

Senate Engrossed House Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

CHAPTER 213

HOUSE BILL 2377

AN ACT

AMENDING SECTIONS 41-1830.12, 41-1830.13 AND 41-1830.16, ARIZONA REVISED STATUTES; RELATING TO THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-1830.12, Arizona Revised Statutes, is amended to
3 read:
4 41-1830.12. Law enforcement merit system council; duties;
5 authority; rules; business manager; definitions
6 A. The law enforcement merit system council shall:
7 1. Select a chairman and vice-chairman.
8 2. Hold meetings that are necessary to perform its duties on the call
9 of the chairman.
10 3. Adopt rules pursuant to recognized merit principles of public
11 employment it deems necessary for establishing the following for department
12 of public safety and Arizona peace officer standards and training board
13 personnel:
14 (a) A classification and compensation plan for all covered positions
15 and for establishing standards and qualifications for all classified
16 positions from a list of necessary employees that is prepared by the director
17 of the employing agency.
18 (b) A plan for fair and impartial selection, appointment, probation,
19 promotion, retention and separation or removal from service by resignation,
20 retirement, reduction in force or dismissal of all classified employees.
21 (c) A performance appraisal system for evaluating the work performance
22 of employees of the agencies.
23 (d) Procedures for the conduct of hearings of employee grievances that
24 are brought before the council relating to classification, compensation and
25 the employee appraisal system.
26 (e) Procedures for the conduct of hearings on appeals from an order of
27 the director of the employing agency in connection with suspension, demotion,
28 reduction in pay, loss of accrued leave time or dismissal of a classified
29 employee.
30 (f) For hours of employment, annual and sick leave and special leaves
31 of absence, with or without pay or with reduced pay.
32 4. Pursuant to recognized merit principles, hear and review appeals
33 from any order of the director of the employing agency in connection with
34 suspension, demotion, reduction in pay, loss of accrued leave time or
35 dismissal of a classified employee. The council's determination is subject
36 to review by the director and appeal as provided in section 41-1830.13.
37 B. The council may meet with the state personnel board to discuss
38 matters of mutual concern.
39 C. The rules under subsection A, paragraph 3, subdivision (f) of this
40 section shall provide for the transfer of accumulated annual leave from one
41 employee to another employee in the same agency and for the transfer of
42 accumulated annual leave from one employee to another employee of another
43 agency, department, board or commission if the employees are members of the
44 same family. The transfers may occur if the employee to whom the leave is
45 transferred has a seriously incapacitating and extended illness or injury or

1 a member of the employee's immediate family has a seriously incapacitating
2 and extended illness or injury and the employee has exhausted all available
3 leave balances. Transferred annual leave shall be increased or reduced
4 proportionally by the difference in the salaries of the employees as
5 determined by council rule. For the purposes of this subsection, "family"
6 means spouse, natural child, adopted child, foster child, stepchild, natural
7 parent, stepparent, adoptive parent, grandparent, grandchild, brother,
8 sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law,
9 mother-in-law or father-in-law.

10 D. In hearing and reviewing an appeal from any order of the director
11 of the employing agency, the council:

12 1. Shall determine whether the employing agency has proven by a
13 preponderance of the evidence ~~the material facts on which the discipline was~~
14 ~~based. On such a finding, the council shall affirm the decision of the~~
15 ~~director of the employing agency, unless the disciplinary decision was~~
16 ~~arbitrary and capricious~~ THAT THE EMPLOYING AGENCY HAD JUST CAUSE TO
17 DISCIPLINE THE EMPLOYEE.

18 2. May recommend modification of a disciplinary action if the director
19 of the employing agency has not proven by a preponderance of the evidence ~~the~~
20 ~~material facts on which the discipline was based or if a disciplinary~~
21 ~~decision is found to be arbitrary and capricious~~ THAT THE EMPLOYING AGENCY
22 HAD JUST CAUSE TO DISCIPLINE THE EMPLOYEE.

23 3. Shall reverse the decision of the director of the employing agency
24 if the council finds that JUST cause did not exist for any discipline to be
25 imposed and, in the case of dismissal or demotion, return the employee to the
26 same position the employee held before the dismissal or demotion with or
27 without back pay.

28 E. On a finding that the director of the employing agency has not
29 proven JUST CAUSE TO DISCIPLINE THE EMPLOYEE by a preponderance of the
30 evidence, ~~the material facts on which the discipline was based, the council~~
31 ~~shall identify the material facts that the council found were not supported~~
32 ~~by a preponderance of the evidence and~~ THE COUNCIL may recommend a proposed
33 disciplinary action in light of the facts proven. ~~On a finding that the~~
34 ~~disciplinary decision was arbitrary and capricious, the council shall include~~
35 ~~the council's reasons for the council's finding and may recommend a proposed~~
36 ~~disciplinary action in light of the facts proven.~~

37 F. Within forty-five days after the conclusion of the hearing, the
38 council shall enter its decision or recommendation and at the same time shall
39 send a copy of the decision or recommendation by certified mail to the
40 employing agency and to the employee at the employee's address as given at
41 the hearing or to a representative designated by the employee to receive a
42 copy of the decision or recommendation.

43 G. The council shall select and the director of the department of
44 public safety shall appoint a business manager who is a certified peace
45 officer and an employee of the department of public safety but who is not a

1 member of the council. The business manager shall perform and discharge all
2 of the powers and duties that are vested in the council, except that adoption
3 of rules, creation and adjustment of classifications and grades, compensation
4 and hearing appeals for dismissal, demotion, reduction in pay, suspensions or
5 other punitive action remain the duty of the council. Any power or duty that
6 the council may lawfully delegate to the business manager is conclusively
7 presumed to have been delegated to the business manager unless it is shown
8 that the council by an affirmative vote recorded in its minutes has
9 specifically reserved the power or duty to itself. At the request of the
10 council, the business manager may make inquiries regarding or investigate
11 infractions of council rules within the department of public safety. The
12 business manager shall report the result of the inquiry or investigation to
13 the council for appropriate action. The business manager may delegate the
14 business manager's powers and duties to the business manager's subordinates
15 unless by council rule or express provision of law the business manager is
16 specifically required to act personally.

17 H. For the purposes of this section and section 41-1830.13: —

18 1. "Director of the employing agency" means the director of the
19 department of public safety with respect to employees of the department and
20 the executive director of the Arizona peace officer standards and training
21 board with respect to employees of the board.

22 2. "JUST CAUSE" HAS THE SAME MEANING PRESCRIBED IN TITLE 38, CHAPTER
23 8, ARTICLE 1.

24 Sec. 2. Section 41-1830.13, Arizona Revised Statutes, is amended to
25 read:

26 41-1830.13. Review of council decision by agency director;
27 appeal; reinstatement

28 A. Within fourteen days of receipt of the finding or recommendation by
29 the council pursuant to section 41-1830.12, the director of the employing
30 agency shall accept, modify or reverse the council's decision or accept,
31 modify or reject the council's recommendation. The director shall accept the
32 council's recommendation unless the recommendation is arbitrary or without
33 reasonable justification. If the director does not accept the council's
34 recommendation, the director shall state the reason or reasons for rejecting
35 the recommendation. The decision of the director of the employing agency is
36 final and binding. The director of the employing agency shall send a copy of
37 the agency's final determination to the employee pursuant to section
38 41-1830.12.

39 B. Except as provided in section 41-1092.08, subsection H, a
40 classified employee who is suspended, is demoted, has pay reduced, loses
41 accrued leave time or is dismissed pursuant to this article, after a fair
42 hearing and review before the law enforcement merit system council and review
43 of the suspension, demotion, reduction in pay, loss of accrued leave time or
44 dismissal by the director of the employing agency, may appeal the
45 determination of the council and the final determination of the director of

1 the employing agency pursuant to title 12, chapter 7, article 6 ~~on one or~~
2 ~~more of the following grounds that the order was:~~

- 3 ~~1. Founded on or contained error of law that shall specifically~~
4 ~~include error of construction or application of any pertinent rules.~~
- 5 ~~2. Unsupported by any evidence as disclosed by the entire record.~~
- 6 ~~3. Materially affected by unlawful procedure.~~
- 7 ~~4. Based on a violation of any constitutional provision.~~
- 8 ~~5. Arbitrary or capricious.~~

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

15 Sec. 3. Section 41-1830.16, Arizona Revised Statutes, is amended to
16 read:

17 41-1830.16. Law enforcement merit system council duties;
18 authority; appeals of covered full authority
19 peace officers employed by agencies in the state
20 personnel system; definitions

21 A. The law enforcement merit system council shall adopt rules the
22 council deems necessary for the administration of hearings and the review of
23 appeals as prescribed in this section.

24 B. A covered employee in the state personnel system who is a full
25 authority peace officer as certified by the Arizona peace officer standards
26 and training board, is appointed to a position that requires such a
27 certification in the covered service and who has completed the employee's
28 original probationary period of service as provided by the personnel rules
29 may appeal to the law enforcement merit system council the covered employee's
30 dismissal from covered service, suspension for more than forty working hours
31 or involuntary demotion resulting from disciplinary action. The covered
32 employee shall file the appeal no later than ten working days after the
33 effective date of the action. The covered employee shall be furnished with
34 specified charges in writing when the action is taken. The appeal shall be
35 in writing and must state specific facts relating directly to the charges on
36 which the appeal is based. Notwithstanding section 41-1092.05, subsection D,
37 the law enforcement merit system council shall hear the appeal within thirty
38 days after the council's receipt. The law enforcement merit system council
39 shall provide the employing agency with a copy of the appeal not less than
40 twenty days in advance of the hearing.

41 C. In hearing and reviewing an appeal, the council:

- 42 1. Shall determine whether the employing agency has proven by a
43 preponderance of the evidence ~~the material facts on which the discipline was~~
44 ~~based. On such a finding the council shall affirm the decision of the state~~

1 ~~agency head unless the disciplinary decision was arbitrary and capricious~~
2 THAT THE EMPLOYING AGENCY HAD JUST CAUSE TO DISCIPLINE THE EMPLOYEE.

3 2. May recommend modification of a disciplinary action if the state
4 agency head has not proven by a preponderance of the evidence ~~the material~~
5 ~~facts on which the discipline was based or if a disciplinary decision is~~
6 ~~found to be arbitrary and capricious~~ THAT THE EMPLOYING AGENCY HAD JUST CAUSE
7 TO DISCIPLINE THE EMPLOYEE.

8 3. Shall reverse the decision of the state agency head if the council
9 finds that JUST cause did not exist for any discipline to be imposed and, in
10 the case of dismissal or demotion, return the employee to the same position
11 the employee held before the dismissal or demotion with or without back pay.

12 D. On a finding that the state agency head has not proven JUST CAUSE
13 TO DISCIPLINE THE EMPLOYEE by a preponderance of the evidence, ~~the material~~
14 ~~facts on which the discipline was based, the council shall identify the~~
15 ~~material facts that the council found were not supported by a preponderance~~
16 ~~of the evidence and~~ THE COUNCIL may recommend a proposed disciplinary action
17 in light of the facts proven. ~~On a finding that the disciplinary decision~~
18 ~~was arbitrary and capricious, the council shall include the council's reasons~~
19 ~~for the council's finding and may recommend a proposed disciplinary action in~~
20 ~~light of the facts proven.~~

21 E. Within forty-five days after the conclusion of the hearing, the
22 council shall enter its decision or recommendation and shall at the same time
23 send a copy of the decision or recommendation by certified mail to the
24 employing agency and to the employee at the employee's address as given at
25 the hearing or to a representative designated by the employee to receive a
26 copy of the decision or recommendation. The state agency head or the agency
27 head's designee shall accept, modify or reverse the council's decision or
28 accept, modify or reject the council's recommendation within fourteen days of
29 receipt of the findings or recommendation from the law enforcement merit
30 system council. The state agency head or the agency head's designee shall
31 accept the council's recommendation unless the recommendation is arbitrary or
32 without reasonable justification. If the state agency head or the agency
33 head's designee does not accept the council's recommendation, the state
34 agency head or the agency head's designee shall state the reasons for
35 rejecting the recommendation. The decision of the agency head or agency
36 head's designee is final and binding. The agency head shall send a copy of
37 the agency's final determination to the covered employee pursuant to this
38 section.

39 F. Any party may appeal the decision of the law enforcement merit
40 system council or the final decision of the agency pursuant to title 12,
41 chapter 7, article 6 to the superior court in the covered employee's county
42 of residence. ~~on one or more of the following grounds that the order was:~~

- 43 1. ~~Founded on or contained error of law that shall specifically~~
44 ~~include error of construction or application of any pertinent rules.~~
45 2. ~~Unsupported by any evidence as disclosed by the entire record.~~

- 1 3. ~~Materially affected by unlawful procedure.~~
2 4. ~~Based on a violation of any constitutional provision.~~
3 5. ~~Arbitrary or capricious.~~
4 G. An appeal shall be available to the court of appeals from the order
5 of the superior court pursuant to title 12, chapter 7, article 6 as in other
6 civil cases.
7 H. For the purposes of this section:
8 1. "Covered employee" has the same meaning prescribed in section
9 41-741.
10 2. "Covered service" has the same meaning prescribed in section
11 41-741.
12 3. "Employing agency" means the agency in the state personnel system
13 where the covered employee is or, in the case of dismissal, was employed.
14 4. "Full authority peace officer" means a peace officer whose
15 authority to enforce the laws of this state is not limited by the rules
16 adopted by the Arizona peace officer standards and training board.
17 5. "JUST CAUSE" HAS THE SAME MEANING PRESCRIBED IN TITLE 38, CHAPTER
18 8, ARTICLE 1.
19 ~~5.~~ 6. "Original probationary period" has the same meaning prescribed
20 in section 41-741.
21 ~~6.~~ 7. "Personnel rules" means the rules adopted by the department of
22 administration, human resources division.
23 ~~7.~~ 8. "State agency head" means the chief executive officer of the
24 employing agency.
25 ~~8.~~ 9. "State personnel system" has the same meaning prescribed in
26 section 41-741.

APPROVED BY THE GOVERNOR APRIL 6, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2015.

Passed the House February 19, 20 15

by the following vote: 49 Ayes,

8 Nays, 3 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate March 30, 20 15

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20 _____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20 _____

at _____ o'clock _____ M.

Secretary of State

H.B. 2377

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

March 31, 20 15,

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
31st day of March, 2015,

at 3:16 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 6th day of

April, 2015,

at 2:23 o'clock P. M.

[Signature]
Governor of Arizona

H.B. 2377

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 7th day of April, 2015,

at 8:30 o'clock A. M.

[Signature]
Secretary of State