



ARIZONA STATE SENATE
Fiftieth Legislature, Second Regular Session

FINAL AMENDED
FACT SHEET FOR H.B. 2571

~~public employees; unlawful acts; termination~~
(NOW: state personnel system)

Purpose

Establishes a new State Personnel System.

Background

According to current statute, the Personnel Board is required to hear and review appeals regarding dismissal from state service, suspension for more than forty working hours or demotion resulting from disciplinary action.

The personnel board is required hear and review complaints relating to any personnel action taken against an employee or former employee of Arizona, except an employee or former employee of a state university or the board of regents, which the employee or former employee believes was taken in reprisal for the employee's or former employee's disclosure of information to a public body. The state personnel board must recommend the dismissal of a supervisor or other responsible person, other than an elected official, who it determines committed a prohibited personnel practice (A.R.S. § 41-782).

There is no anticipated negative fiscal impact to the state General Fund associated with this legislation.

Provisions

State Personnel System

1. Requires the Director of the Arizona Department of Administration (ADOA) to establish and administer the State Personnel System (SPS).
2. Requires the SPS to include the following:
 - a) a classification system and job classes and associated knowledge, skills and abilities for those classes;
 - b) a centralized job announcement system;
 - c) a centralized employment system, including a common application form to be used by all state agencies;
 - d) a compensation system, including assigning pay ranges for all job classes, a special pay plan for investment managers and special pay plans for certain classes or groups of employees considering such factors as occupational patterns, economic conditions and pay plans common to government, business and industry;

- e) a statewide training program;
 - f) a statewide performance management system;
 - g) an audit function to review state agencies' processes and compliance with applicable laws, rules and policies; and
 - h) an integrated system to process personnel, payroll and benefits transactions and serve as the system of record for state employees.
3. Exempts the following from the SPS:
- a) elected state officers;
 - b) members of boards and commissions who are appointed by the Legislature or the Governor;
 - c) employees of the Arizona Legislative Council;
 - d) employees appointed or employed by the Legislature, any legislative agency or either House of the Legislature;
 - e) employees of the Supreme Court and the Court of Appeals;
 - f) the Arizona Board of Regents, officers and employees of state universities and personnel of the Arizona State School for the Deaf and Blind;
 - g) patients or inmates employed in state institutions;
 - h) officers and enlisted personnel of the Arizona National Guard;
 - i) employees of the Department of Emergency and Military Affairs who occupy Arizona National Guard positions identified as mobilization assets;
 - j) the Cotton Research and Protection Council;
 - k) the Department of Public Safety; and
 - l) the Arizona Peace Officer Standards and Training Board (AzPOST).
4. Exempts the following from the provisions relating to new hires, at will uncovered employees and voluntary changes in assignment:
- a) an employee who is a full authority peace officer as certified by AzPOST; and
 - b) an employee of the state Department of Corrections who is employed as a correctional officer I, II, III or a community corrections officer.
5. Exempts the following from the provisions relating to open competition and political affiliation:
- a) employees of the Governor's office;
 - b) employees of elected officials who either report to the elected official, head a primary component or report directly to the head of a primary component of the office of the elected official, or as a primary duty, determine or publicly advocate substantive program policy for the office of the elected official;
 - c) a state agency head and each deputy director and state agency employees who report directly to the state agency head or deputy director;
 - d) an assistant director of each state agency and employees in the state agency who report directly to the assistant director;
 - e) attorneys in the office of the Attorney General; and
 - f) employees in investment related positions in the state retirement system or plans.

6. States that beginning September 29, 2012, unless specifically exempted, all new hires are *at will uncovered employees*.
7. Defines an *at will uncovered employee* as an employee who meets any of the following criteria:
- a) is employed as an attorney in a position assigned to the attorney salary schedule;
 - b) is a supervisor;
 - c) is at a pay grade of 19 or above;
 - d) is in a position assigned to the information technology salary schedule, in a position assigned to an information technology classification; or
 - e) is a covered employee who voluntarily accepts a change in assignment to a position in the uncovered service.
8. Defines *covered employee* as an employee who meets any of the following criteria with exceptions as noted:

Employee	Covered
Before September 29, 2012, is in state service and has been in covered status without a break in service.	Yes.
Before September 29, 2012, is in state service as a correctional officer I, II, III or a community corrections officer without a break in service.	Yes.
Before September 29, 2012, is a full authority peace officer as certified by AzPOST and has remained in that status without a break in service.	Yes.
On or after September 29, 2012, is in state service as a correctional officer I, II, III or a community corrections officer and appointed to a covered position.	Yes, but does not include a position in any other class in the correctional class series.
On or after September 29, 2012, is a full authority peace officer and is appointed to a position that requires certification in covered service.	Yes.

9. Allows a covered employee to voluntarily elect to become an at will uncovered employee.
10. Stipulates that the change from covered employee to at will uncovered employee is irrevocable.
11. States that the purpose of the State Personnel System is for all state agencies to treat employees according to the following principles:
- a) recruiting, selecting and advancing employees on the basis of the employee's relative ability, knowledge and skills after open competition;
 - b) providing compensation based on merit, performance, job value and competitiveness within applicable labor markets;
 - c) training employees if the training will result in better organizational and individual performance;

- d) retaining employees on the basis of the adequacy of their performance, correct inadequate performance where possible and appropriate and separate employees whose performance is inadequate;
- e) managing applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, age, disability or religious creed with proper regard for their privacy and constitutional rights as citizens; and
- f) ensuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office.

ADOA Director

- 12. States that the Director of ADOA (Director) is responsible for the direction and control of personnel administration.
- 13. Requires the Director to employ staff necessary to administer the SPS.
- 14. Requires the Director to adopt rules and procedures relating to personnel and personnel administration for both covered and uncovered employees.
- 15. Requires rules to include:
 - a) the establishment and maintenance of classification and compensation plans;
 - b) the recruitment, selection and appointment process of eligible applicants;
 - c) leave benefits and administration;
 - d) procedures for the periodic and regular review and evaluation of the quality and quantity of employees' work;
 - e) changes to employment status;
 - f) procedures for the review of complaints if the complaint contains an allegation of discrimination or harassment;
 - g) procedures requiring review by the Director of dismissals, suspensions for more than 80 working hours or involuntary demotions before administering action;
 - h) grievance and appeal rights specific to covered employees; and
 - i) any other aspects of personnel administration as determined by the Director.
- 16. Requires the Director to provide an annual report to the Legislature and the Joint Legislative Budget Committee.
- 17. Requires the Director to establish a mandatory personnel management training program for all supervisors.
- 18. Requires the training to include at least the following:
 - a) basic supervision,
 - b) employee performance evaluations,
 - c) employee discipline, and
 - d) other subjects as determined by the Director.
- 19. Allows the Director to waive training requirements on a case by case basis.

20. Requires the Director to provide consultation to state agency management in all aspects of personnel management to increase efficiency and economy in state agencies by improving the methods of personnel administration with full recognition of the requirements and needs of management.
21. Allows the Director to enter into agreements with any state agency or political subdivision of Arizona to furnish personnel administration services and facilities.
22. Allows the Director, subject to legislative appropriation, to contract for the services of consultants necessary to perform the annual salary plan and plan adjustment recommendations.
23. Allows the Director to refuse to consider for employment any applicant who:
 - a) has submitted a deceptive or fraudulent application;
 - b) has failed to reply within a reasonable time to communications regarding the applicant's availability for employment;
 - c) is found to be unsuited or not qualified; or
 - d) lacks any of the requirements for the position the applicant is seeking.
24. Requires the Director to develop procedures and standard forms for all state agencies to verify a candidate's education and work history including a requirement that an agency head make documented, good faith efforts to contact current and previous employers of a candidate.
25. Requires the Director to prepare an annual report on the SPS that includes:
 - a) information concerning all state employees, including employees of all executive, legislative and judicial branch agencies;
 - b) information concerning employee turnover;
 - c) information concerning compensation during the preceding and coming year of state employees and the compensation of other public and private employees;
 - d) an advisory recommendation on state employees' salaries;
 - e) overtime pay of all state agencies; and
 - f) other information as determined by the Director.
26. Requires the Director, when making salary recommendations, to consider relative levels of duties and responsibilities of the various classes of positions, rates paid for comparable positions elsewhere and other relevant factors.

Covered and Uncovered Service

27. States that an employee in covered service is entitled to remain so as long as the employee remains in covered status without a break in service.
28. States that a probationary status employee must complete their probationary period before obtaining rights of appeal.

29. States that uncovered service consists of all employees in the state agencies not included in the covered service and that employees in uncovered service are *at will* and not entitled to rights of appeal.
30. Stipulates the following for a peace officer or a correctional officer I, II or III or a community corrections officer:
- a) if, on September 29, 2012, a position is filled with an uncovered employee, the position remains uncovered for all future appointments to the position;
 - b) if, on September 29, 2012, a position is filled with a covered employee who was in the state service and the employee does not elect to become an at will uncovered employee, the position remains in the covered service for all future appointments to the position; and
 - c) if, on or after September 29, 2012, an employee in the covered service voluntarily elects to become an at will uncovered employee, the position remains in the uncovered service for all future appointments to the position.

Covered Service

31. Requires the Director to adopt rules for employees in covered service that provide for:
- a) the continuation of a probationary period for probationary employees; and
 - b) a minimum period of original probationary service following the initial appointment of a full authority peace officer or a correctional officer I, II, III or community corrections officer.
32. Requires a probationary employee to perform the actual duties of the position.
33. Allows a probationary employee to be discharged without cause.
34. Requires the Director to establish a period of promotional probation service.
35. Requires rules adopted by the Director to include disciplinary action to be taken against an employee only if cause exists.
36. Requires the Director to establish reduction in force procedures to be used by all state agencies if reductions are required in covered service by reason of lack of monies or work, abolition of a position or a material change in duties or organization.
37. Requires reduction in force procedures to use a person's performance record as measured by up to the three most recent performance evaluations as the sole basis for determining retention.

Employees in covered Service; Causes for Dismissal

38. States that each of the following is a cause for dismissal:
- a) fraud or misrepresentation in securing appointment;
 - b) incompetency or inefficiency;
 - c) neglect of duty or insubordination;

- d) dishonesty;
- e) impairment by alcohol or drugs while on duty;
- f) illegal use or possession of a narcotic or habit-forming drug;
- g) unauthorized absence or absence without leave;
- h) commission of a felony or crime involving moral turpitude;
- i) discourteous treatment of the public or other employees;
- j) improper political activity or willful disobedience; or
- k) misuse or unauthorized use of state property.

Transfer of Accumulated Annual Leave

- 39. Requires the Director to adopt, for members of the same family, procedures for the transfer of accumulated annual leave from one employee to another in the same agency and for the transfer of accumulated annual leave from one employee to another in a different state agency.
- 40. Allows transfers of annual leave to occur between employees who are family members for a seriously incapacitating and extended illness or injury, or for a seriously incapacitating and extended disability caused by pregnancy or childbirth and the employee has exhausted all available leave balances.
- 41. Limits an employee who has received transferred annual leave to using six consecutive months of leave per occurrence.

Contribution of Pro Rata Share

- 42. Requires all state agencies to contribute a pro rata share of the overall cost of personnel administration services.
- 43. Requires the pro rata share to be payable by payroll fund source and deposited in a personnel division fund for appropriation by the Legislature for the State Personnel Board and the Personnel Division of ADOA.
- 44. Defines the pro rata share as 1.10 percent of the total payroll of a state agency and requires 0.03 percent to be deposited in a separate subaccount of the Personnel Division Fund for use by the State Personnel Board subject to legislative appropriations.
- 45. States that total payroll includes all fund sources, including the state General Fund, federal monies, special revenue funds, intergovernmental revenue monies, trust funds and other payroll fund sources.
- 46. Limits the reversion of monies from the Personnel Division Fund to monies in excess of \$500,000 and requires the state comptroller to pay monies owed to the federal government from the Fund before calculating the reversion.

47. Requires monies contributed as the pro rate share based on the personnel services for individuals employed by the Arizona State Retirement System and the Public Safety Personnel Retirement systems to be reverted to the respective retirement systems.

Protections of Civil or Political Liberties

48. Prohibits public employee from the following while on duty, in uniform or at public expense:
- a) using any political endorsement in connection with any appointment to a position in the SPS, or
 - b) using or promising to use any official authority or influence for the purpose of influencing the vote or political action of any person or for any consideration.
49. Prohibits an employee, a member of the State Personnel Board or a member of the Law Enforcement Merit System Council from being a member of any national, state or local committee of a political party, an officer or chairperson of a committee of a partisan political club or a candidate for nomination or election to any paid public office.
50. Prohibits an employee, a member of the State Personnel Board or a member of the Law Enforcement Merit System Council from holding any paid, elective public office, taking part in the management or affairs of any political party or participating in the management of any partisan or nonpartisan campaign or recall effort.
51. Exempts the following types of employees from the restrictions on political activity:
- a) employees of the Governor's office;
 - b) employees of offices of elected officials who either report to the elected official or head a primary component or report directly to the head of a primary component of the office of the elected official; and
 - c) employees who, as a primary duty, determine or publicly advocate substantive program policy for the office of the elected official.
52. Allows an employee to:
- a) express an opinion;
 - b) attend meetings for the purpose of becoming informed regarding candidates and issues;
 - c) vote and sign petitions;
 - d) contribute to candidates, political parties or campaign committees;
 - e) circulate petitions;
 - f) engage in activities to advocate for the election or defeat of any candidate; and
 - g) solicit or encourage political contributions.
53. Allows an employee to serve as a member of the governing board of a common or high school district or as a member of a community college district governing board.
54. Prohibits and establishes the following as a class 6 felony:
- a) soliciting an employee, member of the State Personnel Board or of the Law Enforcement Merit System Council to engage or not engage in lawful political activities with the direct or indirect use of any threat, intimidation or coercion;

- b) subjecting any employee, member of the State Personnel Board or of the Law Enforcement Merit System Council engaging in lawful political activities to any direct or indirect discrimination, reprisal, force, coercion or intimidation; or
- c) subjecting any employee, member of the State Personnel Board or of the Law Enforcement Merit System Council who chooses not to engage in any lawful political activity to any direct or indirect discrimination, reprisal, force, coercion or intimidation.

- 55. Subjects an employee who engages in prohibited political activity to suspension of not less than 30 days.
- 56. Establishes violating other laws protecting an employees political and civil liberties as a class 1 misdemeanor.
- 57. Subjects a person soliciting or encouraging a contribution in a prohibited manner to a civil penalty of up to three times the amount of the contribution solicited plus costs, expenses and reasonable attorney fees.

Prohibited Acts

- 58. Establishes making a false statement, certificate, mark, rating or report with regard to any test, certification or appointment made in connection with the SPS as a class 2 misdemeanor.
- 59. Establishes directly or indirectly giving, rendering, paying, offering, soliciting or accepting any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the SPS as a class 2 misdemeanor.
- 60. Prohibits an employee of any state agency, examiner or other person from obstructing any person in their right to examination, eligibility, certification or appointment, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the SPS.
- 61. Prohibits an elected or an appointed official, with corrupt intent, from using their political influence or position to cause the firing, promotion or demotion of any public employee or the hiring or failure to hire any applicant for public employment.
- 62. Establishes the use of political power or position to influence the firing, promoting, hiring or failure to hire as a class 2 misdemeanor and states that a person convicted is ineligible for appointment or employment for five years.
- 63. States that contact by an elected or appointed official regarding the qualifications of an applicant is not to be construed as illegally using political influence or position.

State Personnel Board (SPB)

- 64. Allows the non state employee members of the State Personnel Board to receive compensation of \$100 for each meeting attended, prorated for partial days.
- 65. Requires the SPB to hear and review appeals relating to the dismissal of a covered employee, suspension for more than 80 hours or involuntary demotion.
- 66. Requires the SPB to determine whether the state agency has proven by a preponderance of the evidence the material facts on which discipline was based.
- 67. Allows the SPB to recommend modification of a disciplinary action if the agency does not prove by a preponderance of the evidence the material facts on which the discipline was based or if the disciplinary decision is found to be arbitrary and capricious.
- 68. Requires the SPB 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 covered employee to the same position the employee held before the dismissal or demotion with or without back pay.
- 69. Allows the SPB to recommend a proposed disciplinary action in light of proven facts.
- 70. Requires an agency director to accept, modify or reverse the SPB decision within 14 days of receipt of the findings or recommendation from the SPB.
- 71. States that an agency director's decision is final and binding.

Arizona Department of Administration

- 72. Requires an applicant for an information technology (IT) position in ADOA to submit a full set of fingerprints to ADOA prior to accepting employment.
- 73. Requires the Director of ADOA to request that personnel who were employed in IT positions prior to July 18, 2000 to submit a full set of fingerprints if the Director determines that it is necessary to ensure the privacy, confidentiality or integrity of data within ADOA's control.
- 74. Requires the Director of ADOA to adopt rules to provide for the reimbursement of up to 100 percent of the cost to state employees for public transportation or telecommuting connectivity.
- 75. Allows the Director of ADOA to authorize a workday, for the method and purpose of recording time entries to be included in a work week and a pay period for correctional officers who are regularly scheduled to work a shift that spans two calendar days, defined as the day a majority of the hours are regularly scheduled to be worked.
- 76. Stipulates that if the regularly scheduled hours are equally split between two calendar days, the workday is defined as the day the shift ends.

77. Prohibits the adjusting of scheduled shift start and end times to avoid the payment of overtime.

Department of Public Safety (DPS)

78. Specifies the Director of the Department of Public Safety serves concurrently with the appointing governor.
79. Requires the Director of DPS to determine compensation for civilian employees of DPS.

Law Enforcement Merit System Council (LEMSC)

80. Increases the members of LEMSC from three to five.
81. Stipulates that no more than three members can belong to the same political party and must have had a continuous registration in the same political party for at least two years.
82. Allows LEMSC 1 members to be compensated for their services in the amount of \$100 for each meeting attended, prorated for partial days.
83. Requires LEMSC to hear and review appeals from any order of the director of the employing agency in connection with suspension, demotion, reduction in pay, loss of accrued leave time.
84. 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.
85. Requires LEMSC to determine whether the employing agency has proven by a preponderance of the evidence the material facts on which discipline was based.
86. Requires LEMSC, upon finding that the employing agency has proven by a preponderance of the evidence the material facts on which discipline was based to affirm the decision of the employing agency.
87. Allows LEMSC to recommend modification of a disciplinary action if the agency does not prove by a preponderance of the evidence the material facts on which the discipline was based or if the disciplinary decision is found to be arbitrary and capricious.
88. 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 covered employee to the same position the employee held before the dismissal or demotion with or without back pay.
89. Allows the Council to recommend a proposed disciplinary action in light of proven facts.

90. Requires an agency director to accept, modify or reverse the LEMSC's decision within 14 days of receipt of the findings or recommendation from LEMSC.
91. Requires, if an agency director to state the reason for rejecting LEMSC's decision.
92. States that an agency director's decision is final and binding.
93. Allows any party to appeal a final determination of LEMSC or the final decision of the agency to the superior court on one or more of the following grounds that the order was:
 - a) founded on or contained an error of law,
 - b) unsupported by any evidence as disclosed by the entire record,
 - c) materially affected by unlawful procedure,
 - d) based on a violation of any constitutional provision, or arbitrary and capricious.

Compensation for State Officers and Employees

94. States that with exceptions, any officer or employee of Arizona is entitled to receive a salary within the range as determined by ADOA unless modified by the Legislature.
95. Exempts the Arizona Board of Regents from statutory salary requirements.

Retirement Systems, Special Pay Plans

96. 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.
97. 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.
98. Prohibits ASRS and PSPRS from establishing any other compensation plans without the approval of the Director of ADOA.
99. 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.
100. Requires the Director of ADOA to establish the special pay plan after considering the recommendations of the ASRS and using relevant market data.
101. Allows the Director of ADOA to adopt other special pay plans determined necessary for certain classes or groups of ASRS employees.

Miscellaneous

102. Requires the Industrial Commission to employ a Director, subject to Senate confirmation.

103. States that the Director of the Industrial Commission serves at the pleasure of the Governor.
104. Repeals the requirement that the Governor appoint a selection committee for filling a vacancy on the Board of Executive Clemency.
105. Establishes, for state agencies of the state personnel system, the state work week as the period of seven consecutive days starting Saturday at 12:00 A.M. and ending Friday at 11:59 P.M.
106. Allows, subject to the approval of ADOA, a budget unit to spend any monies for the following:
 - a) transportation or other travel expenses necessary to bring any person to Arizona for a job interview;
 - b) transportation or moving expenses for any person newly employed or retained; and
 - c) reasonable relocation expenses for employees subject to management initiated geographical reassignment of more than 50 miles from an employee's current work site.
107. Requires budget units to report to the Governor's Office of Strategic Planning and Budgeting and the Joint Legislative Budget Committee regarding monies spent for prospective employee transportation and current employee moving expenses.
108. Allows state officers to be closed on holidays and if authorized by ADOA to implement an agency furlough.
109. Requires an agency that implements a furlough to ensure that appropriate notice is given to the public regarding the office closure.
110. Subjects an employee who accesses pornography without agency approval to disciplinary action or dismissal.
111. Establishes a civil penalty of up to \$10,000 for an employee who knowingly commits a prohibited personnel practice against an employee who disclosed information that the employee reasonably evidenced a violation of the law.
112. Limits the amount of attorney fees that a court may award an employee who prevails in an action concerning prohibited personnel practices to \$10,000.
113. Allows a state department or agency to accept gifts and donations from a public entity, a private entity or any person for the conduct of employee recognition programs.
114. Stipulates that gifts and donations for employee recognition are subject to public finance and procurement regulations.
115. Stipulates that provisions of the SPS that conflict or are inconsistent with federal laws governing the grant of federal monies to an agency or department do not apply.

116. Requires an appointing authority to comply with personnel statutes and rules for the recruitment, selection, hiring and separation of employees.
117. Requires a state agency head to report to the Director regarding an employee who is placed on administrative leave during the investigation of alleged wrongdoing by the employee when the administrative leave totals 80 consecutive hours.
118. Requires a state agency head to obtain approval from the Director if an employee's administrative leave with pay exceeds 30 days.
119. Requires the Arizona Board of Regents, the Judicial Department and the Arizona State Schools for the Deaf and Blind to each prepare an annual report that includes:
 - a) information on employee turnover,
 - b) information on employee compensation,
 - c) advisory recommendations on their employees salary plan, and
 - d) overtime pay.
120. Allows an agency director to require an agency employee to work reduced hours to comply with any reduction in appropriations.
121. Defines terms.
122. Becomes effective on September 29, 2012.

House Action

Senate Action

ERA	2/16/12	DPA/SE	6-3-0-0	APPROP	3/20/12	DP	8-4-1-0
3 rd Read	3/14/12		39-19-2-0	3 rd Read	5/2/12		21-9-0-0
Final Read	5/3/12		38-18-4-0				

Signed by the Governor 5/10/12
Chapter 321

Prepared by Senate Research
May 29, 2012
BB/tf