



Bill Number: H.B. 2377

Smith Floor Amendment

Reference to: House engrossed bill

Amendment drafted by: Amber Witter

FLOOR AMENDMENT EXPLANATION

- 1. Reinserts that the agency head, instead of the Law Enforcement Merit System Council, makes the final determination on an appeal, but requires any discipline to be based on *just cause*.**
- 2. Removes the grounds on which an appeal must be based.**

SMITH FLOOR AMENDMENT

SENATE AMENDMENTS TO H.B. 2377

(Reference to House engrossed bill)

1 Page 1, line 35, strike "~~subject~~"

2 Strike lines 36, 37 and 38, insert "subject to review by the director and appeal
3 as provided in section 41-1830.13."

4 Page 2, strike line 20

5 Line 21, strike "~~of the employing agency has not proven by a preponderance of
6 the evidence~~" insert:

7 "2. May recommend modification of a disciplinary action if the director
8 of the employing agency has not proven by a preponderance of the evidence"

9 Line 23, after "~~capricious.~~" insert "THAT THE EMPLOYING AGENCY HAD JUST CAUSE TO
10 DISCIPLINE THE EMPLOYEE."

11 Renumber to conform

12 Lines 25 and 26, strike "~~for any discipline to be imposed~~" insert "for any
13 discipline to be imposed"

14 Line 28, after the period strike remainder of line

15 Strike lines 29 and 30

16 Line 31, strike "~~proven by a preponderance of the evidence~~" insert:

17 "E. On a finding that the director of the employing agency has not
18 proven JUST CAUSE TO DISCIPLINE THE EMPLOYEE by a preponderance of the
19 evidence,"

20 Lines 33 and 34, strike "~~may recommend a proposed disciplinary action in light
21 of the facts proven.~~" insert "THE COUNCIL may recommend a proposed
22 disciplinary action in light of the facts proven."

23 Reletter to conform

24 Strike lines 38 through 43, insert:

25 "F. Within forty-five days after the conclusion of the hearing, the
26 council shall enter its decision or recommendation and at the same time shall
27 send a copy of the decision or recommendation by certified mail to the

1 employing agency and to the employee at the employee's address as given at
2 the hearing or to a representative designated by the employee to receive a
3 copy of the decision or recommendation."

4 Reletter to conform

5 Page 3, line 18, strike ":", ~~and section 41-1830.13,~~ insert "and section 41-
6 1830.13:"

7 Line 23, strike "SECTION 38-1101" insert "TITLE 38, CHAPTER 8, ARTICLE 1"

8 Strike lines 24 and 25, insert:

9 "Sec. 2. Section 41-1830.13, Arizona Revised Statutes, is amended to
10 read:

11 41-1830.13. Review of council decision by agency director;
12 appeal; reinstatement

13 A. Within fourteen days of receipt of the finding or recommendation by
14 the council pursuant to section 41-1830.12, the director of the employing
15 agency shall accept, modify or reverse the council's decision or accept,
16 modify or reject the council's recommendation. The director shall accept the
17 council's recommendation unless the recommendation is arbitrary or without
18 reasonable justification. If the director does not accept the council's
19 recommendation, the director shall state the reason or reasons for rejecting
20 the recommendation. The decision of the director of the employing agency is
21 final and binding. The director of the employing agency shall send a copy of
22 the agency's final determination to the employee pursuant to section
23 41-1830.12.

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

1 ~~1. Founded on or contained error of law that shall specifically~~
2 ~~include error of construction or application of any pertinent rules.~~

3 ~~2. Unsupported by any evidence as disclosed by the entire record.~~

4 ~~3. Materially affected by unlawful procedure.~~

5 ~~4. Based on a violation of any constitutional provision.~~

6 ~~5. Arbitrary or capricious.~~

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

13 Page 4, strike line 13

14 Line 14, strike "~~agency head has not proven by a preponderance of the evidence~~"
15 insert:

16 "2. May recommend modification of a disciplinary action if the state
17 agency head has not proven by a preponderance of the evidence"

18 Line 16, after "~~capricious.~~" insert "THAT THE EMPLOYING AGENCY HAD JUST CAUSE TO
19 DISCIPLINE THE EMPLOYEE."

20 Renumber to conform

21 Line 18, strike "~~for any discipline to be imposed~~" insert "for any discipline to
22 be imposed"

23 Line 21, after the period strike remainder of line

24 Strike lines 22 and 23

25 Line 24, strike "~~preponderance of the evidence~~" insert:

26 "D. On a finding that the state agency head has not proven JUST CAUSE
27 TO DISCIPLINE THE EMPLOYEE by a preponderance of the evidence,"

28 Lines 26 and 27, strike "~~may recommend a proposed disciplinary action in light~~
29 ~~of the facts proven.~~" insert "THE COUNCIL may recommend a proposed
30 disciplinary action in light of the facts proven."

31 Reletter to conform

32 Strike lines 31 through 45

1 Page 5, strike lines 1 through 6

2 Line 7, strike "AGENCY OR THE AFFECTED EMPLOYEE" insert:

3 "E. Within forty-five days after the conclusion of the hearing, the
4 council shall enter its decision or recommendation and shall at the same time
5 send a copy of the decision or recommendation by certified mail to the
6 employing agency and to the employee at the employee's address as given at
7 the hearing or to a representative designated by the employee to receive a
8 copy of the decision or recommendation. The state agency head or the agency
9 head's designee shall accept, modify or reverse the council's decision or
10 accept, modify or reject the council's recommendation within fourteen days of
11 receipt of the findings or recommendation from the law enforcement merit
12 system council. The state agency head or the agency head's designee shall
13 accept the council's recommendation unless the recommendation is arbitrary or
14 without reasonable justification. If the state agency head or the agency
15 head's designee does not accept the council's recommendation, the state
16 agency head or the agency head's designee shall state the reasons for
17 rejecting the recommendation. The decision of the agency head or agency
18 head's designee is final and binding. The agency head shall send a copy of
19 the agency's final determination to the covered employee pursuant to this
20 section.

21 F. Any party may appeal the decision of the law enforcement merit
22 system council or the final decision of the agency"

23 Reletter to conform

24 Line 29, strike "SECTION 38-1101" insert "TITLE 38, CHAPTER 8, ARTICLE 1"

25 Amend title to conform

3/24/15
8:16 AM
S: AW/lS