



Bill Number: H.B. 2571

Biggs Floor Amendment

Reference to: House engrossed bill

Amendment drafted by: Leg Council

## FLOOR AMENDMENT EXPLANATION

---

The Biggs floor amendment to S.B. 2571 makes the following changes to the bill:

1. Removes language that made the Director of the Industrial Commission a gubernatorial appointee and returns that responsibility to the Commission, subject to Senate approval. The Director will serve at the pleasure of the Governor.
2. Removes language that requires the Governor to appoint a selection committee for selecting members of the Board of Executive Clemency.
3. Subjects all employees of the Department of Public Safety (DPS) to the Law Enforcement Merit System Council (LEMSC).
4. Defines *full authority peace officer* as a peace officer whose authority to enforce the laws of this state is not limited by the rules adopted by AzPOST.
5. Clarifies that employees of any Legislative Agency are exempt from the State Personnel System (SPS).
6. Decreases the compensation for members of both the SPS and LEMSC from \$200 to \$100 per day.
7. Requires a covered employee within the SPS that is a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board (AzPOST) and is appointed to a position that requires such a certification to appeal suspensions greater than 80 hours, demotions and dismissals to LEMSC.
8. Requires, if the Director of DPS does not accept LEMSC's recommendation, the Director to state the reasons for rejecting the recommendation.

Amendment explanation prepared by Bill Boyd

5/2/2012

9. Modifies the level of superior court review for whistleblower complaints from a trial de novo to a review of the records of the administrative hearing.
10. Exempts the Arizona Department of Administration (ADOA) from rulemaking for 1 year.
11. Excludes political appointees from the provision that requires that all suspensions over 80 hours, demotions and dismissals be reviewed by ADOA prior to implementation.
12. Exempts employees in investment related positions in the state retirement systems from directives regarding open competition and political affiliation.
13. Prohibits pro rata monies contributed by ASRS and PSPRS from being reverted to the state General Fund and requires them to be separately accounted for and reverted to the various retirement plans.
14. Includes a severability clause.

#### ***LEMSC Duties***

15. Allows a covered employee who is a full authority peace officer to appeal to LEMSC the employee's dismissal from service, suspension for more than 40 working hours or involuntary demotion.
16. Requires a covered employee to file an appeal no later than 10 working days after the effective date of the action.
17. Requires LEMSC to hear the appeal within 30 days after receipt.
18. Requires LEMSC to determine whether the employing agency has proven by a preponderance of the evidence the material facts on which the discipline was based and upon doing so, affirm the decision of the state agency head unless the disciplinary decision was arbitrary and capricious.
19. Allows LEMSC to recommend modification of a disciplinary action if the agency head does not prove by a preponderance of the evidence the material facts on which the discipline was based or the decision is found to be arbitrary and capricious.
20. Requires LEMSC to reverse a disciplinary decision if it finds that cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the employee to the same position with or without back pay.
21. Requires, on finding that the agency head has not proven by a preponderance of the evidence the material facts on which the discipline was based, or if the decision was arbitrary and capricious, LEMSC to identify the facts that were not supported and allows LEMSC to recommend an alternate disciplinary action in light of facts proven.

- 22. Requires an agency head to accept, modify or reject LEMSC's decision.
- 23. States that an agency head's decision is final and binding.
- 24. Allows any party to appeal the LEMSC decision or the final decision of the agency to the superior court on specified grounds.

#### ***ASRS and PSPRS Incentive Compensation***

- 25. Allows the Arizona State Retirement System (ASRS) and the Public Safety Personnel Retirement System (PSPRS) to administer an incentive compensation plan (plan) for investment related personnel.
- 26. Requires ASRS and PSPRS to file a copy of the plan with the Governor, the President of the Senate, the Speaker of the House of Representatives, the Office of Strategic Planning and Budgeting, the Joint Legislative Budget Committee and ADOA.
- 27. Prohibits ASRS and PSPRS from establishing any other compensation plans without the approval of the Director of ADOA.
- 28. Allows ASRS to request that the Director of ADOA establish a special pay plan for the ASRS and PSPRS Directors, Deputy Directors, Chief Investment Officers, investment related personnel and fiduciary or investment counsel.
- 29. Requires the Director of ADOA to establish the special pay plan after considering the recommendations of the ASRS and using relevant market data.
- 30. Allows the Director of ADOA to adopt other special pay plans determined necessary for certain classes or groups of ASRS employees.

BIGGS FLOOR AMENDMENT  
SENATE AMENDMENTS TO H.B. 2571  
(Reference to House engrossed bill)

Page 39, strike lines 44 and 45, insert "A. The commission shall employ a director  
WHO IS SUBJECT TO CONFIRMATION BY THE SENATE. SUBJECT TO"

Page 40, line 5, after the period strike remainder of line

Line 6, strike "~~education and training as the commission determines.~~" insert  
"The director shall have such administrative ability, education and training  
as the commission determines."

Page 51, after line 45, insert:

"Sec. 40. Section 31-401, Arizona Revised Statutes, is amended to  
read:

31-401. Board of executive clemency; qualifications;  
appointment; officers; quorum; meeting

A. The board of executive clemency is established consisting of five  
members who are appointed by the governor pursuant to this subsection and  
section 38-211. ~~The governor shall appoint a selection committee consisting  
of the director of the department of public safety, the director of the state  
department of corrections and three other persons who shall submit a list of  
three qualified candidates to the governor for each vacancy on the board.  
The governor shall fill the vacancy by appointing a member to the board of  
executive clemency from the list.~~

B. The members of the board shall serve on a full-time basis and the  
compensation of members shall be as determined pursuant to section 38-611.  
Each member shall be appointed on the basis of broad professional or  
educational qualifications and experience and shall have demonstrated an  
interest in the state's correctional program. No more than two members from  
the same professional discipline shall be members of the board at the same  
time.

C. Each member appointed to the board shall complete a four week  
course relating to the duties and activities of the board. The course shall

1 be designed and administered by the chairman of the board and shall be  
2 conducted by the office of the board of executive clemency and the office of  
3 the attorney general. The course shall include training in all statutes that  
4 pertain to the board and participation in a decision making workshop.

5 D. Members shall be appointed for a term of five years to expire on  
6 the third Monday in January of the appropriate year.

7 E. A member of the board may be removed by the governor for cause.

8 F. The governor shall select a member of the board as chairman. The  
9 chairman shall select other officers as are advisable. The term of the  
10 chairman is two years, except that the chairman may be removed as chairman at  
11 the pleasure of the governor. If a board member's term expires while the  
12 member is serving as chairman, the chair shall be deemed vacant and a new  
13 chairman shall be selected.

14 G. The board may adopt rules, not inconsistent with law, as it deems  
15 proper for the conduct of its business. The board may from time to time  
16 amend or change the rules and publish and distribute the rules as provided by  
17 the administrative procedures act.

18 H. The board shall meet at least once a month at the state prison and  
19 at other times or places as the board deems necessary.

20 I. The presence of three members of the board constitutes a quorum,  
21 except that the chairman may designate that the presence of two members of  
22 the board constitutes a quorum.

23 J. If two members of the board constitute a quorum pursuant to  
24 subsection I of this section and the two members do not concur on the action  
25 under consideration, the chairman of the board, if the chairman is not one of  
26 the members who constituted the quorum and after reviewing the information  
27 considered by the two members, shall cast the deciding vote. If the chairman  
28 of the board is one of the two members constituting a quorum at a hearing  
29 under subsection I of this section, and there is not concurrence on the  
30 action under consideration, the action fails.

1 K. The board shall employ an executive director whose compensation  
2 shall be determined pursuant to section 38-611. The chairman of the board  
3 may act as the executive director."

4 Renumber to conform

5 Page 116, line 2, after the period strike remainder of line

6 Strike line 3

7 Page 118, between lines 31 and 32, insert:

8 "Sec. 95. Title 38, chapter 4, article 1, Arizona Revised Statutes, is  
9 amended by adding sections 38-611.01 and 38-611.02, to read:

10 38-611.01. Arizona state retirement system; special pay plan

11 THE ARIZONA STATE RETIREMENT SYSTEM ESTABLISHED BY CHAPTER 5, ARTICLE 2  
12 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 FILE  
16 A COPY OF ANY INCENTIVE COMPENSATION PLAN FOR INVESTMENT RELATED PERSONNEL  
17 WITH THE GOVERNOR, THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF  
18 REPRESENTATIVES, THE OFFICE OF STRATEGIC PLANNING AND BUDGETING, THE JOINT  
19 LEGISLATIVE BUDGET COMMITTEE AND THE DEPARTMENT OF ADMINISTRATION WITHIN TEN  
20 BUSINESS DAYS OF ITS ADOPTION OR READOPTION.

21 2. EXCEPT FOR THE INCENTIVE COMPENSATION PLAN FOR INVESTMENT RELATED  
22 PERSONNEL, SHALL NOT ESTABLISH ANY OTHER COMPENSATION PLANS WITHOUT THE  
23 APPROVAL OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION.

24 3. MAY REQUEST THAT THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION  
25 ESTABLISH A SPECIAL PAY PLAN FOR THE ARIZONA STATE RETIREMENT SYSTEM  
26 DIRECTOR, DEPUTY DIRECTOR, CHIEF INVESTMENT OFFICER, INVESTMENT RELATED  
27 PERSONNEL AND FIDUCIARY OR INVESTMENT COUNSEL. THE DIRECTOR OF THE  
28 DEPARTMENT OF ADMINISTRATION, PURSUANT TO SECTION 41-742, SUBSECTION C,  
29 PARAGRAPH 4, SHALL ESTABLISH THE SPECIAL PAY PLAN AFTER CONSIDERING THE  
30 RECOMMENDATIONS OF THE ARIZONA STATE RETIREMENT SYSTEM BOARD AND USING  
31 RELEVANT MARKET DATA. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION MAY  
32 ADOPT OTHER SPECIAL PAY PLANS DETERMINED NECESSARY FOR CERTAIN CLASSES OR

1        GROUPS OF ARIZONA STATE RETIREMENT SYSTEM EMPLOYEES, TAKING INTO  
2        CONSIDERATION SUCH FACTORS AS OCCUPATIONAL PATTERNS, ECONOMIC CONDITIONS AND  
3        PAY RANGES COMMON TO GOVERNMENT, BUSINESS AND INDUSTRY, AND SHALL WORK WITH  
4        THE ARIZONA STATE RETIREMENT SYSTEM IN ESTABLISHING THE PLANS.

5        38-611.02. Public safety personnel retirement system: special  
6        pay practices

7        THE BOARD OF TRUSTEES OF THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM  
8        ESTABLISHED BY CHAPTER 5, ARTICLE 4 OF THIS TITLE:

9        1. MAY ADMINISTER AN INCENTIVE COMPENSATION PLAN FOR INVESTMENT  
10       RELATED PERSONNEL ESTABLISHED IN CONSULTATION WITH THE DIRECTOR OF THE  
11       DEPARTMENT OF ADMINISTRATION. THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM  
12       SHALL FILE A COPY OF ANY INCENTIVE COMPENSATION PLAN FOR INVESTMENT RELATED  
13       PERSONNEL WITH THE GOVERNOR, THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE  
14       HOUSE OF REPRESENTATIVES, THE OFFICE OF STRATEGIC PLANNING AND BUDGETING, THE  
15       JOINT LEGISLATIVE BUDGET COMMITTEE AND THE DEPARTMENT OF ADMINISTRATION  
16       WITHIN TEN BUSINESS DAYS OF ITS ADOPTION OR READOPTION.

17       2. EXCEPT FOR THE INCENTIVE COMPENSATION PLAN FOR INVESTMENT RELATED  
18       PERSONNEL, SHALL NOT ESTABLISH ANY OTHER COMPENSATION PLANS WITHOUT THE  
19       APPROVAL OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION.

20       3. MAY REQUEST THAT THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION  
21       ESTABLISH A SPECIAL PAY PLAN FOR THE PUBLIC SAFETY PERSONNEL RETIREMENT  
22       SYSTEM ADMINISTRATOR, DEPUTY OR ASSISTANT ADMINISTRATOR, CHIEF INVESTMENT  
23       OFFICER, INVESTMENT RELATED PERSONNEL AND FIDUCIARY OR INVESTMENT COUNSEL.  
24       THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION, PURSUANT TO SECTION 41-742,  
25       SUBSECTION C, PARAGRAPH 4, SHALL ESTABLISH THE SPECIAL PAY PLAN AFTER  
26       CONSIDERING THE RECOMMENDATIONS OF THE PUBLIC SAFETY PERSONNEL RETIREMENT  
27       SYSTEM BOARD OF TRUSTEES, INCLUDING CONSIDERATION OF THE SALARY RANGES  
28       RECOMMENDED BY AN INDEPENDENT COMPENSATION CONSULTANT AND USING RELEVANT  
29       MARKET DATA. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION MAY ADOPT  
30       OTHER SPECIAL PAY PLANS DETERMINED NECESSARY FOR CERTAIN CLASSES OR GROUPS OF  
31       PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM EMPLOYEES, TAKING INTO  
32       CONSIDERATION SUCH FACTORS AS OCCUPATIONAL PATTERNS, ECONOMIC CONDITIONS AND

PAY RANGES COMMON TO GOVERNMENT, BUSINESS AND INDUSTRY, AND SHALL WORK WITH  
THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM IN ESTABLISHING THE PLANS."

Renumber to conform

Page 121, between lines 9 and 10, insert:

"Sec. 97. Section 38-654, Arizona Revised Statutes, is amended to  
read:

38-654. Special employee health insurance trust fund; purpose;  
investment of monies; use of monies; exemption from  
lapsing; annual report

A. There is established a special employee health insurance trust fund  
for the purpose of administering the state employee health insurance benefit  
plans. The fund shall consist of legislative appropriations, monies  
collected from the employer and employees for the health insurance benefit  
plans and investment earnings on monies collected from employees. The fund  
shall be administered by the director of the department of administration.  
Monies in the fund that are determined by the legislature to be for  
administrative expenses of the department of administration, including monies  
authorized by subsection C, paragraph 4 of this section, are subject to  
legislative appropriation.

B. On notice from the department of administration, the state  
treasurer shall invest and divest monies in the fund as provided by section  
35-313, and monies earned from investment shall be credited to the fund.  
There shall be a separate accounting of monies contributed by the employer,  
monies collected from state employees and investment earnings on monies  
collected from employees. Monies collected from state employees for health  
insurance benefit plans shall be expended before expenditure of monies  
contributed by the employer.

C. Monies in the fund shall be used by the department of  
administration for the following purposes for the benefit of officers and  
employees who participate in a health insurance benefit plan pursuant to this  
article:



1           1. To administer a health insurance benefit program for state officers  
2 and employees.

3           2. To pay health insurance premiums, claims costs and related  
4 administrative expenses.

5           3. To apply against future premiums, claims costs and related  
6 administrative expenses.

7           4. To apply the equivalent of not more than one dollar fifty cents for  
8 each employee for each month to administer applicable federal and state laws  
9 relating to health insurance benefit programs and to design, implement and  
10 administer improvements to the employee health insurance or benefit program.

11           D. Subsection C of this section shall not be construed to require that  
12 all monies in the special employee health insurance trust fund shall be used  
13 within any one or more fiscal years. Any person who is no longer a state  
14 employee or an employee who is no longer a participant in a health insurance  
15 plan under contract with the department of administration shall have no claim  
16 on monies in the fund.

17           E. Monies deposited in or credited to the fund are exempt from the  
18 provisions of section 35-190 relating to lapsing of appropriations.

19           F. Claims for services rendered before July 1, 1989 shall not be paid  
20 from the special employee health insurance trust fund.

21           G. The department of administration shall submit an annual report on  
22 the financial status of the special employee insurance trust fund to the  
23 governor, the president of the senate, the speaker of the house of  
24 representatives, the chairpersons of the house and senate appropriations  
25 committees and the joint legislative budget committee staff by ~~March~~  
26 ~~JULY~~ 1. The report shall include:

27           1. The actuarial assumptions and a description of the methodology used  
28 to set premiums and reserve balance targets for the health insurance benefit  
29 program for the current plan year.

30           2. An analysis of the actuarial soundness of the health insurance  
31 benefit program for the previous plan year.

1           3. An analysis of the actuarial soundness of the health insurance  
2 benefit program for the current plan year, based on both year-to-date  
3 experience and total expected experience.

4           4. A preliminary estimate of the premiums and reserve balance targets  
5 for the next plan year, including the actuarial assumptions and a description  
6 of the methodology used.

7           H. The department shall submit a report to the joint legislative  
8 budget committee detailing any changes to the type of benefits offered under  
9 the plan and associated costs at least forty-five days before making the  
10 change. The report shall include:

11           1. An estimate of the cost or saving associated with the change.

12           2. An explanation of why the change was implemented before the next  
13 plan year."

14       Renumber to conform

15       Page 121, strike lines 21 and 22, insert:

16           "2. BE RESPONSIBLE FOR THE RECRUITMENT, HIRING AND DAY-TO-DAY  
17 MANAGEMENT OF EMPLOYEES."

18       Page 123, between lines 2 and 3, insert:

19           "G. IN CONSULTATION WITH THE DIRECTOR OF THE DEPARTMENT OF  
20 ADMINISTRATION, THE BOARD MAY ENTER INTO EMPLOYMENT AGREEMENTS AND ESTABLISH  
21 THE TERMS OF THOSE AGREEMENTS WITH PERSONS HOLDING ANY OF THE FOLLOWING ASRS  
22 POSITIONS:

23           1. DIRECTOR.

24           2. DEPUTY DIRECTOR.

25           3. CHIEF INVESTMENT OFFICER.

26           4. FIDUCIARY OR INVESTMENT COUNSEL."

27       Lines 18 and 24, strike "S" insert "T"

28       Page 128, between lines 23 and 24, insert:

29           "2. BE RESPONSIBLE FOR THE RECRUITMENT, HIRING AND DAY-TO-DAY  
30 MANAGEMENT OF EMPLOYEES."

31       Renumber to conform

Page 129, between lines 16 and 17, insert:

"0. IN CONSULTATION WITH THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION, THE BOARD MAY ENTER INTO EMPLOYMENT AGREEMENTS AND ESTABLISH THE TERMS OF THOSE AGREEMENTS WITH PERSONS HOLDING ANY OF THE FOLLOWING SYSTEM POSITIONS:

1. ADMINISTRATOR.
2. DEPUTY OR ASSISTANT ADMINISTRATOR.
3. CHIEF INVESTMENT OFFICER.
4. DEPUTY CHIEF INVESTMENT OFFICER.
5. FIDUCIARY OR INVESTMENT COUNSEL."

Reletter to conform

Page 146, strike lines 16, 17 and 18

Reletter to conform

Line 34, after "41-783" insert "OR 41-1830.16, AS APPLICABLE"

Between lines 39 and 40, insert:

"9. "FULL AUTHORITY PEACE OFFICER" MEANS A PEACE OFFICER WHOSE AUTHORITY TO ENFORCE THE LAWS OF THIS STATE IS NOT LIMITED BY THE RULES ADOPTED BY THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD."

Renumber to conform

Page 147, line 11, after the comma insert "THE DEPARTMENT OF PUBLIC SAFETY, THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD,"

Page 148, line 44, strike ", A SPECIAL PAY PLAN FOR INVESTMENT MANAGERS"; strike "OTHER"

Page 149, line 9, strike "DOES" insert "AND ARTICLES 5 AND 6 DO"

Line 16, after "LEGISLATURE" insert ", ANY LEGISLATIVE AGENCY"

Strike lines 27 through 30, insert:

- "7. THE DEPARTMENT OF PUBLIC SAFETY.
8. THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD."

Page 150, between lines 12 and 13, insert:

"6. EMPLOYEES IN INVESTMENT RELATED POSITIONS IN THE STATE RETIREMENT SYSTEM OR PLANS ESTABLISHED BY TITLE 38, CHAPTER 5, ARTICLE 2, 3, 4 OR 6."

Page 151, between lines 35 and 36, insert:

"D. SUBSECTION B, PARAGRAPH 3, SUBDIVISION (g) RELATING TO REVIEW BY THE DIRECTOR FOR CERTAIN DISCIPLINARY ACTIONS DOES NOT APPLY TO THOSE EMPLOYEES LISTED IN SECTION 41-742, SUBSECTION F."

Page 152, line 9, after "CHAPTER" insert "OR SECTION 41-1830.16, AS APPLICABLE"

Line 23, after "SERVICE" strike remainder of line

Line 24, strike "UNDER THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL"

Page 154, line 3, strike "EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION,"

Strike lines 17 through 30

Reletter to conform

Between lines 38 and 39, insert:

"D. MONIES CONTRIBUTED BASED ON THE PERSONNEL SERVICES FOR INDIVIDUALS EMPLOYED BY THE ARIZONA STATE RETIREMENT SYSTEM AND MONIES CONTRIBUTED BASED ON THE PERSONNEL SERVICES FOR INDIVIDUALS EMPLOYED BY THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM AS THE PRO RATA SHARE SHALL NOT REVERT TO THE STATE GENERAL FUND AND SHALL BE SEPARATELY ACCOUNTED FOR AND REVERTED TO THE ARIZONA STATE RETIREMENT SYSTEM, THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM, THE ELECTED OFFICIALS RETIREMENT PLAN OR THE CORRECTIONS OFFICER RETIREMENT PLAN, AS APPLICABLE."

Page 155, line 21, after the comma insert "THE DEPARTMENT OF PUBLIC SAFETY,"

Page 159, line 22, after the period strike remainder of line

Strike line 23, insert "EACH OF"

Page 160, line 1, after "AND" insert ", AS APPLICABLE,"; after "BOARD" insert "OR

THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL"

Line 44, strike "TWO" insert "ONE"

Page 161, line 6, strike "CHAPTER 12, ARTICLE 10 OF THIS TITLE" insert "SECTION

41-1830.16"

Line 12, strike "EXCEPT AS PROVIDED BY CHAPTER 12, ARTICLE 10 OF THIS TITLE,"

Line 34, strike "CHAPTER 12, ARTICLE 10 OF THIS TITLE" insert "SECTION

41-1830.16"

Strike pages 178 through 181

- 1 Page 182, strike lines 1 through 15
- 2 Renumber to conform
- 3 Line 36, strike "~~TWO~~" insert "ONE"
- 4 Page 183, line 10, after "for" strike remainder of line
- 5 Strike lines 11 through 14, insert "establishing the following for department of
- 6 public safety and Arizona peace officer standards and training board
- 7 personnel:"
- 8 Line 15, strike "~~covered~~" insert "covered"
- 9 Lines 16 and 21, strike "~~classified~~" insert "classified"
- 10 Line 29, strike "~~a classified~~ AN" insert "a classified"
- 11 Line 36, after "of" strike remainder of line
- 12 Line 37, strike "OR"; strike "~~classified~~ SWORN DEPARTMENT OF PUBLIC SAFETY"
- 13 insert "classified"
- 14 Page 184, lines 7 and 8, strike "~~as determined by council rule~~" insert "as
- 15 determined by council rule"
- 16 Page 185, lines 11 and 12, strike "SWORN DEPARTMENT EMPLOYEES"
- 17 Line 19, strike "SWORN"
- 18 Line 29, after the period insert "THE DIRECTOR SHALL ACCEPT THE COUNCIL'S
- 19 RECOMMENDATION UNLESS THE RECOMMENDATION IS ARBITRARY OR WITHOUT REASONABLE
- 20 JUSTIFICATION. IF THE DIRECTOR DOES NOT ACCEPT THE COUNCIL'S RECOMMENDATION,
- 21 THE DIRECTOR SHALL STATE THE REASON OR REASONS FOR REJECTING THE
- 22 RECOMMENDATION."
- 23 Line 33, strike "AN"
- 24 Line 34, strike "ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD EMPLOYEE
- 25 OR"; strike "~~classified~~" insert "classified"
- 26 Line 35, strike "SWORN DEPARTMENT OF PUBLIC SAFETY"

Page 186, line 17, strike "~~classified~~ SWORN" insert "classified"

After line 44, insert:

"Sec. 140. Title 41, chapter 12, article 10, Arizona Revised Statutes, is amended by adding section 41-1830.16, to read:

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

A. THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL SHALL ADOPT RULES THE COUNCIL DEEMS NECESSARY FOR THE ADMINISTRATION OF HEARINGS AND THE REVIEW OF APPEALS AS PRESCRIBED IN THIS SECTION.

B. A COVERED EMPLOYEE IN THE STATE PERSONNEL SYSTEM WHO IS A FULL AUTHORITY PEACE OFFICER AS CERTIFIED BY THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD, IS APPOINTED TO A POSITION THAT REQUIRES SUCH A CERTIFICATION IN THE COVERED SERVICE AND WHO HAS COMPLETED THE EMPLOYEE'S ORIGINAL PROBATIONARY PERIOD OF SERVICE AS PROVIDED BY THE PERSONNEL RULES MAY APPEAL TO THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL THE COVERED EMPLOYEE'S DISMISSAL FROM COVERED SERVICE, SUSPENSION FOR MORE THAN FORTY WORKING HOURS OR INVOLUNTARY DEMOTION RESULTING FROM DISCIPLINARY ACTION. THE COVERED EMPLOYEE SHALL FILE THE APPEAL NO LATER THAN TEN WORKING DAYS AFTER THE EFFECTIVE DATE OF THE ACTION. THE COVERED EMPLOYEE SHALL BE FURNISHED WITH SPECIFIED CHARGES IN WRITING WHEN THE ACTION IS TAKEN. THE APPEAL SHALL BE IN WRITING AND MUST STATE SPECIFIC FACTS RELATING DIRECTLY TO THE CHARGES ON WHICH THE APPEAL IS BASED. THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL SHALL HEAR THE APPEAL WITHIN THIRTY DAYS AFTER THE COUNCIL'S RECEIPT. THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL SHALL PROVIDE THE EMPLOYING AGENCY WITH A COPY OF THE APPEAL NOT LESS THAN TWENTY DAYS IN ADVANCE OF THE HEARING.

C. IN HEARING AND REVIEWING AN APPEAL, THE COUNCIL:

1. SHALL DETERMINE WHETHER THE EMPLOYING AGENCY HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THE MATERIAL FACTS ON WHICH THE DISCIPLINE WAS BASED. ON SUCH A FINDING THE COUNCIL SHALL AFFIRM THE DECISION OF THE STATE AGENCY HEAD UNLESS THE DISCIPLINARY DECISION WAS ARBITRARY AND CAPRICIOUS.

1           2. MAY RECOMMEND MODIFICATION OF A DISCIPLINARY ACTION IF THE STATE  
2 AGENCY HEAD HAS NOT PROVEN BY A PREPONDERANCE OF THE EVIDENCE THE MATERIAL  
3 FACTS ON WHICH THE DISCIPLINE WAS BASED OR IF A DISCIPLINARY DECISION IS  
4 FOUND TO BE ARBITRARY AND CAPRICIOUS.

5           3. SHALL REVERSE THE DECISION OF THE STATE AGENCY HEAD IF THE COUNCIL  
6 FINDS THAT CAUSE DID NOT EXIST FOR ANY DISCIPLINE TO BE IMPOSED AND, IN THE  
7 CASE OF DISMISSAL OR DEMOTION, RETURN THE EMPLOYEE TO THE SAME POSITION THE  
8 EMPLOYEE HELD BEFORE THE DISMISSAL OR DEMOTION WITH OR WITHOUT BACK PAY.

9           D. ON A FINDING THAT THE STATE AGENCY HEAD HAS NOT PROVEN BY A  
10 PREPONDERANCE OF THE EVIDENCE THE MATERIAL FACTS ON WHICH THE DISCIPLINE WAS  
11 BASED, THE COUNCIL SHALL IDENTIFY THE MATERIAL FACTS THAT THE COUNCIL FOUND  
12 WERE NOT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE AND MAY RECOMMEND A  
13 PROPOSED DISCIPLINARY ACTION IN LIGHT OF THE FACTS PROVEN. ON A FINDING THAT  
14 THE DISCIPLINARY DECISION WAS ARBITRARY AND CAPRICIOUS, THE COUNCIL SHALL  
15 INCLUDE THE COUNCIL'S REASONS FOR THE COUNCIL'S FINDING AND MAY RECOMMEND A  
16 PROPOSED DISCIPLINARY ACTION IN 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 DECISION OF THE AGENCY HEAD OR AGENCY HEAD'S DESIGNEE IS  
27 FINAL AND BINDING. THE AGENCY HEAD SHALL SEND A COPY OF THE AGENCY'S FINAL  
28 DETERMINATION TO THE COVERED EMPLOYEE PURSUANT TO THIS SECTION.

29           F. ANY PARTY MAY APPEAL THE DECISION OF THE LAW ENFORCEMENT MERIT  
30 SYSTEM COUNCIL OR THE FINAL DECISION OF THE AGENCY PURSUANT TO TITLE 12,  
31 CHAPTER 7, ARTICLE 6 TO THE SUPERIOR COURT IN THE COVERED EMPLOYEE'S COUNTY  
32 OF RESIDENCE ON ONE OR 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           G. AN APPEAL SHALL BE AVAILABLE TO THE COURT OF APPEALS FROM THE ORDER  
8 OF THE SUPERIOR COURT PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6 AS IN OTHER  
9 CIVIL CASES.

10          H. FOR THE PURPOSES OF THIS SECTION:

11          1. "COVERED EMPLOYEE" HAS THE SAME MEANING PRESCRIBED IN SECTION  
12 41-741.

13          2. "COVERED SERVICE" HAS THE SAME MEANING PRESCRIBED IN SECTION  
14 41-741.

15          3. "EMPLOYING AGENCY" MEANS THE AGENCY IN THE STATE PERSONNEL SYSTEM  
16 WHERE THE COVERED EMPLOYEE IS OR, IN THE CASE OF DISMISSAL, WAS EMPLOYED.

17          4. "FULL AUTHORITY PEACE OFFICER" MEANS A PEACE OFFICER WHOSE  
18 AUTHORITY TO ENFORCE THE LAWS OF THIS STATE IS NOT LIMITED BY THE RULES  
19 ADOPTED BY THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD.

20          5. "ORIGINAL PROBATIONARY PERIOD" HAS THE SAME MEANING PRESCRIBED IN  
21 SECTION 41-741.

22          6. "PERSONNEL RULES" MEANS THE RULES ADOPTED BY THE DEPARTMENT OF  
23 ADMINISTRATION, HUMAN RESOURCES DIVISION.

24          7. "STATE AGENCY HEAD" MEANS THE CHIEF EXECUTIVE OFFICER OF THE  
25 EMPLOYING AGENCY.

26          8. "STATE PERSONNEL SYSTEM" HAS THE SAME MEANING PRESCRIBED IN SECTION  
27 41-741."

28          Renumber to conform

29          Page 187, strike lines 1 through 28

30          Renumber to conform

31          Page 222, line 45, strike "October 31, 2012" insert "April 30, 2013"



1 Page 223, line 15, strike "41-1830.11" insert "41-1830.12"  
2 Line 16, after "act," insert "and section 41-1830.16, Arizona Revised Statutes,  
3 as added by this act,"  
4 Line 18, strike "board" insert "council"  
5 Between lines 22 and 23, insert:  
6 "Sec. 173. Severability  
7 If a provision of this act or its application to any person or  
8 circumstance is held invalid, the invalidity does not affect other provisions  
9 or applications of the act that can be given effect without the invalid  
10 provision or application, and to this end the provisions of this act are  
11 severable."  
12 Amend title to conform

2571ab.doc  
05/01/2012  
5:55 PM  
C: mo