

AMENDED IN SENATE APRIL 18, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 388

Introduced by Senator Lieu

February 20, 2013

An act to amend Sections 3253 and 3303 of the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 388, as amended, Lieu. Public safety officers and firefighters: investigations and interrogations.

The Public Safety Officers Procedural Bill of Rights Act and the Firefighters Procedural Bill of Rights Act grant certain rights to public safety officers and firefighters, as defined. The acts require that, when any public safety officer or firefighter is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department or fire department, that could lead to punitive action, the interrogation be conducted under certain conditions, except as specified.

This bill would provide that the above-mentioned conditions apply when any interrogation of a public safety officer or firefighter is conducted, whether or not an investigation of that public safety officer or firefighter is being conducted.

This bill would also state the intent of the Legislature that this measure not be construed to alter specified provisions limiting the right of a public safety officer or firefighter to be represented by a representative of his or her choice.

By adding to the duties of local agencies to comply with *the Public Safety Officers Procedural Bill of Rights Act and the Firefighters*

Procedural Bill of Rights 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. It is the intent of the Legislature that this measure
2 not be construed to alter any limitations on the rights of
3 representation contained in subdivision (i) of Section 3253 of the
4 Government Code or subdivision (i) of Section 3303 of the
5 Government Code.

6 SECTION 1.

7 SEC. 2. Section 3253 of the Government Code is amended to
8 read:

9 3253. When any firefighter is under investigation and subjected
10 to interrogation, or subjected to interrogation without being under
11 investigation, by his or her commanding officer, or any other
12 representative designated by the employing department or licensing
13 or certifying agency, that could lead to punitive action, the
14 interrogation shall be conducted under the following conditions:

15 (a) The interrogation shall be conducted at a reasonable hour,
16 at a time when the firefighter is on duty, unless an imminent threat
17 to the safety of the public requires otherwise. If the interrogation
18 does occur during off-duty time of the firefighter being
19 interrogated, the firefighter shall be compensated for any off-duty
20 time in accordance with regular department procedures. The
21 firefighter's compensation shall not be reduced as a result of any
22 work missed while being interrogated.

23 (b) The firefighter shall be informed, prior to the interrogation,
24 of the rank, name, and command of the officer or other person in
25 charge of the interrogation, the interrogating officer, and all other
26 persons to be present during the interrogation. All questions

1 directed to the firefighter under interrogation shall be asked by
2 and through no more than two interrogators at one time.

3 (c) The firefighter shall be informed of the nature of the inquiry
4 prior to any interrogation.

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

10 (e) (1) The firefighter under interrogation shall not be subjected
11 to offensive language or threatened with punitive action. A promise
12 of reward shall not be made as an inducement to answering any
13 question. The employer shall provide to, and obtain from, an
14 employee a formal grant of immunity from criminal prosecution,
15 in writing, before the employee may be compelled to respond to
16 incriminating questions in an interrogation. Subject to that grant
17 of immunity, a firefighter refusing to respond to questions or
18 submit to interrogations shall be informed that the failure to answer
19 questions directly related to the inquiry or interrogation may result
20 in punitive action.

21 (2) The employer shall not cause the firefighter under
22 interrogation to be subjected to visits by the press or news media
23 without his or her express written consent free of duress, and the
24 firefighter's photograph, home address, telephone number, or other
25 contact information shall not be given to the press or news media
26 without his or her express written consent.

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

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

35 (2) This subdivision shall not prevent the admissibility of
36 statements otherwise made by the firefighter under interrogation
37 in any civil action, including administrative actions, brought by
38 that firefighter, or that firefighter's exclusive representative, arising
39 out of a disciplinary action.

1 (g) The complete interrogation of a firefighter may be recorded.
2 If a recording is made of the interrogation, the firefighter shall
3 have access to the recording if any further proceedings are
4 contemplated or prior to any further interrogation at a subsequent
5 time. The firefighter shall be entitled to a transcribed copy of any
6 notes made by a stenographer or to any reports or complaints made
7 by investigators or other persons, except those portions that are
8 otherwise required by law to be kept confidential. Notes or reports
9 that are deemed to be confidential shall not be entered in the
10 firefighter's personnel file. The firefighter being interrogated shall
11 have the right to bring his or her own recording device and record
12 any and all aspects of the interrogation.

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

17 (i) Upon the filing of a formal written statement of charges, or
18 whenever an interrogation under any circumstances focuses on
19 matters that may result in punitive action against any firefighter,
20 that firefighter, at his or her request, shall have the right to be
21 represented by a representative of his or her choice who may be
22 present at all times during the interrogation. The representative
23 shall not be a person subject to the same inquiry. The representative
24 shall not be required to disclose, or be subject to any punitive
25 action for refusing to disclose, any information received from the
26 firefighter being investigated or interrogated for noncriminal
27 matters.

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

31 (j) A firefighter shall not be loaned or temporarily reassigned
32 to a location or duty assignment if a firefighter in his or her
33 department would not normally be sent to that location or would
34 not normally be given that duty assignment under similar
35 circumstances.

36 ~~SEC. 2.~~

37 *SEC. 3.* Section 3303 of the Government Code is amended to
38 read:

39 3303. When any public safety officer is under investigation
40 and subjected to interrogation, or is subject to interrogation without

1 being under investigation, by his or her commanding officer, or
2 any other representative of the employing public safety department
3 or its designee, that could lead to punitive action, the interrogation
4 shall be conducted under the following conditions. For the purpose
5 of this chapter, punitive action means any action that may lead to
6 dismissal, demotion, suspension, reduction in salary, written
7 reprimand, or transfer for purposes of punishment.

8 (a) The interrogation shall be conducted at a reasonable hour,
9 preferably at a time when the public safety officer is on duty, or
10 during the normal waking hours for the public safety officer, unless
11 the seriousness of the inquiry requires otherwise. If the
12 interrogation does occur during off-duty time of the public safety
13 officer being interrogated, the public safety officer shall be
14 compensated for any off-duty time in accordance with regular
15 department procedures, and the public safety officer shall not be
16 released from employment for any work missed.

17 (b) The public safety officer shall be informed prior to the
18 interrogation of the rank, name, and command of the officer in
19 charge of the interrogation, the interrogating officers, and all other
20 persons to be present during the interrogation. All questions
21 directed to the public safety officer under interrogation shall be
22 asked by and through no more than two interrogators at one time.

23 (c) The public safety officer shall be informed of the nature of
24 the inquiry prior to any interrogation.

25 (d) The interrogating session shall be for a reasonable period
26 taking into consideration gravity and complexity of the issue being
27 investigated. The person under interrogation shall be allowed to
28 attend to his or her own personal physical necessities.

29 (e) The public safety officer under interrogation shall not be
30 subjected to offensive language or threatened with punitive action,
31 except that an officer refusing to respond to questions or submit
32 to interrogations shall be informed that failure to answer questions
33 directly related to the inquiry or interrogation may result in punitive
34 action. No promise of reward shall be made as an inducement to
35 answering any question. The employer shall not cause the public
36 safety officer under interrogation to be subjected to visits by the
37 press or news media without his or her express consent nor shall
38 his or her home address or photograph be given to the press or
39 news media without his or her express consent.

1 (f) A statement made during interrogation by a public safety
2 officer under duress, coercion, or threat of punitive action shall
3 not be admissible in any subsequent civil proceeding. This
4 subdivision is subject to the following qualifications:

5 (1) This subdivision shall not limit the use of statements made
6 by a public safety officer when the employing public safety
7 department is seeking civil sanctions against any public safety
8 officer, including disciplinary action brought under Section 19572.

9 (2) This subdivision shall not prevent the admissibility of
10 statements made by the public safety officer under interrogation
11 in any civil action, including administrative actions, brought by
12 that public safety officer, or that officer's exclusive representative,
13 arising out of a disciplinary action.

14 (3) This subdivision shall not prevent statements made by a
15 public safety officer under interrogation from being used to
16 impeach the testimony of that officer after an in camera review to
17 determine whether the statements serve to impeach the testimony
18 of the officer.

19 (4) This subdivision shall not otherwise prevent the admissibility
20 of statements made by a public safety officer under interrogation
21 if that officer subsequently is deceased.

22 (g) The complete interrogation of a public safety officer may
23 be recorded. If a tape recording is made of the interrogation, the
24 public safety officer shall have access to the tape if any further
25 proceedings are contemplated or prior to any further interrogation
26 at a subsequent time. The public safety officer shall be entitled to
27 a transcribed copy of any notes made by a stenographer or to any
28 reports or complaints made by investigators or other persons,
29 except those which are deemed by the investigating agency to be
30 confidential. No notes or reports that are deemed to be confidential
31 may be entered in the officer's personnel file. The public safety
32 officer being interrogated shall have the right to bring his or her
33 own recording device and record any and all aspects of the
34 interrogation.

35 (h) If prior to or during the interrogation of a public safety
36 officer it is deemed that he or she may be charged with a criminal
37 offense, he or she shall be immediately informed of his or her
38 constitutional rights.

39 (i) Upon the filing of a formal written statement of charges, or
40 whenever an interrogation under any circumstances focuses on

1 matters that could lead to punitive action against any public safety
2 officer, that officer, at his or her request, shall have the right to be
3 represented by a representative of his or her choice who may be
4 present at all times during the interrogation. The representative
5 shall not be a person subject to the same inquiry. The representative
6 shall not be required to disclose, nor be subject to any punitive
7 action for refusing to disclose, any information received from the
8 officer being investigated or interrogated for noncriminal matters.

9 This section shall not apply to any interrogation of a public safety
10 officer in the normal course of duty, counseling, instruction, or
11 informal verbal admonishment by, or other routine or unplanned
12 contact with, a supervisor or any other public safety officer, nor
13 shall this section apply to an inquiry concerned solely and directly
14 with alleged criminal activities.

15 (j) No public safety officer shall be loaned or temporarily
16 reassigned to a location or duty assignment if a sworn member of
17 his or her department would not normally be sent to that location
18 or would not normally be given that duty assignment under similar
19 circumstances.

20 ~~SEC. 3.~~

21 *SEC. 4.* If the Commission on State Mandates determines that
22 this act contains costs mandated by the state, reimbursement to
23 local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code.

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