

AMENDED IN ASSEMBLY JUNE 4, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 220**

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**Introduced by Assembly Member Bass  
(Principal coauthor: Assembly Member Solorio)**

January 29, 2007

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An act to add Chapter 9.6 (commencing with Section 3250) to Division 4 of Title 1 of the Government Code, relating to firefighters.

LEGISLATIVE COUNSEL'S DIGEST

AB 220, as amended, Bass. Firefighters.

The Public Safety Officers Procedural Bill of Rights Act prescribes various rights of public safety officers, as defined, with regard to representation, discrimination, discipline, and interrogation, as specified.

This bill would enact the Firefighters Procedural Bill of Rights Act to prescribe various rights of firefighters, defined as any firefighter *employed by a public agency*, including a firefighter who is a paramedic or emergency medical technician, with specified exceptions. The bill would prescribe rights related to, among others, political activity, interrogation, punitive action, and administrative appeals.

By adding to the duties of local agencies to comply with that act, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Firefighters are often called upon to render aid in hostile  
4 emergency situations rife with conflict and confrontation.

5 (b) In providing lifesaving services to the public, firefighters  
6 are subject to numerous job safety procedures and protocols, which  
7 sometimes are compromised or altered, in a highly charged  
8 atmosphere of critical incident stressors.

9 (c) Firefighters who trust their instincts in these volatile  
10 emergency situations are deserving of due process rights and  
11 protections should those circumstances arise.

12 (d) Mutual aid and automatic aid agreements entered into  
13 between fire agencies throughout the state require firefighters to  
14 respond to emergencies across political boundaries, therefore, the  
15 rights and protections provided to firefighters under this act  
16 constitute a matter of statewide concern.

17 (e) The effective protection of property and the safety of the  
18 public depends upon the maintenance of reasonable and consistent  
19 procedural protections applicable to all employers with respect to  
20 the disciplinary process.

21 (f) It is necessary that this act be applicable to all firefighters,  
22 as defined in subdivision (a) of Section 3251 of the Government  
23 Code, wherever situated within the State of California, in order to  
24 ensure that stable employment relations are continued throughout  
25 the state, and to further ensure that effective services are provided  
26 to all people of the state.

27 SEC. 2. Chapter 9.6 (commencing with Section 3250) is added  
28 to Division 4 of Title 1 of the Government Code, to read:

29

30 CHAPTER 9.6. FIREFIGHTERS

31

32 3250. This chapter shall be known, and may be cited, as the  
33 Firefighters Procedural Bill of Rights Act.

34 3251. For purposes of this chapter, the following definitions  
35 apply:

1 (a) “Firefighter” means any firefighter *employed by a public*  
2 *agency*, including, but not limited to, any firefighter who is a  
3 paramedic or emergency medical technician, irrespective of rank.  
4 However, “firefighter” does not include an inmate of a state or  
5 local correctional agency who performs firefighting or related  
6 duties or persons who are subject to Chapter 9.7 (commencing  
7 with Section 3300). This chapter does not apply to any employee  
8 who has not successfully completed the probationary period  
9 established by his or her employer as a condition of employment.

10 (b) “Public agency” has the meaning given that term by Section  
11 53101.

12 ~~(b)~~

13 (c) “Punitive action” means any action that may lead to  
14 dismissal, demotion, suspension, reduction in salary, written  
15 reprimand, or transfer for purposes of punishment.

16 3252. (a) Except as otherwise provided in Chapter 9.5  
17 (commencing with Section 3201), or whenever on duty or in  
18 uniform, no firefighter shall be prohibited from engaging, or be  
19 coerced or required to engage, in political activity.

20 (b) A firefighter shall not be prohibited from seeking election  
21 to, or serving as a member of, the governing board of a school  
22 district, or any local agency where the firefighter is not employed,  
23 including, but not limited to, any city, county, city and county, or  
24 special district, or political subdivision thereof.

25 3253. When any firefighter is under investigation and subjected  
26 to interrogation by his or her commanding officer, or any other  
27 member designated by the employing department or licensing or  
28 certifying agency, that could lead to punitive action, the  
29 interrogation shall be conducted under the following conditions:

30 (a) The interrogation shall be conducted at a reasonable hour,  
31 at a time when the firefighter is on duty, unless an imminent threat  
32 to the safety of the public requires otherwise. If the interrogation  
33 does occur during off-duty time of the firefighter being  
34 interrogated, the firefighter shall be compensated for any off-duty  
35 time in accordance with the employer relations ordinance governing  
36 overtime compensation. The firefighter’s compensation shall not  
37 be reduced as a result of any work missed while being interrogated.

38 (b) The firefighter under investigation shall be informed, prior  
39 to the interrogation, of the rank, name, and command of the officer  
40 or other person in charge of the interrogation, the interrogating

1 officer, and all other persons to be present during the interrogation.  
2 All questions directed to the firefighter under interrogation shall  
3 be asked by and through one interrogator.

4 (c) The firefighter under investigation shall be informed of the  
5 nature of the investigation prior to any interrogation.

6 (d) The interrogating session shall be for a reasonable period  
7 taking into consideration the gravity and complexity of the issue  
8 being investigated. The person under interrogation shall be allowed  
9 reasonable breaks to attend to his or her own personal physical  
10 necessities.

11 (e) The firefighter under interrogation shall not be subjected to  
12 offensive language or threatened with punitive action. A promise  
13 of reward shall not be made as an inducement to answering any  
14 question. The employer shall not cause the firefighter under  
15 interrogation to be subjected to visits by the press or news media  
16 without his or her express written consent free of duress, and the  
17 firefighter's photograph, home address, telephone number, or other  
18 contact information shall not be given to the press or news media  
19 without his or her express written consent.

20 (f) A statement made during interrogation by a firefighter under  
21 duress, coercion, or threat of punitive action shall not be admissible  
22 in any subsequent judicial proceeding, subject to the following  
23 qualifications:

24 (1) This subdivision shall not limit the use of statements  
25 otherwise made by a firefighter when the employing department  
26 is seeking civil service sanctions against any firefighter, including  
27 disciplinary action brought under Section 19572.

28 (2) This subdivision shall not prevent the admissibility of  
29 statements otherwise made by the firefighter under interrogation  
30 in any civil action, including administrative actions, brought by  
31 that firefighter, or that firefighter's exclusive representative, arising  
32 out of a disciplinary action.

33 (g) The complete interrogation of a firefighter may be recorded.  
34 If a recording is made of the interrogation, the firefighter shall  
35 have access to the recording if any further proceedings are  
36 contemplated or prior to any further interrogation at a subsequent  
37 time. The firefighter shall be entitled to a transcribed copy of any  
38 notes made by a stenographer or to any reports or complaints made  
39 by investigators or other persons, except those portions that are  
40 otherwise required by law to be kept confidential. Notes or reports

1 that are deemed to be confidential shall not be entered in the  
2 firefighter's personnel file. The firefighter being interrogated shall  
3 have the right to bring his or her own recording device and record  
4 any and all aspects of the interrogation.

5 (h) If, prior to or during the interrogation of a firefighter, it is  
6 contemplated that he or she may be charged with a criminal  
7 offense, he or she shall be immediately informed of his or her  
8 constitutional rights.

9 (i) Upon the filing of a formal written statement of charges, or  
10 whenever an interrogation focuses on matters that may result in  
11 punitive action against any firefighter, that firefighter, at his or her  
12 request, shall have the right to be represented by a representative  
13 of his or her choice who may be present at all times during the  
14 interrogation. The representative shall not be a person subject to  
15 the same investigation. The representative shall not be required to  
16 disclose, or be subject to any punitive action for refusing to  
17 disclose, any information received from the firefighter under  
18 investigation.

19 This section shall not be construed to apply to counseling,  
20 instruction, or informal verbal admonishment by, or other routine  
21 or unplanned contact with, a supervisor or any other firefighter.

22 (j) A firefighter shall not be loaned or temporarily reassigned  
23 to a location or duty assignment if a firefighter in his or her  
24 department would not normally be sent to that location or would  
25 not normally be given that duty assignment.

26 3254. (a) A firefighter shall not be subjected to punitive action,  
27 or denied promotion, or be threatened with that treatment, because  
28 of the lawful exercise of the rights granted under this chapter, or  
29 the exercise of any rights under any existing administrative  
30 grievance procedure.

31 (b) Punitive action or denial of promotion on grounds other than  
32 merit shall not be undertaken by any employing department or  
33 licensing or certifying agency against any firefighter without  
34 providing the firefighter with an opportunity for administrative  
35 appeal.

36 (c) A fire chief shall not be removed by a public agency or  
37 appointing authority without providing that person with written  
38 notice, the reason or reasons for removal, and an opportunity for  
39 administrative appeal.

1 For purposes of this subdivision, the removal of a fire chief by  
2 a public agency or appointing authority, for the purpose of  
3 implementing the goals or policies, or both, of the public agency  
4 or appointing authority, or for reasons including, but not limited  
5 to, incompatibility of management styles or as a result of a change  
6 in administration, shall be sufficient to constitute “reason or  
7 reasons.”

8 Nothing in this subdivision shall be construed to create a property  
9 interest, if one does not otherwise exist by rule or law, in the  
10 position of that fire chief.

11 (d) Punitive action or denial of promotion on grounds other than  
12 merit shall not be undertaken for any act, omission, or other  
13 allegation of misconduct if the investigation of the allegation is  
14 not completed within one year of discovery by the employing  
15 department or licensing or certifying agency. This one-year  
16 limitation period shall apply only if the discovery of the act,  
17 omission, or other misconduct occurred on or after January 1,  
18 2008. If the employing department or licensing or certifying agency  
19 determines that discipline may be taken, it shall complete its  
20 investigation and notify the firefighter of its proposed disciplinary  
21 action within that year. If the firefighter voluntarily waives the  
22 one-year time period in writing, the time period shall be tolled for  
23 the period of time specified in the written waiver.

24 (e) If a predisciplinary response or grievance procedure is  
25 required or utilized, the time for that response or procedure shall  
26 not be governed or limited by this chapter.

27 (f) If, after investigation and any predisciplinary response or  
28 procedure, the employing department or licensing or certifying  
29 agency decides to impose discipline, that agency shall notify the  
30 firefighter in writing of its decision to impose discipline within 30  
31 days of its decision, but not less than 48 hours prior to imposing  
32 the discipline.

33 3254.5. An administrative appeal instituted by a firefighter  
34 under this chapter shall be conducted in conformance with rules  
35 and procedures adopted by the employing department or licensing  
36 or certifying agency that are in accordance with Chapter 5  
37 (commencing with Section 11500) of Part 1 of Division 3 of Title  
38 2.

39 3255. A firefighter shall not have any comment adverse to his  
40 or her interest entered in his or her personnel file, or any other file

1 used for any personnel purposes by his or her employer, without  
2 the firefighter having first read and signed the instrument  
3 containing the adverse comment indicating he or she is aware of  
4 the comment. However, the entry may be made if after reading  
5 the instrument the firefighter refuses to sign it. That fact shall be  
6 noted on that document, and signed or initialed by the firefighter.

7 3256. A firefighter shall have 30 days within which to file a  
8 written response to any adverse comment entered in his or her  
9 personnel file. The written response shall be attached to, and shall  
10 accompany, the adverse comment.

11 3257. (a) A firefighter shall not be compelled to submit to a  
12 lie detector test against his or her will.

13 (1) Disciplinary action or other recrimination shall not be taken  
14 against a firefighter refusing to submit to a lie detector test.

15 (2) No comment shall be entered anywhere in the investigator's  
16 notes or anywhere else that the firefighter refused to take, or did  
17 not take, a lie detector test.

18 (3) Testimony or evidence to the effect that the firefighter  
19 refused to take, or was subjected to, a lie detector test shall not be  
20 admissible at a subsequent hearing, trial, or proceeding, judicial  
21 or administrative.

22 (b) For the purpose of this section, "lie detector" means a  
23 polygraph, deceptograph, voice stress analyzer, psychological  
24 stress evaluator, or any other similar device, whether mechanical  
25 or electrical, that is used, or the results of which are used, for the  
26 purpose of rendering a diagnostic opinion regarding the honesty  
27 or dishonesty of an individual.

28 3258. A firefighter shall not be required or requested for  
29 purposes of job assignment or other personnel action to disclose  
30 any item of his or her property, income, assets, source of income,  
31 debts, or personal or domestic expenditures, including those of  
32 any member of his or her family or household, unless that  
33 information is otherwise required to be furnished under state law  
34 or obtained pursuant to court order.

35 3259. A firefighter shall not have his or her locker or other  
36 space for storage that may be assigned to him or her searched  
37 except in his or her presence, or with his or her consent, or unless  
38 a valid search warrant has been obtained. This section shall apply  
39 only to lockers or other space for storage that are owned or leased  
40 by the employing department or licensing or certifying agency.

1 3260. (a) It shall be unlawful for any employing department  
2 or licensing or certifying agency to deny or refuse to any firefighter  
3 the rights and protections guaranteed by this chapter.

4 (b) The superior court shall have initial jurisdiction over any  
5 proceeding brought by any firefighter against any employing  
6 department or licensing or certifying agency for alleged violations  
7 of this chapter.

8 (c) If the superior court finds that the employing department or  
9 licensing or certifying agency has violated any of the provisions  
10 of this chapter, the court shall render appropriate injunctive or  
11 other extraordinary relief to remedy the violation and to prevent  
12 future violations of a like or similar nature, including, but not  
13 limited to, the granting of a temporary restraining order or  
14 preliminary or permanent injunction prohibiting the employing  
15 department or licensing or certifying agency from taking any  
16 punitive action against the firefighter.

17 3261. Nothing in this chapter shall in any way be construed to  
18 limit the ability of any employing department, licensing or  
19 certifying agency, or any firefighter to fulfill mutual aid agreements  
20 with other jurisdictions or agencies, and this chapter shall not be  
21 construed in any way to limit any jurisdictional or interagency  
22 cooperation under any circumstances where that activity is deemed  
23 necessary or desirable by the jurisdictions or agencies involved.

24 3262. *The rights and protections described in this chapter shall*  
25 *only apply to a firefighter during events and circumstances*  
26 *involving the performance of his or her official duties.*

27 SEC. 3. If the Commission on State Mandates determines that  
28 this act contains costs mandated by the state, reimbursement to  
29 local agencies and school districts for those costs shall be made  
30 pursuant to Part 7 (commencing with Section 17500) of Division  
31 4 of Title 2 of the Government Code.