The state personnel board shall hear and review complaints as
31 provided in title 38, chapter 3, article 9, relating to any personnel
32 action taken against an employee or former employee of this state, except
33 an employee or former employee of a state university or the ARIZONA board
34 of regents, which the employee or former employee believes was taken in
35 reprisal for the employee's or former employee's disclosure of information
36 to a public body. The state personnel board shall recommend the dismissal
37 of a supervisor or other responsible person, other than an elected
38 official, who it determines committed a prohibited personnel practice.

39 C. The state personnel board may adopt rules it deems necessary for
40 the administration of hearings and the review of appeals and complaints as
41 prescribed in this section.

42 ~~D. The state personnel board shall only exercise authority that is~~
43 ~~specifically granted to the board pursuant to this article.~~

1 Sec. 11. Renumber
2 Section 41-783, Arizona Revised Statutes, is renumbered as section
3 41-785.

4 Sec. 12. Title 41, chapter 4, article 6, Arizona Revised Statutes,
5 is amended by adding a new section 41-783, to read:

6 41-783. Personnel rules

7 THE PERSONNEL RULES SHALL PROVIDE FOR:

8 1. A POSITION CLASSIFICATION PLAN FOR ALL POSITIONS IN THE STATE
9 SERVICE.

10 2. COMPETITIVE EXAMINATIONS TO TEST THE RELATIVE QUALIFICATIONS OF
11 APPLICANTS FOR POSITIONS IN STATE SERVICE. ALL COMPETITIVE EXAMINATIONS
12 SHALL BE GIVEN STATEWIDE. FOR THE PURPOSES OF THIS PARAGRAPH, "STATEWIDE"
13 MEANS THAT A COMPETITIVE EXAMINATION SHALL BE GIVEN IN AN OFFICE OF THE
14 DEPARTMENT OF ECONOMIC SECURITY IN EACH CITY OR TOWN OF THE STATE IN WHICH
15 THE OFFICE IS LOCATED, UNLESS THE DIRECTOR DESIGNATES ANOTHER LOCATION
16 WITHIN THAT CITY OR TOWN.

17 3. EVALUATION OF PERFORMANCE OF EMPLOYEES FOR THE PURPOSE OF
18 IMPROVING STAFF EFFECTIVENESS.

19 4. PROMOTIONS OR TRANSFERS BETWEEN CLASSES THAT GIVE APPROPRIATE
20 CONSIDERATION TO THE APPLICANT'S QUALIFICATIONS, RECORD OF PERFORMANCE AND
21 CONDUCT.

22 5. ESTABLISHMENT OF ELIGIBILITY LISTS FOR APPOINTMENT AND
23 PROMOTION. THE NAMES OF SUCCESSFUL CANDIDATES SHALL BE PLACED ON THE
24 LISTS IN THE ORDER OF THEIR RELATIVE EXCELLENCE IN THEIR RESPECTIVE
25 EXAMINATIONS.

26 6. REJECTION OF CANDIDATES FOR APPOINTMENT OR PROMOTION WHO FAIL TO
27 FULFILL REASONABLE REQUIREMENTS.

28 7. DELIVERY OF A LIST OF QUALIFIED APPLICANTS TO ANY STATE AGENCY
29 REQUIRING IT. THE STATE AGENCY MAY SELECT AND HIRE AN EMPLOYEE FROM THIS
30 LIST.

31 8. A MINIMUM PERIOD OF ORIGINAL PROBATIONARY SERVICE FOLLOWING
32 INITIAL APPOINTMENT. DURING A PERIOD OF ORIGINAL PROBATIONARY SERVICE,
33 THE PROBATIONARY EMPLOYEE SHALL PERFORM THE ACTUAL DUTIES OF THE POSITION
34 AND MAY BE DISCHARGED WITHOUT CAUSE. A PERIOD OF PROMOTIONAL PROBATION
35 SERVICE SHALL BE ESTABLISHED BY THE DIRECTOR.

36 9. A REASONABLE PERIOD OF PROVISIONAL EMPLOYMENT WITHOUT
37 COMPETITIVE EXAMINATION IF THERE IS NO ELIGIBILITY LIST AVAILABLE FOR THE
38 POSITION.

39 10. EMERGENCY APPOINTMENTS FOR NOT MORE THAN THIRTY DAYS WITH OR
40 WITHOUT EXAMINATION AS PROVIDED BY THE RULES.

41 11. TEMPORARY APPOINTMENTS TO POSITIONS THAT OCCUR, TERMINATE AND
42 RECUR PERIODICALLY REGARDLESS OF THE DURATION OF THE POSITION.

43 12. TRANSFER FROM A POSITION IN ONE DEPARTMENT TO A SIMILAR
44 POSITION IN ANOTHER DEPARTMENT INVOLVING SIMILAR QUALIFICATIONS, DUTIES,
45 RESPONSIBILITIES AND SALARY RANGES.

1 13. REINSTATEMENT TO AN ELIGIBILITY LIST OF PREVIOUS EMPLOYEES WHO
2 HAVE RESIGNED IN GOOD STANDING OR WHO WERE SEPARATED FROM THEIR POSITIONS
3 WITHOUT FAULT ON THEIR PART.

4 14. REDUCTION IN FORCE BY REASON OF LACK OF FUNDS OR WORK,
5 ABOLITION OF A POSITION OR MATERIAL CHANGE IN DUTIES OR ORGANIZATION, AND
6 FOR REEMPLOYMENT OF EMPLOYEES SEPARATED BY REDUCTION IN FORCE AS PROVIDED
7 IN SECTION 41-745.

8 15. THE CIRCUMSTANCES UNDER WHICH AN EMPLOYEE MAY BE SUSPENDED
9 WITHOUT PAY.

10 16. ESTABLISHMENT OF A PLAN FOR RESOLVING EMPLOYEE GRIEVANCES AND
11 COMPLAINTS AND IN CASES OF ALLEGED DISCRIMINATION FOR REFERRAL TO THE
12 APPROPRIATE AGENCY IF AN EMPLOYEE IS NOT OTHERWISE SATISFIED WITH THE
13 FINAL GRIEVANCE RESOLUTION.

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

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

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

42 (c) THAT IF A PERMANENT STATUS EMPLOYEE IS UNABLE TO WORK DUE TO A
43 NON-JOB RELATED, SERIOUSLY INCAPACITATING AND EXTENDED ILLNESS OR INJURY,
44 AS CERTIFIED BY A PHYSICIAN OF THE EMPLOYEE SUBJECT TO CONFIRMATION BY A
45 PHYSICIAN CHOSEN BY THE AGENCY, AND THE EMPLOYEE HAS EXHAUSTED ALL LEAVE

1 BALANCES AND ANY LEAVE TRANSFERRED PURSUANT TO SUBDIVISION (a) OF THIS
2 PARAGRAPH, THE EMPLOYEE SHALL BE PLACED ON LEAVE WITHOUT PAY STATUS FOR UP
3 TO ONE HUNDRED EIGHTY DAYS OR UNTIL ABLE TO RETURN TO WORK, WHICHEVER IS
4 SOONER.

5 18. DEVELOPMENT OF POLICIES AND PROCEDURES FOR THE EMPLOYMENT OF
6 QUALIFIED DISABLED JOB APPLICANTS.

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

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

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

15 22. THE ESTABLISHMENT OF STANDARDS OF ETHICAL CONDUCT FOR
16 EMPLOYEES.

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

19 24. AUTHORIZATION TO PUBLISH AND MAKE AVAILABLE TO ALL EMPLOYEES A
20 HANDBOOK OUTLINING PERTINENT RULES.

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

29 (a) ALL ELECTED POSITIONS.

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

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

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

34 (i) WHO USE DISCRETIONARY POWERS.

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

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

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

39 27. APPROVAL OF OVERTIME PAY FOR POSITIONS THAT ARE ELIGIBLE FOR
40 COMPENSATORY TIME OFF PURSUANT TO PARAGRAPH 26 OF THIS SECTION BECAUSE
41 THEIR PRIMARY DUTY IS MANAGEMENT WHEN EITHER OF THE FOLLOWING CRITERIA IS
42 MET:

43 (a) THE PRACTICE IS DETERMINED BY THE DIRECTOR TO BE A PREVAILING
44 CONDITION IN THE ARIZONA LABOR MARKET AND WHEN PAY DIFFERENTIALS BETWEEN
45 SUBORDINATES AND SUPERVISORS ARE REDUCED BY OVERTIME PAY RECEIVED BY THE

1 NONEXEMPT SUBORDINATES TO THE EXTENT THAT IT IS NO LONGER AN INCENTIVE TO
2 REMAIN IN THE SUPERVISORY POSITION.

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

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

6 Sec. 13. Title 41, chapter 4, article 6, Arizona Revised Statutes,
7 is amended by adding section 41-784, to read:

8 41-784. Nonconformity with federal regulations granting
9 federal funds

10 ANY PROVISION OF THIS ARTICLE OR ARTICLE 5 OF THIS CHAPTER THAT
11 CONFLICTS OR IS INCONSISTENT WITH FEDERAL RULES, REGULATIONS OR STANDARDS
12 GOVERNING THE GRANT OF FEDERAL FUNDS TO AN AGENCY OR DEPARTMENT OF THIS
13 STATE IS NOT APPLICABLE TO THAT AGENCY OR DEPARTMENT. THE DIRECTOR IS
14 AUTHORIZED TO VARY THE TERMS OF THE PERSONNEL RULES AS APPLICABLE TO SUCH
15 AGENCIES AND DEPARTMENTS TO COMPLY WITH THE CONDITIONS FOR FEDERAL GRANTS.

16 Sec. 14. Section 41-785, Arizona Revised Statutes, as renumbered by
17 this act, is amended to read:

18 41-785. Appeals to the state personnel board; notice of
19 charges; hearings

20 A. ~~Except as provided by section 41-1830.16, a covered~~ AN employee
21 who has completed the ~~covered~~ employee's original probationary period of
22 service as provided by the personnel rules may appeal to the state
23 personnel board ~~the covered employee's~~ SEEKING RELIEF FROM dismissal from
24 ~~covered~~ STATE service, suspension for more than ~~eighty~~ FORTY working hours
25 or ~~involuntary~~ demotion resulting from disciplinary action. The appeal
26 shall be filed not later than ten working days after the effective date of
27 such action. The ~~covered~~ employee shall be furnished with specified
28 charges in writing when the action is taken. Such appeal shall be in
29 writing and must state specific facts relating directly to the charges on
30 which the appeal is based and shall be heard by the state personnel board
31 within thirty days after its receipt. The state personnel board shall
32 provide the employing agency with a copy of the appeal not less than
33 twenty days in advance of the hearing.

34 B. Hearings on such appeals shall be open to the public, except in
35 cases where the ~~covered~~ employee requests a confidential hearing, and
36 shall be informal with technical rules of evidence not applying to the
37 proceedings except the rule of privilege recognized by law. Both the
38 ~~covered~~ employee and the employing agency shall be notified of any hearing
39 or meeting date not less than twenty days in advance of the hearing or not
40 less than ten days in advance of a meeting and may select representatives
41 of their choosing, present and cross-examine witnesses and give evidence
42 before the state personnel board. The state personnel board may appoint a
43 hearing officer to conduct the hearing and take evidence on behalf of the
44 board and exercise the rights prescribed by section 12-2212. The state
45 personnel board shall prepare an official record of the hearing, including

1 all testimony recorded manually or by mechanical device, and exhibits.
2 Either party may request that the record be transcribed. If a party
3 requests that the record be transcribed, an entity, other than the state
4 personnel board, selected by the requesting party shall transcribe the
5 record at the cost of the requesting party. If the disciplinary hearing
6 would involve evidence the state is prevented by law from disclosing, then
7 a confidential hearing upon the state's request shall be granted.

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

9 ~~1. Shall determine whether the state agency has proven by a~~
10 ~~preponderance of the evidence the material facts on which the discipline~~
11 ~~was based. On such a finding, the board shall affirm the decision of the~~
12 ~~state agency head, unless the disciplinary decision was arbitrary and~~
13 ~~capricious.~~

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

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

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

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

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

38 E. Within forty-five days after the conclusion of the hearing, the
39 state personnel board shall enter its decision ~~or recommendation~~ and shall
40 at the same time send a copy of the decision ~~or recommendation~~ by
41 certified mail to the employing agency and to the ~~covered~~ employee at the
42 employee's address as given at the hearing or to a representative
43 designated by the ~~covered~~ employee to receive a copy of the decision ~~or~~
44 ~~recommendation. The agency director or the director's designee shall~~
45 ~~accept, modify or reverse the board's decision or accept, modify or reject~~

1 ~~the board's recommendation within fourteen days of receipt of the findings~~
2 ~~or recommendation from the state personnel board. The decision of the~~
3 ~~agency director or director's designee is final and binding. The agency~~
4 ~~director shall send a copy of the agency's final determination to the~~
5 ~~covered employee pursuant to this section.~~

6 F. Any party may appeal the decision of the state personnel board
7 ~~or the final decision of the agency~~ pursuant to title 12, chapter 7,
8 article 6 to the superior court in the ~~covered~~ employee's county of
9 residence on one or 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. 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
18 in other civil cases.

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

25 Sec. 15. Section 41-1233, Arizona Revised Statutes, is amended to
26 read:

27 41-1233. Prohibited acts; definition

28 A. No person shall:

29 1. Retain or employ another person to promote or oppose legislation
30 for compensation contingent in whole or in part on the passage or defeat
31 of any legislation, or the approval or veto of any legislation by the
32 governor, and no person shall accept employment or render service for
33 compensation on a contingent basis.

34 2. Lobby the legislature for compensation within one year after the
35 person ceases to be a member of the senate or house of representatives.

36 3. In any manner improperly seek to influence the vote of any
37 member of the legislature through communication with that member's
38 employer.

39 4. Lobby the public body that employed the person in a capacity
40 having a significant procurement role ~~as defined in section 41-741~~ in the
41 procurement of materials, services or construction within one year after
42 the person ceases to be employed by the public body.

43 B. FOR THE PURPOSES OF THIS SECTION, "SIGNIFICANT PROCUREMENT
44 ROLE":

- 1 1. MEANS ANY ROLE THAT INCLUDES ANY OF THE FOLLOWING DUTIES:
2 (a) PARTICIPATING IN THE DEVELOPMENT OF A PROCUREMENT AS DEFINED IN
3 SECTION 41-2503.
4 (b) PARTICIPATING IN THE DEVELOPMENT OF AN EVALUATION TOOL.
5 (c) APPROVING A PROCUREMENT AS DEFINED IN SECTION 41-2503 OR AN
6 EVALUATION TOOL.
7 (d) SOLICITING QUOTES GREATER THAN TEN THOUSAND DOLLARS FOR THE
8 PROVISION OF MATERIALS, SERVICES OR CONSTRUCTION.
9 (e) SERVING AS A TECHNICAL ADVISOR OR AN EVALUATOR WHO EVALUATES A
10 PROCUREMENT AS DEFINED IN SECTION 41-2503.
11 (f) RECOMMENDING OR SELECTING A VENDOR THAT WILL PROVIDE MATERIALS,
12 SERVICES OR CONSTRUCTION TO THIS STATE.
13 (g) SERVING AS A DECISION-MAKER OR DESIGNEE ON A PROTEST OR AN
14 APPEAL BY A PARTY REGARDING AN AGENCY PROCUREMENT SELECTION OR DECISION.

15 2. DOES NOT INCLUDE MAKING DECISIONS ON DEVELOPING SPECIFICATIONS
16 AND THE SCOPE OF WORK FOR A PROCUREMENT AS DEFINED IN SECTION 41-2503 IF
17 THE DECISION IS BASED ON THE APPLICATION OF COMMONLY ACCEPTED INDUSTRY
18 STANDARDS OR KNOWN PUBLISHED STANDARDS OF THE AGENCY AS APPLIED TO THE
19 PROJECT, SERVICES, GOODS OR MATERIALS.

20 Sec. 16. Section 41-1830.12, Arizona Revised Statutes, is amended
21 to read:

22 41-1830.12. Law enforcement merit system council; duties;
23 authority; rules; business manager; definitions

24 A. The law enforcement merit system council shall:

- 25 1. Select a chairman and vice-chairman.
26 2. Hold meetings that are necessary to perform its duties on the
27 call of the chairman.

28 3. Adopt rules pursuant to recognized merit principles of public
29 employment it deems necessary for establishing the following for
30 department of public safety and Arizona peace officer standards and
31 training board personnel:

32 (a) A classification and compensation plan for all covered
33 positions and for establishing standards and qualifications for all
34 classified positions from a list of necessary employees that is prepared
35 by the director of the employing agency.

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

40 (c) A performance appraisal system for evaluating the work
41 performance of employees of the agencies.

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

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

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

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

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

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

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

33 ~~1. Shall determine whether the employing agency has proven by a~~
34 ~~preponderance of the evidence that the employing agency had just cause to~~
35 ~~discipline the employee.~~

36 ~~2. May recommend modification of a disciplinary action if the~~
37 ~~director of the employing agency has not proven by a preponderance of the~~
38 ~~evidence that the employing agency had just cause to discipline the~~
39 ~~employee.~~

40 ~~3. Shall reverse the decision of the director of the employing~~
41 ~~agency if the council finds that just cause did not exist for any~~
42 ~~discipline to be imposed and, in the case of dismissal or demotion, return~~
43 ~~the employee to the same position the employee held before the dismissal~~
44 ~~or demotion with or without back pay.~~

1 ~~E. On a finding that the director of the employing agency has not~~
2 ~~proven just cause to discipline the employee by a preponderance of the~~
3 ~~evidence, the council may recommend a proposed disciplinary action in~~
4 ~~light of the facts proven.~~

5 ~~F. Within forty-five days after the conclusion of the hearing, the~~
6 ~~council shall enter its decision or recommendation and at the same time~~
7 ~~shall send a copy of the decision or recommendation by certified mail to~~
8 ~~the employing agency and to the employee at the employee's address as~~
9 ~~given at the hearing or to a representative designated by the employee to~~
10 ~~receive a copy of the decision or recommendation.~~

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

31 ~~H.~~ E. For the purposes of this section ~~and section 41-1830.13:~~

32 1. "Director of the employing agency" means the director of the
33 department of public safety with respect to employees of the department
34 and the executive director of the Arizona peace officer standards and
35 training board with respect to employees of the board.

36 2. "Just cause" has the same meaning prescribed in ~~title 38,~~
37 ~~chapter 8, article 1~~ SECTION 38-1101.

38 Sec. 17. Section 41-1830.13, Arizona Revised Statutes, is amended
39 to read:

40 41-1830.13. Review of council decision; appeal; reinstatement

41 ~~A. Within fourteen days of receipt of the finding or recommendation~~
42 ~~by the council pursuant to section 41-1830.12, the director of the~~
43 ~~employing agency shall accept, modify or reverse the council's decision or~~
44 ~~accept, modify or reject the council's recommendation. The director shall~~
45 ~~accept the council's recommendation unless the recommendation is arbitrary~~

1 ~~or without reasonable justification. If the director does not accept the~~
2 ~~council's recommendation, the director shall state the reason or reasons~~
3 ~~for rejecting the recommendation. The decision of the director of the~~
4 ~~employing agency is final and binding. The director of the employing~~
5 ~~agency shall send a copy of the agency's final determination to the~~
6 ~~employee pursuant to section 41-1830.12.~~

7 ~~B.~~ A. Except as provided in section 41-1092.08, subsection H, a
8 classified employee who is suspended, is demoted, has pay reduced, loses
9 accrued leave time or is dismissed pursuant to this article, after a fair
10 hearing and review before the law enforcement merit system council and
11 ~~review~~ CONFIRMATION of the suspension, demotion, reduction in pay, loss of
12 accrued leave time or dismissal by the director of the ~~employing agency~~
13 DEPARTMENT OF PUBLIC SAFETY, may appeal the determination of the council
14 ~~and the final determination of the director of the employing agency~~
15 pursuant to title 12, chapter 7, article 6.

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

22 Sec. 18. Title 41, chapter 12, article 10, Arizona Revised
23 Statutes, is amended by adding section 41-1830.14, to read:

24 41-1830.14. Status of persons employed before merit system
25 institution

26 ALL EMPLOYEES OF THE DEPARTMENT SHALL CONTINUE IN THEIR RESPECTIVE
27 POSITIONS WITHOUT EXAMINATION, UNTIL REMOVED FROM THE POSITIONS UNDER THE
28 PROVISIONS OF THE MERIT SYSTEM ESTABLISHED PURSUANT TO THIS ARTICLE.

29 Sec. 19. Section 41-1830.15, Arizona Revised Statutes, is amended
30 to read:

31 41-1830.15. Causes for dismissal or discipline; definitions

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

- 34 1. Fraud or misrepresentation in securing employment.
- 35 2. Incompetency.
- 36 3. Inefficiency.
- 37 4. Inexcusable neglect of duty or unauthorized absence.
- 38 5. Insubordination.
- 39 6. Dishonesty.

40 7. Physical or mental disability subject to the provisions of the
41 Americans with disabilities act of 1990 (42 United States Code sections
42 12101 through 12213).

43 8. Unauthorized drinking on duty or drunkenness on duty.

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

- 1 10. Commission of any crime classified as a felony.
2 11. Discourteous treatment of the public or other employees.
3 12. Commission of any crime involving moral turpitude.
4 13. Improper political activity as proscribed in section ~~41-752~~
5 ~~41-772~~.
6 14. Misuse or unauthorized use of state property.
7 15. Addiction to the illegal use of a narcotic or dangerous drug.
8 16. Any other failure of good behavior or acts either during or
9 outside of duty hours that are incompatible with or inimical to the
10 interest of the department of public safety.
11 B. For the purposes of this section:
12 1. "Incompetency" means the lack of ability or judgment, legal
13 qualifications or fitness to discharge required duties.
14 2. "Inefficiency" means the failure to produce as required for
15 reasons other than incompetency.
16 Sec. 20. Repeal
17 Section 41-1830.16, Arizona Revised Statutes, is repealed.
18 Sec. 21. Section 41-2517, Arizona Revised Statutes, is amended to
19 read:
20 41-2517. Procurement officers and procurement employees;
21 violation; classification; exception; definition
22 A. It is unlawful for a procurement officer or an employee having a
23 significant procurement role to accept any position or have employment
24 discussions with a person or firm lobbying or potentially responding to
25 the solicitation beginning on signature of the first nondisclosure
26 agreement pertaining to a particular solicitation or at the time of
27 request for a sole source procurement or competition impracticable
28 procurement and ending at the time of contract award. It is unlawful for
29 a procurement officer or an employee having a significant procurement role
30 to accept any position or have employment discussions with the successful
31 offeror or offerors and their lobbyists beginning on signature of the
32 first nondisclosure agreement pertaining to a particular solicitation or
33 at the time of request for a sole source procurement or competition
34 impracticable procurement and ending one year after the purchased
35 materials are delivered or the purchase of services or construction
36 begins, if the procurement officer or employee had a significant
37 procurement role in the particular procurement.
38 B. It is unlawful for a procurement officer or an employee having a
39 significant procurement role to solicit an employment opportunity,
40 regardless of who would receive such an opportunity, from any person or
41 firm lobbying or potentially responding to a solicitation for the
42 procurement of materials, services or construction beginning on signature
43 of the first nondisclosure agreement pertaining to a particular
44 solicitation or at the time of request for a sole source procurement or
45 competition impracticable procurement and ending at the time of contract

1 award. It is unlawful for a procurement officer or an employee having a
2 significant procurement role to solicit an employment opportunity,
3 regardless of who would receive such an opportunity, from the successful
4 offeror or offerors and their lobbyists beginning on signature of the
5 first nondisclosure agreement pertaining to a particular solicitation or
6 at the time of request for a sole source procurement or competition
7 impracticable procurement and ending one year after the purchased
8 materials are delivered or the purchase of services or construction
9 begins, if the procurement officer or employee had a significant role in
10 the particular procurement.

11 C. It is unlawful for a person or firm lobbying or potentially
12 responding to a solicitation for the procurement of materials, services or
13 construction to offer employment to a procurement officer, a procurement
14 employee or an employee having a significant procurement role beginning on
15 signature of the first nondisclosure agreement pertaining to a particular
16 solicitation or at the time of request for a sole source procurement or
17 competition impracticable procurement and ending at the time of contract
18 award. It is unlawful for the successful offeror or offerors and their
19 lobbyists to offer employment to a procurement officer, a procurement
20 employee or an employee having a significant procurement role beginning on
21 signature of the first nondisclosure agreement pertaining to a particular
22 solicitation or at the time of request for a sole source procurement or
23 competition impracticable procurement and ending one year after the
24 purchased materials are delivered or the purchase of services or
25 construction begins, if the procurement officer or employee had a
26 significant role in the particular procurement.

27 D. The director of the department of administration may waive any
28 or all of the waiting period required pursuant to subsections A, B and C
29 of this section in excess of twenty-four months for a procurement officer
30 or an employee with a significant procurement role if the period of time
31 that follows the signature of the nondisclosure agreement exceeds
32 twenty-four months. A procurement officer or an employee seeking a waiver
33 shall make a written request to the officer's or employee's state
34 governmental unit director, and the director of the state governmental
35 unit shall forward the request with a written recommendation to the
36 director of the department of administration. The director of the
37 department of administration shall provide a written decision and
38 justification within fifteen business days after the receipt of the
39 complete request. The director of the department of administration may
40 not approve waiver requests for matters still in evaluation or within six
41 months following the contract award. If the requesting party is the
42 director or a deputy director of a state governmental unit, the request
43 for a waiver and all written materials, including a director
44 recommendation, must be forwarded to the governor for a final decision,

1 except that the director may not make any recommendation or determination
2 on the director's own request.

3 E. In response to a written request from an employee seeking
4 clarification on whether the employee has played a significant role in a
5 procurement, the director shall issue a determination in writing within
6 fifteen days after receiving the request. The director may make a
7 determination in writing that this section ~~and section 41-753, subsection~~
8 ~~to do~~ DOES not apply if a particular solicitation, sole source procurement
9 or competition impracticable procurement has been canceled or is
10 associated with the privatization of existing state services that would
11 result in the elimination of the position in state service of an employee
12 with a significant procurement role. The director may delegate the
13 authority to make determinations pursuant to this subsection to a director
14 of a state agency. An agency director or agency deputy director may
15 request a determination from the office of the governor regarding whether
16 the agency director or agency deputy director played a significant role in
17 a particular procurement for the purposes of the one-year employment
18 restriction, and the office of the governor shall make a determination
19 within thirty days after the receipt of the written request.

20 F. AN EMPLOYEE OF AN AGENCY AS DEFINED IN SECTION 41-1001,
21 INCLUDING THE OFFICE OF THE GOVERNOR, WHO HAS A SIGNIFICANT ROLE IN THE
22 PROCUREMENT OF MATERIALS, SERVICES OR CONSTRUCTION SHALL NOT ACCEPT AN
23 OFFER OF EMPLOYMENT FROM OR HAVE EMPLOYMENT DISCUSSIONS WITH ANY PERSON OR
24 ENTITY LOBBYING FOR OR POTENTIALLY RESPONDING TO A SOLICITATION DURING A
25 PERIOD BEGINNING ON SIGNATURE OF THE FIRST NONDISCLOSURE AGREEMENT
26 PERTAINING TO A PARTICULAR SOLICITATION OR AT THE TIME OF REQUEST FOR A
27 SOLE SOURCE PROCUREMENT OR COMPETITION IMPRACTICABLE PROCUREMENT AND
28 ENDING AT THE TIME OF THE CONTRACT AWARD. AN EMPLOYEE OF AN AGENCY AS
29 DEFINED IN SECTION 41-1001, INCLUDING THE OFFICE OF THE GOVERNOR, WHO HAS
30 A SIGNIFICANT ROLE IN THE PROCUREMENT OF MATERIALS, SERVICES OR
31 CONSTRUCTION SHALL NOT ACCEPT AN OFFER OF EMPLOYMENT FROM OR HAVE
32 EMPLOYMENT DISCUSSIONS WITH THE SUCCESSFUL OFFEROR OR OFFERORS AND THEIR
33 LOBBYISTS DURING A PERIOD BEGINNING ON SIGNATURE OF THE FIRST
34 NONDISCLOSURE AGREEMENT PERTAINING TO A PARTICULAR SOLICITATION OR AT THE
35 TIME OF REQUEST FOR A SOLE SOURCE PROCUREMENT OR COMPETITION IMPRACTICABLE
36 PROCUREMENT AND ENDING ONE YEAR AFTER THE PURCHASED MATERIALS ARE
37 DELIVERED OR THE PURCHASE OF SERVICES OR CONSTRUCTION BEGINS. THE
38 DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION MAY WAIVE ANY OR ALL OF THE
39 WAITING PERIOD IN EXCESS OF TWENTY-FOUR MONTHS FOR A PROCUREMENT OFFICER
40 OR AN EMPLOYEE WITH A SIGNIFICANT PROCUREMENT ROLE IF THE PERIOD OF TIME
41 THAT FOLLOWS THE SIGNATURE OF THE NONDISCLOSURE AGREEMENT EXCEEDS
42 TWENTY-FOUR MONTHS. A PROCUREMENT OFFICER OR AN EMPLOYEE SEEKING A WAIVER
43 SHALL MAKE A WRITTEN REQUEST TO THE OFFICER'S OR EMPLOYEE'S STATE AGENCY
44 DIRECTOR, AND THE DIRECTOR OF THE STATE AGENCY SHALL FORWARD THE REQUEST
45 WITH A WRITTEN RECOMMENDATION TO THE DIRECTOR OF THE DEPARTMENT OF

1 ADMINISTRATION. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL
 2 PROVIDE A WRITTEN DECISION AND JUSTIFICATION WITHIN FIFTEEN BUSINESS DAYS
 3 AFTER THE RECEIPT OF THE COMPLETE REQUEST. THE DIRECTOR OF THE DEPARTMENT
 4 OF ADMINISTRATION MAY NOT APPROVE WAIVER REQUESTS FOR MATTERS STILL IN
 5 EVALUATION OR WITHIN SIX MONTHS FOLLOWING THE CONTRACT AWARD. IF THE
 6 REQUESTING PARTY IS THE DIRECTOR OR A DEPUTY DIRECTOR OF A STATE AGENCY,
 7 THE REQUEST FOR A WAIVER AND ALL WRITTEN MATERIALS, INCLUDING A DIRECTOR
 8 RECOMMENDATION, MUST BE FORWARDED TO THE GOVERNOR FOR A FINAL DECISION,
 9 EXCEPT THAT THE DIRECTOR MAY NOT MAKE ANY RECOMMENDATION OR DETERMINATION
 10 ON THE DIRECTOR'S OWN REQUEST. AN AGENCY AS DEFINED IN SECTION 41-1001,
 11 INCLUDING THE OFFICE OF THE GOVERNOR, SHALL INFORM ITS EMPLOYEES WHEN THE
 12 FIRST NONDISCLOSURE AGREEMENT IS SIGNED ON A PARTICULAR SOLICITATION, AND
 13 THE AGENCY SHALL NOTIFY THE STATE PROCUREMENT ADMINISTRATOR WHO SHALL POST
 14 INFORMATION REGARDING THE DATE OF THE FIRST NONDISCLOSURE AGREEMENT
 15 PERTAINING TO A PARTICULAR PROCUREMENT ACTIVITY ON THE DEPARTMENT OF
 16 ADMINISTRATION'S WEBSITE. THIS SUBSECTION DOES NOT APPLY TO A PROCUREMENT
 17 OFFICER OR AN EMPLOYEE WHO IN GOOD FAITH RELIES ON A DETERMINATION ISSUED
 18 BY THE DIRECTOR PURSUANT TO SUBSECTION E OF THIS SECTION THAT THE
 19 PROCUREMENT OFFICER OR EMPLOYEE HAS NOT HAD A SIGNIFICANT PROCUREMENT
 20 ROLE.

21 ~~F.~~ G. It is unlawful for a procurement officer or an employee who
 22 was previously employed by a person or firm responding to a solicitation
 23 to serve in a significant procurement role for a period of one year
 24 following the person's previous employment.

25 ~~G.~~ H. Beginning October 1, 2014, if an agency uses a qualified
 26 vendor list of persons or entities that are eligible to be selected to
 27 design, develop, implement or construct any form of project associated
 28 with the list, any procurement officer who was assigned to work evaluating
 29 or approving the vendor list or any employee having a significant
 30 procurement role in developing the vendor list shall not accept an offer
 31 of employment from or have employment discussions with a vendor on the
 32 list within one year after the initial publication of the list or accept
 33 an offer of employment from or have employment discussions with a newly
 34 added vendor within one year after the vendor is added to the original
 35 list. If a vendor from an approved list of qualified vendors is awarded a
 36 contract that is associated with the list, a procurement officer involved
 37 in selecting the vendor or an employee having a significant procurement
 38 role in selecting the vendor shall not accept an offer of employment from
 39 or have employment discussions with that vendor within one year after that
 40 vendor is awarded the contract.

41 ~~H.~~ I. On signature of a nondisclosure agreement pertaining to a
 42 particular solicitation, or at the time of a request for a sole source or
 43 competition impracticable procurement, a procurement officer or an
 44 employee having a significant role in the procurement shall provide

1 written disclosure of any financial interest the officer or employee, or
2 the spouse of the officer or employee, may hold.

3 ~~I~~ J. A person who knowingly violates this section is guilty of a
4 class 2 misdemeanor. On conviction the person is ineligible for
5 appointment to or employment in a position in the state personnel system
6 for a period of five years and, if the person is an employee of this state
7 at the time of conviction, is subject to suspension for not less than
8 ninety days or dismissal.

9 ~~J~~ K. This section does not apply to a procurement officer or
10 employee who in good faith relies on a determination issued by the
11 director pursuant to subsection ~~H~~ E of this section that the procurement
12 officer or employee has not had a significant procurement role.