

Senate Engrossed House Bill

State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

**FILED**  
**MICHELE REAGAN**  
**SECRETARY OF STATE**

CHAPTER 41

# **HOUSE BILL 2247**

AN ACT

AMENDING SECTIONS 11-353, 11-356 AND 38-1004, ARIZONA REVISED STATUTES;  
RELATING TO COUNTY MERIT SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-353, Arizona Revised Statutes, is amended to  
3 read:

4 11-353. County employee merit system commission; members;  
5 terms; vacancies

6 A. ~~Upon~~ ON the adoption of a county employee merit system the board of  
7 supervisors shall appoint a county employee merit system commission to assist  
8 in administering the system. The commission shall consist of five members,  
9 each of whom shall hold office for a term of four years and until ~~his~~ A  
10 successor is appointed and qualified. Of the members first appointed, two  
11 shall serve for a two-year term, two for a three-year term and one shall  
12 serve a four-year term, and ~~such~~ THE members shall determine by lot the  
13 length of their terms. Appointment to fill a vacancy caused by other than  
14 expiration of term shall be for the unexpired portion of the term.

15 B. Members of the commission shall be selected from among the  
16 qualified electors of the county. No more than three of ~~such~~ THE members  
17 shall be from the same political party.

18 C. IF THE MEMBERS OF THE COUNTY EMPLOYEE MERIT SYSTEM COMMISSION ARE  
19 THE SAME MEMBERS THAT THE BOARD OF SUPERVISORS APPOINTS TO THE COUNTY MERIT  
20 SYSTEM COUNCIL FOR LAW ENFORCEMENT OFFICERS ESTABLISHED PURSUANT TO SECTION  
21 38-1002, THE BOARD OF SUPERVISORS MAY APPOINT THE MEMBERS OF THE COUNTY  
22 EMPLOYEE MERIT SYSTEM COMMISSION TO FIVE-YEAR TERMS CONSISTENT WITH THE TERMS  
23 PRESCRIBED BY SECTION 38-1002, SUBSECTION C. TO MAKE THE TERMS CONSISTENT, A  
24 MEMBER'S CURRENT TERM ON THE COUNTY EMPLOYEE MERIT SYSTEM COMMISSION SHALL  
25 EXTEND TO THE DATE ON WHICH THE MEMBER'S CURRENT TERM ON THE COUNTY MERIT  
26 SYSTEM COUNCIL FOR LAW ENFORCEMENT OFFICERS EXPIRES. THE SUBSEQUENT TERM OF  
27 OFFICE WILL BE FIVE YEARS AS PRESCRIBED BY SECTION 38-1002, SUBSECTION C.

28 Sec. 2. Section 11-356, Arizona Revised Statutes, is amended to read:

29 11-356. Dismissal, suspension or reduction in rank of  
30 employees; appeals; hearings

31 A. Any officer or employee in the classified civil service may be  
32 dismissed, suspended or reduced in rank or compensation by the appointing  
33 authority after appointment or promotion is complete only by written order,  
34 stating specifically the reasons for the action. The order shall be filed  
35 ~~with the clerk of the board of supervisors~~ IN THE OFFICER'S OR EMPLOYEE'S  
36 OFFICIAL COUNTY PERSONNEL RECORD and a copy shall be furnished to the person  
37 to be dismissed, suspended or reduced.

38 B. ~~The officer or employee,~~ Within ten CALENDAR days after  
39 ~~presentation to him of~~ the order IS PRESENTED TO THE OFFICER OR EMPLOYEE, THE  
40 OFFICER OR EMPLOYEE may appeal the order through the clerk of the commission.  
41 On the filing of the appeal, the clerk of the commission shall immediately  
42 transmit the order and appeal to the commission for a hearing.

43 C. Within twenty CALENDAR days after receiving the order and appeal,  
44 the commission shall set a date for a hearing of the appeal. The appellant

1 may appear personally, produce evidence, AND have counsel and, if requested  
2 by the appellant, request a public hearing.

3 D. The commission may appoint a hearing officer to conduct the hearing  
4 and take evidence on behalf of the commission. If a hearing officer is  
5 appointed to conduct the hearing, on conclusion of the hearing the hearing  
6 officer shall submit proposed findings of fact, conclusions of law and a  
7 recommendation to the commission.

8 E. ANY APPEAL OF A DISMISSAL, SUSPENSION OR REDUCTION IN RANK IN WHICH  
9 A SINGLE HEARING OFFICER HAS BEEN APPOINTED BY THE COMMISSION TO CONDUCT THE  
10 APPEAL HEARING SHALL BE OPEN TO THE PUBLIC UNLESS THE HEARING OFFICER  
11 DETERMINES THAT GOOD CAUSE EXISTS TO CLOSE THE HEARING.

12 ~~E.~~ F. In any appeal of a dismissal, suspension or reduction in rank  
13 in which a single hearing officer has been appointed to conduct the appeal  
14 hearing, the officer or employee or the employer may request a change of  
15 hearing officer. On the first request of a party, the commission shall grant  
16 the request. The commission may grant all other requests only on a showing  
17 that a fair and impartial hearing cannot be obtained due to the prejudice of  
18 the assigned hearing officer. The chairperson of the commission shall decide  
19 whether a sufficient showing of prejudice has been made.

20 ~~F.~~ G. Following the hearing, or if a hearing officer has been  
21 appointed, following receipt of the hearing officer's proposed findings of  
22 fact, conclusions of law and recommendation, the commission shall either  
23 affirm, modify or revoke the order.

24 ~~G.~~ H. The findings and decision of the commission shall be final and  
25 shall be subject to administrative review as provided in title 12, chapter 7,  
26 article 6.

27 ~~H.~~ I. This section does not apply to furloughs of classified  
28 employees if the furloughs are undertaken to address budget shortfalls or  
29 structural imbalance.

30 Sec. 3. Section 38-1004, Arizona Revised Statutes, is amended to read:  
31 38-1004. Appeals; hearings

32 A. A classified law enforcement officer who is suspended, demoted or  
33 dismissed by the department head, after a hearing and review before the merit  
34 system council, may have the determination of the council reviewed pursuant  
35 to title 12, chapter 7, article 6 in the superior court of the county in  
36 which the law enforcement officer resides. If the determination of the  
37 council is overruled by the court, the law enforcement officer shall be  
38 reinstated in the officer's position and the officer shall be reimbursed for  
39 any compensation withheld pending determination by the council and court.

40 B. If the order of the department head was for a suspension greater  
41 than sixteen hours, demotion or dismissal and the court exonerates the  
42 officer, the court may award, in whole or in part, the reasonable costs and  
43 attorney fees that the law enforcement officer incurred or were incurred on  
44 behalf of the law enforcement officer in the court proceedings. The award of

1 attorney fees by the court shall not exceed fifteen thousand dollars. An  
2 award of attorney fees does not apply if either of the following applies:

3 1. The order of the department head was not for disciplinary purposes  
4 but was for administrative purposes such as a reduction in force.

5 2. The disciplinary action related to off-duty activities unrelated to  
6 the required duties of the law enforcement officer. If the department head  
7 appeals the decision of the court, the court's award of any costs or attorney  
8 fees to an officer shall be stayed pending the conclusion of the appeal. If  
9 the department head's decision is upheld on appeal, the award of costs or  
10 attorney fees in favor of the officer shall be reversed.

11 C. If a law enforcement officer of a county, city or town described in  
12 section 38-1007 appeals from a decision of a department head in connection  
13 with the law enforcement officer's suspension greater than sixteen hours,  
14 demotion or dismissal and the county, city or town maintains a merit system  
15 or civil service plan for its employees, and the merit system or civil  
16 service plan appeals board exonerates the officer, the merit system or civil  
17 service plan appeals board may award, in whole or in part, the reasonable  
18 costs and attorney fees that the law enforcement officer incurred or were  
19 incurred on behalf of the law enforcement officer in connection with the  
20 appeal. The amount of the award by the merit system or civil service plan  
21 appeals board shall not exceed ten thousand dollars. If the department head  
22 appeals the decision of the merit system or civil service appeals board, the  
23 award of attorney fees shall be stayed pending the conclusion of the appeal.  
24 If the officer appeals to court the decision of the merit system or civil  
25 service plan appeals board, or of the city or town council or board of  
26 supervisors if the city, town or county has no such board, and the court  
27 exonerates the officer, the court may award, in whole or in part, the  
28 reasonable costs and attorney fees that the law enforcement officer incurred  
29 or were incurred on behalf of the law enforcement officer in connection with  
30 the appeal. The award of attorney fees by the governing body or court shall  
31 not exceed fifteen thousand dollars. An award of attorney fees under this  
32 subsection does not apply if either of the following applies:

33 1. The order of the department head was not for disciplinary purposes  
34 but was for administrative purposes such as a reduction in force.

35 2. The disciplinary action related to off-duty activities unrelated to  
36 the required duties of the law enforcement officer. If the department head  
37 appeals the decision of the court, the court's award of any costs or attorney  
38 fees to an officer shall be stayed pending the conclusion of the appeal. If  
39 the department head's decision is upheld on appeal, the award of costs or  
40 attorney fees in favor of the officer shall be reversed.

41 D. A department head shall have the right to have all council policies  
42 and decisions reviewed pursuant to title 12, chapter 7, article 6 in the  
43 superior court of the county in which the law enforcement officer resides and  
44 legal counsel for the department head shall be provided by the county or city  
45 attorney in whose jurisdiction the department lies.

1           E. NOTWITHSTANDING SECTION 38-1106, SUBSECTION I, ANY APPEAL OF A  
2       SUSPENSION, DEMOTION OR DISMISSAL IN WHICH A SINGLE HEARING OFFICER OR  
3       ADMINISTRATIVE LAW JUDGE HAS BEEN APPOINTED BY THE MERIT SYSTEM COUNCIL OR  
4       APPEALS BOARD TO CONDUCT THE APPEAL HEARING SHALL BE OPEN TO THE PUBLIC  
5       UNLESS THE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE DETERMINES THAT GOOD  
6       CAUSE EXISTS TO CLOSE THE HEARING.

APPROVED BY THE GOVERNOR MARCH 17, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 18, 2016.

Passed the House February 16, 2016

Passed the Senate March 15, 2016

by the following vote: 60 Ayes,

by the following vote: 29 Ayes,

0 Nays, 0 Not Voting

0 Nays, 1 Not Voting

259

[Signature]

Speaker of the House

President of the Senate

Pro Tempore

[Signature]  
Chief Clerk of the House

[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. 2247

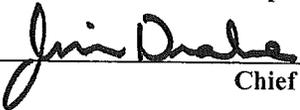
HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

March 16, 2016,

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

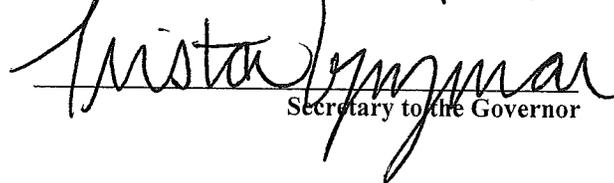
  
\_\_\_\_\_  
Speaker of the House

  
\_\_\_\_\_  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this  
16th day of March, 2016,

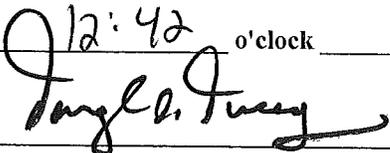
at 4:02 o'clock P. M.

  
\_\_\_\_\_  
Secretary to the Governor

Approved this 17th day of

March, 2016,

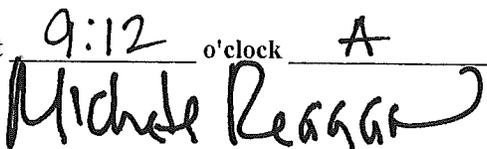
at 12:42 o'clock P. M.

  
\_\_\_\_\_  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this 18 day of March, 2016,

at 9:12 o'clock A. M.

  
\_\_\_\_\_  
Secretary of State

H.B. 2247