

OLSON FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2571

(Reference to the EMPLOYMENT AND REGULATORY AFFAIRS Committee amendment)

1 Page 4, strike lines 22 through 48

2 Page 5, strike lines 1 through 11

3 Renumber to conform

4 Page 38, line 39, strike "~~the law enforcement merit system council,~~" insert "the
5 law enforcement merit system council,"

6 Line 45, strike "~~following rates:~~" insert "following rates:"

7 Line 46, strike "~~1-~~ RATE OF" insert:

8 "1."

9 Page 39, strike lines 1 through 9

10 Line 10, strike "~~WEEK SHALL BE COMPENSATED FOR THE EXCESS TIME AT~~" insert:

11 "2. If federal law does not mandate overtime compensation, the person
12 shall receive"

13 Reletter to conform

14 Line 13, strike "OR B"

15 Lines 14 and 15, strike "~~the law enforcement merit system council,~~" insert "the
16 law enforcement merit system council,"

17 Page 40, strike lines 15 through 48

18 Strike pages 41 and 42, insert:

19 "Sec. 30. Section 23-1501, Arizona Revised Statutes, is amended to
20 read:

21 23-1501. Severability of employment relationships; protection
22 from retaliatory discharges; exclusivity of
23 statutory remedies in employment

24 A. The public policy of this state is that:

25 1. The employment relationship is contractual in nature.

26 2. The employment relationship is severable at the pleasure of either
27 the employee or the employer unless both the employee and the employer have
28 signed a written contract to the contrary setting forth that the employment
29 relationship shall remain in effect for a specified duration of time or
30 otherwise expressly restricting the right of either party to terminate the

1 employment relationship. Both the employee and the employer must sign this
2 written contract, or this written contract must be set forth in the
3 employment handbook or manual or any similar document distributed to the
4 employee, if that document expresses the intent that it is a contract of
5 employment, or this written contract must be set forth in a writing signed by
6 the party to be charged. Partial performance of employment shall not be
7 deemed sufficient to eliminate the requirements set forth in this paragraph.
8 Nothing in this paragraph shall be construed to affect the rights of public
9 employees under the Constitution of Arizona and state and local laws of this
10 state or the rights of employees and employers as defined by a collective
11 bargaining agreement.

12 3. An employee has a claim against an employer for termination of
13 employment only if one or more of the following circumstances have occurred:

14 (a) The employer has terminated the employment relationship of an
15 employee in breach of an employment contract, as set forth in paragraph 2 of
16 this ~~section~~ SUBSECTION, in which case the remedies for the breach are
17 limited to the remedies for a breach of contract.

18 (b) The employer has terminated the employment relationship of an
19 employee in violation of a statute of this state. If the statute provides a
20 remedy to an employee for a violation of the statute, the remedies provided
21 to an employee for a violation of the statute are the exclusive remedies for
22 the violation of the statute or the public policy set forth in or arising out
23 of the statute, including the following:

24 (i) The civil rights act prescribed in title 41, chapter 9.

25 (ii) The occupational safety and health act prescribed in chapter 2,
26 article 10 of this title.

27 (iii) The statutes governing the hours of employment prescribed in
28 chapter 2 of this title.

29 (iv) The agricultural employment relations act prescribed in chapter
30 8, article 5 of this title.

31 (v) THE STATUTES GOVERNING DISCLOSURE OF INFORMATION BY PUBLIC
32 EMPLOYEES PRESCRIBED IN TITLE 38, CHAPTER 3, ARTICLE 9.

1 All definitions and restrictions contained in the statute also apply to any
2 civil action based on a violation of the public policy arising out of the
3 statute. If the statute does not provide a remedy to an employee for the
4 violation of the statute, the employee shall have the right to bring a tort
5 claim for wrongful termination in violation of the public policy set forth in
6 the statute.

7 (c) The employer has terminated the employment relationship of an
8 employee in retaliation for any of the following:

9 (i) The refusal by the employee to commit an act or omission that
10 would violate the Constitution of Arizona or the statutes of this state.

11 (ii) The disclosure by the employee in a reasonable manner that the
12 employee has information or a reasonable belief that the employer, or an
13 employee of the employer, has violated, is violating or will violate the
14 Constitution of Arizona or the statutes of this state to either the employer
15 or a representative of the employer who the employee reasonably believes is
16 in a managerial or supervisory position and has the authority to investigate
17 the information provided by the employee and to take action to prevent
18 further violations of the Constitution of Arizona or statutes of this state
19 or an employee of a public body or political subdivision of this state or any
20 agency of a public body or political subdivision.

21 (iii) The exercise of rights under the workers' compensation statutes
22 prescribed in chapter 6 of this title.

23 (iv) Service on a jury as protected by section 21-236.

24 (v) The exercise of voting rights as protected by section 16-1012.

25 (vi) The exercise of free choice with respect to nonmembership in a
26 labor organization as protected by section 23-1302.

27 (vii) Service in the national guard or armed forces as protected by
28 sections 26-167 and 26-168.

29 (viii) The exercise of the right to be free from the extortion of fees
30 or gratuities as a condition of employment as protected by section 23-202.

(ix) The exercise of the right to be free from coercion to purchase goods or supplies from any particular person as a condition of employment as protected by section 23-203.

(x) The exercise of a victim's ~~leaves~~ right **TO LEAVE WORK** as provided in sections 8-420 and 13-4439.

~~(d) In the case of a public employee, if the employee has a right to continued employment under the United States Constitution, the Arizona Constitution, Arizona Revised Statutes, any applicable regulation, policy, practice, or contract of the state, any subdivision of the state or other public entity, or any ordinance of any political subdivision of the state.~~

B. IF THE STATUTE PROVIDES A REMEDY TO AN EMPLOYEE FOR A VIOLATION OF THE STATUTE, THE REMEDIES PROVIDED TO AN EMPLOYEE FOR A VIOLATION OF THE STATUTE ARE THE EXCLUSIVE REMEDIES FOR THE VIOLATION OF THE STATUTE OR THE PUBLIC POLICY PRESCRIBED IN OR ARISING OUT OF THE STATUTE."

Renumber to conform

Page 91, between lines 19 and 20, insert:

"Sec. 81. Section 36-450.02, Arizona Revised Statutes, is amended to read:

36-450.02. Nonretaliatory policy

A. Each health care institution licensed pursuant to this chapter shall adopt a policy that prohibits retaliatory action against a health professional who in good faith:

1. Makes a report to the health care institution pursuant to the requirements of section 36-450.01.

2. Having provided the health care institution a reasonable opportunity to address the report, provides information to a private health care accreditation organization or governmental entity concerning the activity, policy or practice that was the subject of the report.

B. This section does not prohibit a health care institution licensed pursuant to this chapter from taking action against a health professional for a purpose not related to a report filed pursuant to section 36-450.01.

1 C. Except as provided in section 23-1501, **SUBSECTION A**, paragraph 3,
2 subdivisions (a), ~~AND~~ (c) ~~and (d)~~, this section shall only be enforced
3 through the provisions of this chapter.

4 D. There shall be a rebuttable presumption that any termination or
5 other adverse action that occurs more than one hundred eighty days after the
6 date of a report made pursuant to either subsection A, paragraph 1 or 2 of
7 this section is not a retaliatory action."

8 Renumber to conform

9 Page 108, line 28, after "dismissal" insert ", **EXCEPT THAT ON A FINDING THAT AN**
10 **EMPLOYEE COMMITTED A PROHIBITED PERSONNEL PRACTICE AGAINST AN EMPLOYEE WHO**
11 **DISCLOSED INFORMATION THAT THE EMPLOYEE REASONABLY BELIEVED EVIDENCED A**
12 **VIOLATION OF ANY LAW, THE EMPLOYEE WHO KNOWINGLY COMMITTED THE PROHIBITED**
13 **PERSONNEL PRACTICE IS SUBJECT TO A CIVIL PENALTY OF UP TO TEN THOUSAND**
14 **DOLLARS, THE EMPLOYER SHALL DISMISS THE EMPLOYEE AND THE EMPLOYEE IS BARRED**
15 **FROM ANY FUTURE EMPLOYMENT BY THE GOVERNMENT ENTITY"**

16 Page 109, line 44, after the period insert "**A COURT MAY AWARD REASONABLE ATTORNEY**
17 **FEES TO AN EMPLOYEE OR FORMER EMPLOYEE WHO PREVAILS IN AN ACTION PURSUANT TO**
18 **THIS SECTION, BUT THE AWARD OF ATTORNEY FEES SHALL NOT EXCEED TEN THOUSAND**
19 **DOLLARS.**

20 Page 123, strike lines 3 through 48

21 Strike pages 124 through 128

22 Page 129, strike lines 1 through 9

23 Renumber to conform

24 Page 144, line 2, strike "**OR**" insert a comma; after "**III**" insert "**OR COMMUNITY**
25 **CORRECTIONS OFFICER**"

26 Line 6, after "**SYSTEM**" insert "**COUNCIL**"

27 Line 8, after "**2012,**" insert "**IS IN THE STATE SERVICE,**"

28 Line 9, after "**BOARD**" strike remainder of line

29 Strike line 10

30 Line 11, strike "**ENFORCEMENT MERIT SYSTEM COUNCIL**"

31 Line 14, strike "**OR**" insert a comma; after "**III**" insert "**OR COMMUNITY**
32 **CORRECTIONS OFFICER**"

Page 144, line 16, strike the comma insert "OR"

Line 17, after "OR" insert "IN"

Lines 23 and 24, strike "OR CHAPTER 12, ARTICLE 10 OF THIS TITLE"

Line 44, after "BLIND," insert "THE COTTON RESEARCH AND PROTECTION COUNCIL"

Page 145, line 33, after the first "ASSIGNMENT" insert "TO A POSITION IN THE
UNCOVERED SERVICE"

Page 146, line 24, after the first "CLASSES" insert ", A SPECIAL PAY PLAN FOR
INVESTMENT MANAGERS"; after "AND" insert "OTHER"

Line 38, after the first comma insert "BOARD MEMBERS APPOINTED PURSUANT TO
SECTION 41-619.52 UNLESS OTHERWISE PRESCRIBED BY LAW,"

After line 47, insert:

"6. THE COTTON RESEARCH AND PROTECTION COUNCIL.

7. EMPLOYEES OF THE DEPARTMENT OF PUBLIC SAFETY OR EMPLOYEES OF THE
ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD WHO ARE EMPLOYED AS A FULL
AUTHORITY PEACE OFFICER AS CERTIFIED BY THE BOARD AND WHO ARE IN POSITIONS
THAT REQUIRE SUCH A CERTIFICATION."

Page 147, line 2, after "TO" insert "EITHER AN INITIAL APPOINTMENT TO OR CHANGES IN
ASSIGNMENT TO"

Line 6, after the first "OF" insert "THE"; strike "THE"

Line 8, after "III" insert ", COMMUNITY CORRECTIONS OFFICER"

Between lines 25 and 26, insert:

"5. ATTORNEYS IN THE OFFICE OF THE ATTORNEY GENERAL."

Page 148, between lines 8 and 9, insert:

"(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 EIGHTY WORKING HOURS OR INVOLUNTARY DEMOTIONS
BEFORE ADMINISTERING THE ACTION."

Reletter to conform

Page 149, line 17, strike the first "THIS"; after the first "ARTICLE" strike remainder of line

Line 18, strike "TITLE, AS APPLICABLE" insert "6 OF THIS CHAPTER"

Line 23, strike "DESIGNATED" insert "THAT REQUIRES CERTIFICATION"

Line 24, after "OR" insert "A POSITION"

Line 25, strike "OR" insert a comma; after "III" insert "OR COMMUNITY CORRECTIONS OFFICER"

Line 31, after "EMPLOYED" insert "AS A CIVILIAN EMPLOYEE"

Page 151, line 5, after the period insert "EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION,"

Line 7, after "SOURCE" insert a comma

Between lines 17 and 18, insert:

"B. THE DEPARTMENT OF PUBLIC SAFETY SHALL CONTRIBUTE A PRO RATA SHARE OF THE OVERALL COST OF PERSONNEL ADMINISTRATION SERVICES PROVIDED BY THE DEPARTMENT FOR CIVILIAN DEPARTMENT OF PUBLIC SAFETY EMPLOYEES. THE PRO RATA SHARE SHALL BE PAYABLE BY PAYROLL FUND SOURCE, AND THE RESULTANT AMOUNT SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN A PERSONNEL DIVISION FUND FOR APPROPRIATION BY THE LEGISLATURE FOR THE PERSONNEL BOARD AND THE PERSONNEL DIVISION OF THE DEPARTMENT. THE PRO RATA SHARE SHALL BE 1.10 PER CENT OF THE PAYROLL FOR CIVILIAN EMPLOYEES OF THE DEPARTMENT. OF THE 1.10 PER CENT PRO RATA SHARE, 0.03 PER CENT SHALL BE DEPOSITED IN A SEPARATE SUBACCOUNT OF THE PERSONNEL DIVISION FUND FOR USE BY THE PERSONNEL BOARD AND SHALL BE SUBJECT TO LEGISLATIVE APPROPRIATION. SUCH PAYROLL SHALL INCLUDE ALL FUND SOURCES, INCLUDING THE STATE GENERAL FUND, FEDERAL MONIES, SPECIAL REVENUE FUNDS, INTERGOVERNMENTAL REVENUE MONIES, TRUST FUNDS AND OTHER PAYROLL FUND SOURCES."

Reletter to conform

Page 152, line 32, strike "STATE LAW ENFORCEMENT PERSONNEL BOARD" insert "LAW ENFORCEMENT MERIT SYSTEM COUNCIL"

Page 153, line 6, strike "STATE LAW ENFORCEMENT PERSONNEL BOARD" insert "LAW ENFORCEMENT MERIT SYSTEM COUNCIL"

Line 12, strike "STATE LAW ENFORCEMENT PERSONNEL BOARD" insert "THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL"

Line 17, strike "STATE LAW ENFORCEMENT PERSONNEL BOARD" insert "LAW ENFORCEMENT MERIT SYSTEM COUNCIL"

Page 155, line 13, strike "OR" insert a comma

Line 14, after "III" insert "OR COMMUNITY CORRECTIONS OFFICER"

Page 156, line 40, strike the second "STATE"

Line 41, strike "~~merit system council~~ PERSONNEL BOARD" insert "merit system council"

Page 157, line 9, strike "service" insert "PERSONNEL SYSTEM"

Line 14, strike "UP TO"

Line 15, after "ATTENDED" strike remainder of line

Line 16, strike "JOINT LEGISLATIVE BUDGET COMMITTEE"

Page 158, strike lines 36 through 47

Page 159, strike lines 1 and 2, insert:

"C. The STATE PERSONNEL board: ~~may reverse an agency's action on appeal only if the board finds the action to be arbitrary, capricious or otherwise contrary to law.~~

~~D. The board may modify the disciplinary penalty chosen by an agency only if the board finds the penalty to be disproportionate to the proven offense in light of mitigating circumstances or made for reasons that are arbitrary, capricious or otherwise contrary to law.~~

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

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

3. SHALL REVERSE THE DECISION OF THE STATE AGENCY HEAD IF THE BOARD 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.

D. ON A FINDING THAT THE AGENCY HAS NOT PROVEN BY A PREPONDERANCE OF THE EVIDENCE THE MATERIAL FACTS ON WHICH THE DISCIPLINE WAS BASED, THE BOARD SHALL IDENTIFY THE MATERIAL FACTS THAT THE BOARD FOUND WERE NOT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE AND MAY RECOMMEND A PROPOSED DISCIPLINARY ACTION IN LIGHT OF THE FACTS PROVEN. ON A FINDING THAT THE DISCIPLINARY DECISION WAS ARBITRARY AND CAPRICIOUS, THE BOARD SHALL INCLUDE THE BOARD'S REASONS FOR THE BOARD'S FINDING AND MAY RECOMMEND A PROPOSED DISCIPLINARY ACTION IN LIGHT OF THE FACTS PROVEN."

Page 159, lines 4 and 5, after "decision" insert "OR RECOMMENDATION"

Line 8, after "decision" insert "OR RECOMMENDATION"; after the period insert "THE AGENCY DIRECTOR OR THE DIRECTOR'S DESIGNEE SHALL ACCEPT, MODIFY OR REVERSE THE BOARD'S DECISION OR ACCEPT, MODIFY OR REJECT THE BOARD'S RECOMMENDATION WITHIN FOURTEEN DAYS OF RECEIPT OF THE FINDINGS OR RECOMMENDATION FROM THE STATE PERSONNEL BOARD. THE DECISION OF THE AGENCY DIRECTOR OR DIRECTOR'S DESIGNEE IS FINAL AND BINDING. THE AGENCY DIRECTOR SHALL SEND A COPY OF THE AGENCY'S FINAL DETERMINATION TO THE COVERED EMPLOYEE PURSUANT TO THIS SECTION."

Line 9, after "board" insert "OR THE FINAL DECISION OF THE AGENCY"

Strike line 18, insert:

"5. Arbitrary or capricious."

Page 173, line 3, after "~~rules~~" insert ":

(a)"

Line 4, strike "AND SECTION 41-1830.15"

Line 5, after "~~classified~~" insert "CIVILIAN"

Line 10, after "ALL" insert "CIVILIAN"

Page 173, between lines 11 and 12, insert:

"(b) THE RULES ESTABLISHED BY THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL AND SECTION 41-1830.15, APPOINT, SUSPEND, DEMOTE, PROMOTE OR DISMISS SWORN DEPARTMENT EMPLOYEES."

Line 12, strike "AND"

Strike line 13

Line 14, strike "AND SECTION 41-1830.15"

Between lines 22 and 23, insert:

"4. EMPLOY:

(a) SWORN OFFICERS SUBJECT TO THE RULES OF THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL AND SECTION 41-1830.15.

(b) CIVILIAN EMPLOYEES PURSUANT TO CHAPTER 4, ARTICLE 4 AND, AS APPLICABLE, CHAPTER 4, ARTICLE 5 OF THIS TITLE AND WHO ARE COMPENSATED PURSUANT TO SECTION 38-611."

Renumber to conform

Page 175, line 23, after the period strike remainder of line

Strike lines 24, 25 and 26, insert "Subject to approval by the law enforcement merit system council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph."

Strike lines 39 and 40, insert:

"Sec. 133. Section 41-1714, Arizona Revised Statutes, is amended to read:

41-1714. Merit system for sworn department employees

The SWORN employees of the department shall be included under the merit system council of the Arizona highway patrol or its successor, the law enforcement merit system council, if established by law."

Page 176, between lines 3 and 4, insert:

"C. THE DIRECTOR SHALL EMPLOY:

1. CIVILIAN EMPLOYEES OF THE DIVISION SUBJECT TO CHAPTER 4, ARTICLE 4 AND, AS APPLICABLE, ARTICLE 5 OF THIS TITLE AND WHO ARE COMPENSATED PURSUANT TO SECTION 38-611.

2. SWORN DIVISION EMPLOYEES SUBJECT TO THE RULES ESTABLISHED BY THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL AND SECTION 41-1830.15."

Reletter to conform

Page 176, line 7, after the period insert "THE DIRECTOR SHALL DETERMINE"; after the first "of" insert "SWORN"

Line 8, strike "and" insert "and"

Line 19, after "who" insert "SHALL BE APPOINTED BY THE DIRECTOR SUBJECT TO CHAPTER 4, ARTICLE 4 OF THIS TITLE AND"

Lines 22 and 23, strike "SUBJECT TO CHAPTER 4, ARTICLE 4 AND, AS APPLICABLE ARTICLE 5 OF THIS TITLE"

Lines 24 and 25, strike ", SUBJECT TO CHAPTER 4, ARTICLE 4 AND, AS APPLICABLE ARTICLE 5 OF THIS TITLE,"

Strike lines 29 through 47

Strike pages 177 through 180

Page 181, strike lines 1, 2 and 3

Renumber to conform

Between lines 3 and 4, insert:

"Sec. 136. Section 41-1830.11, Arizona Revised Statutes, is amended to read:

41-1830.11. Law enforcement merit system council; composition

A. The governor shall appoint a law enforcement merit system council PURSUANT TO SECTION 38-211. The council consists of ~~three~~ FIVE persons ~~chosen on the basis of experience in and sympathy with merit principles of public employment.~~ NO MORE THAN THREE MEMBERS SHALL BELONG TO THE SAME POLITICAL PARTY. PERSONS ELIGIBLE FOR APPOINTMENT SHALL HAVE HAD A CONTINUOUS RECORDED REGISTRATION PURSUANT TO TITLE 16, CHAPTER 1 WITH EITHER THE SAME POLITICAL PARTY OR AS AN INDEPENDENT FOR AT LEAST TWO YEARS IMMEDIATELY PRECEDING APPOINTMENT. MEMBERS APPOINTED SHALL BE PERSONS WHO ARE COMMITTED TO ENFORCING THIS ARTICLE IN AN HONEST, INDEPENDENT AND IMPARTIAL FASHION AND TO SEEKING TO UPHOLD PUBLIC CONFIDENCE IN THE INTEGRITY OF PUBLIC SAFETY PEACE OFFICERS. The members of the council shall not have held elective public office within one year before appointment and shall not hold any other political office while serving on the council.

1 B. The governor shall fill a vacancy on the same basis as the original
2 appointment.

3 C. Members of the council are ~~not~~ eligible to receive compensation for
4 their services ~~but are eligible to receive reimbursement of expenses pursuant~~
5 ~~to title 38, chapter 4, article 2~~ IN THE AMOUNT OF TWO HUNDRED DOLLARS FOR
6 EACH MEETING ATTENDED, PRORATED FOR PARTIAL DAYS FOR EACH MEETING ATTENDED.

7 D. A member serves for a term of ~~six~~ THREE years. The governor may
8 remove a member only for cause.

9 E. The chairman of the council serves as an ex officio member of the
10 state personnel board without voting privileges.

11 Sec. 137. Section 41-1830.12, Arizona Revised Statutes, is amended to
12 read:

13 41-1830.12. Law enforcement merit system council; duties;
14 authority; rules; business manager; definition

15 A. The law enforcement merit system council shall:

16 1. Select a chairman and vice-chairman.

17 2. Hold meetings that are necessary to perform its duties on the call
18 of the chairman.

19 3. **ADOPT RULES** pursuant to recognized merit principles of public
20 employment ~~adopt rules~~ it deems necessary for ~~establishing the following for~~
21 **ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD PERSONNEL AND SWORN**
22 **OFFICERS OF THE** department of public safety ~~and Arizona peace officer~~
23 ~~standards and training board personnel~~. **THE RULES DO NOT APPLY TO CIVILIAN**
24 **DEPARTMENT EMPLOYEES AND SHALL PROVIDE:**

25 (a) A classification and compensation plan for all ~~covered~~ positions
26 and for establishing standards and qualifications for all ~~classified~~
27 positions from a list of necessary employees that is prepared by the director
28 of the employing agency.

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

1 (c) A performance appraisal system for evaluating the work performance
2 of employees of the agencies.

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

6 (e) Procedures for the conduct of hearings on appeals from an order of
7 the director of the employing agency in connection with suspension, demotion,
8 reduction in pay, loss of accrued leave time or dismissal of ~~a-classified~~ AN
9 employee.

10 ~~4-~~ (f) ~~Adopt rules~~ For hours of employment, annual and sick leave and
11 special leaves of absence, with or without pay or with reduced pay.

12 ~~5-~~ 4. Pursuant to recognized merit principles, hear and review
13 appeals from any order of the director of the employing agency in connection
14 with suspension, demotion, reduction in pay, loss of accrued leave time or
15 dismissal of AN ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD EMPLOYEE
16 OR a ~~classified~~ SWORN DEPARTMENT OF PUBLIC SAFETY employee. The council's
17 determination is ~~final, except on~~ SUBJECT TO REVIEW BY THE DIRECTOR AND
18 appeal as provided in section 41-1830.13.

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

21 C. The rules under subsection A, paragraph ~~4-~~ 3, SUBDIVISION (f) of
22 this section shall provide for the transfer of accumulated annual leave from
23 one employee to another employee in the same agency and for the transfer of
24 accumulated annual leave from one employee to another employee of another
25 agency, department, board or commission if the employees are members of the
26 same family. The transfers may occur if the employee to whom the leave is
27 transferred has a seriously incapacitating and extended illness or injury or
28 a member of the employee's immediate family has a seriously incapacitating
29 and extended illness or injury and the employee has exhausted all available
30 leave balances. Transferred annual leave shall be increased or reduced
31 proportionally by the difference in the salaries of the employees ~~as~~
32 ~~determined by council rule~~. For the purposes of this subsection, "family"

1 means spouse, natural child, adopted child, foster child, stepchild, natural
2 parent, stepparent, adoptive parent, grandparent, grandchild, brother,
3 sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law,
4 mother-in-law or father-in-law.

5 D. IN HEARING AND REVIEWING AN APPEAL FROM ANY ORDER OF THE DIRECTOR
6 OF THE EMPLOYING AGENCY, THE COUNCIL:

7 1. SHALL DETERMINE WHETHER THE EMPLOYING AGENCY HAS PROVEN BY A
8 PREPONDERANCE OF THE EVIDENCE THE MATERIAL FACTS ON WHICH THE DISCIPLINE WAS
9 BASED. ON SUCH A FINDING, THE COUNCIL SHALL AFFIRM THE DECISION OF THE
10 DIRECTOR OF THE EMPLOYING AGENCY, UNLESS THE DISCIPLINARY DECISION WAS
11 ARBITRARY AND CAPRICIOUS.

12 2. MAY RECOMMEND MODIFICATION OF A DISCIPLINARY ACTION IF THE DIRECTOR
13 OF THE EMPLOYING AGENCY HAS NOT PROVEN BY A PREPONDERANCE OF THE EVIDENCE THE
14 MATERIAL FACTS ON WHICH THE DISCIPLINE WAS BASED OR IF A DISCIPLINARY
15 DECISION IS FOUND TO BE ARBITRARY AND CAPRICIOUS.

16 3. SHALL REVERSE THE DECISION OF THE DIRECTOR OF THE EMPLOYING AGENCY
17 IF THE COUNCIL FINDS THAT CAUSE DID NOT EXIST FOR ANY DISCIPLINE TO BE
18 IMPOSED AND, IN THE CASE OF DISMISSAL OR DEMOTION, RETURN THE EMPLOYEE TO THE
19 SAME POSITION THE EMPLOYEE HELD BEFORE THE DISMISSAL OR DEMOTION WITH OR
20 WITHOUT BACK PAY.

21 E. ON A FINDING THAT THE DIRECTOR OF THE EMPLOYING AGENCY HAS NOT
22 PROVEN BY A PREPONDERANCE OF THE EVIDENCE THE MATERIAL FACTS ON WHICH THE
23 DISCIPLINE WAS BASED, THE COUNCIL SHALL IDENTIFY THE MATERIAL FACTS THAT THE
24 COUNCIL FOUND WERE NOT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE AND MAY
25 RECOMMEND A PROPOSED DISCIPLINARY ACTION IN LIGHT OF THE FACTS PROVEN. ON A
26 FINDING THAT THE DISCIPLINARY DECISION WAS ARBITRARY AND CAPRICIOUS, THE
27 COUNCIL SHALL INCLUDE THE COUNCIL'S REASONS FOR THE COUNCIL'S FINDING AND MAY
28 RECOMMEND A PROPOSED DISCIPLINARY ACTION IN LIGHT OF THE FACTS PROVEN.

29 F. WITHIN FORTY-FIVE DAYS AFTER THE CONCLUSION OF THE HEARING, THE
30 COUNCIL SHALL ENTER ITS DECISION OR RECOMMENDATION AND SHALL AT THE SAME TIME
31 SEND A COPY OF THE DECISION OR RECOMMENDATION BY CERTIFIED MAIL TO THE
32 EMPLOYING AGENCY AND TO THE EMPLOYEE AT THE EMPLOYEE'S ADDRESS AS GIVEN AT

1 THE HEARING OR TO A REPRESENTATIVE DESIGNATED BY THE EMPLOYEE TO RECEIVE A
2 COPY OF THE DECISION OR RECOMMENDATION.

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

22 ~~E.~~ H. For the purposes of this section AND SECTION 41-1830.13,
23 "director of the employing agency" means the director of the department of
24 public safety with respect to SWORN employees of the department and the
25 executive director of the Arizona peace officer standards and training board
26 with respect to employees of the board.

27 Sec. 138. Section 41-1830.13, Arizona Revised Statutes, is amended to
28 read:

29 41-1830.13. Review of council decision by agency director;
30 appeal; reinstatement

31 A. WITHIN FOURTEEN DAYS OF RECEIPT OF THE FINDING OR RECOMMENDATION BY
32 THE COUNCIL PURSUANT TO SECTION 41-1830.12, THE DIRECTOR OF THE EMPLOYING

1 AGENCY SHALL ACCEPT, MODIFY OR REVERSE THE COUNCIL'S DECISION OR ACCEPT,
2 MODIFY OR REJECT THE COUNCIL'S RECOMMENDATION. THE DECISION OF THE DIRECTOR
3 OF THE EMPLOYING AGENCY IS FINAL AND BINDING. THE DIRECTOR OF THE EMPLOYING
4 AGENCY SHALL SEND A COPY OF THE AGENCY'S FINAL DETERMINATION TO THE EMPLOYEE
5 PURSUANT TO SECTION 41-1830.12.

6 ~~A.~~ B. Except as provided in section 41-1092.08, subsection H, AN
7 ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD EMPLOYEE OR a ~~classified~~
8 SWORN DEPARTMENT OF PUBLIC SAFETY employee who is suspended, is demoted, has
9 pay reduced, loses accrued leave time or is dismissed pursuant to this
10 article, after a fair hearing and review before the law enforcement merit
11 system council and ~~confirmation~~ REVIEW of the suspension, demotion, reduction
12 in pay, loss of accrued leave time or dismissal by the director of the
13 ~~department of public safety~~ EMPLOYING AGENCY, may appeal the ~~final~~
14 determination of the council AND THE FINAL DETERMINATION OF THE DIRECTOR OF
15 THE EMPLOYING AGENCY pursuant to title 12, chapter 7, article 6 ON ONE OR
16 MORE OF THE FOLLOWING GROUNDS THAT THE ORDER WAS:

- 17 1. FOUNDED ON OR CONTAINED ERROR OF LAW THAT SHALL SPECIFICALLY
- 18 INCLUDE ERROR OF CONSTRUCTION OR APPLICATION OF ANY PERTINENT RULES.
- 19 2. UNSUPPORTED BY ANY EVIDENCE AS DISCLOSED BY THE ENTIRE RECORD.
- 20 3. MATERIALLY AFFECTED BY UNLAWFUL PROCEDURE.
- 21 4. BASED ON A VIOLATION OF ANY CONSTITUTIONAL PROVISION.
- 22 5. ARBITRARY OR CAPRICIOUS.

23 ~~B.~~ C. In addition to the trial court's powers as prescribed in
24 section 12-911, if the court overrules the determination of the council OR
25 THE DIRECTOR OF THE EMPLOYING AGENCY, the employee shall be reinstated in the
26 employee's position and the employee shall receive full compensation for any
27 salary withheld pending the determination by the council, THE DIRECTOR OF THE
28 EMPLOYING AGENCY and court."

29 Renumber to conform

30 Page 181, strike lines 6 through 47

31 Page 182, strike lines 1 through 20

32 Renumber to conform

1 Line 25, after "~~classified~~" strike remainder of line, insert "SWORN employee"

2 Line 26, strike "SERVICE EMPLOYED BY THE DEPARTMENT OF PUBLIC SAFETY"

3 Line 43, strike "41-772" insert "41-752"

4 Page 202, strike lines 30 through 36

5 Renumber to conform

6 Page 216, strike lines 20 through 29, insert:

7 "Sec. 168. Initial terms of additional members of the law
8 enforcement merit system council

9 A. Notwithstanding section 41-1830.11, Arizona Revised Statutes, as
10 amended by this act, the initial terms of additional members of the law
11 enforcement merit system council are:

12 1. One term ending July 1, 2016.

13 2. One term ending July 1, 2014.

14 B. Notwithstanding section 41-1830.11, Arizona Revised Statutes, as
15 amended by this act, members of the law enforcement merit system council who
16 are serving on the effective date of this act may continue to serve the
17 remainder of their terms.

18 C. The governor shall make all subsequent appointments as prescribed
19 by statute."

20 Renumber to conform

21 Page 217, line 2, after "board;" strike remainder of line

22 Strike line 3, insert "law enforcement merit system council; retroactivity"

23 Line 4, strike "for six"

24 Line 5, strike "months after the effective date of this act" insert "until
25 October 31, 2012"

26 Line 14, after the second comma strike remainder of line

27 Page 217, line 15, strike "date of this act" insert "until October 31, 2012"

28 Line 22, strike "added" insert "amended"; after the second comma strike
29 remainder of line

30 Strike line 23

31 Line 24, strike "section 41-1830.11, Arizona Revised Statutes," insert "until
32 October 31, 2012 the law enforcement merit system council"

1 Lines 25 and 26, strike ", as added by this act"

2 Between lines 28 and 29, insert:

3 "D. This section is effective retroactively to from and after April
4 30, 2012."

5 Line 30, strike "A. Except as provided in subsection B of this section,"

6 Strike lines 32, 33 and 34

7 Amend title to conform

JUSTIN OLSON

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