

AMENDED IN ASSEMBLY MARCH 28, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 417

Introduced by Assembly Member Cedillo

February 20, 2001

An act to amend Section 3301 of, *and to add Chapter 9.8 (commencing with Section 3400) to Division 4 of Title 1 of, the Government Code, relating to public safety officers and firefighters.*

LEGISLATIVE COUNSEL'S DIGEST

AB 417, as amended, Cedillo. Public safety officers: civilian employees.

~~(1) Existing~~

Existing law establishes the Public Safety Officers Procedural Bill of Rights, which *permits public safety officers to engage in political activity, as specified and which* provides specified procedures and conditions for the investigation and interrogation of a public safety officer that could lead to punitive action.

This bill would extend this procedural bill of rights to civilian employees of the police department of any city.

~~To the extent that the requirements of these protections would apply to local government employers, the bill would impose a state-mandated local program.~~

~~(2) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide~~

~~and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~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.~~

This bill would also establish the Firefighters Procedural Bill of Rights which would permit firefighters to engage in political activity in the same manner and which would require the same procedures and conditions for the investigation and interrogation of a firefighter that could lead to punitive action. The bill would define firefighter to include a firefighter, paramedic, or emergency medical technician.

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

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

1 SECTION 1. Section 3301 of the Government Code is
2 amended to read:

3 3301. For purposes of this chapter, the term public safety
4 officer means all peace officers specified in Sections 830.1, 830.2,
5 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34,
6 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and
7 830.5 of the Penal Code, and also means all civilian employees of
8 the police department of any city.

9 The Legislature hereby finds and declares that the rights and
10 protections provided to peace officers under this chapter constitute
11 a matter of statewide concern. The Legislature further finds and
12 declares that effective law enforcement depends upon the
13 maintenance of stable employer-employee relations, between
14 public safety employees and their employers. In order to assure
15 that stable relations are continued throughout the state and to
16 further assure that effective services are provided to all people of
17 the state, it is necessary that this chapter be applicable to all public
18 safety officers, as defined in this section, wherever situated within
19 the State of California.

20 ~~SEC. 2. Notwithstanding Section 17610 of the Government~~
21 ~~Code, if the Commission on State Mandates determines that this~~
22 ~~act contains costs mandated by the state, reimbursement to local~~
23 ~~agencies and school districts for those costs shall be made pursuant~~



1 ~~to Part 7 (commencing with Section 17500) of Division 4 of Title~~
 2 ~~2 of the Government Code. If the statewide cost of the claim for~~
 3 ~~reimbursement does not exceed one million dollars (\$1,000,000);~~
 4 ~~reimbursement shall be made from the State Mandates Claims~~
 5 ~~Fund.~~

6 *SEC. 2. Chapter 9.8 (commencing with Section 3400) is*
 7 *added to Division 4 of Title 1 of the Government Code, to read:*

8

9 *CHAPTER 9.8. FIREFIGHTERS, PARAMEDICS, AND EMERGENCY*
 10 *MEDICAL TECHNICIANS*

11

12 *3400. This chapter shall be known and may be cited as the*
 13 *Firefighters Procedural Bill of Rights Act.*

14 *3401. For purposes of this chapter, the term “firefighter”*
 15 *includes a firefighter, paramedic, or emergency medical*
 16 *technician, irrespective of rank. However, “firefighter” does not*
 17 *include an inmate of a state or local correctional agency who*
 18 *performs firefighting or related duties or persons who are subject*
 19 *to Chapter 9.7 (commencing with Section 3300).*

20 *The Legislature hereby finds and declares that the rights and*
 21 *protections provided to firefighters, paramedics, and emergency*
 22 *medical technicians under this chapter constitute a matter of*
 23 *statewide concern. The Legislature further finds and declares that*
 24 *effective law enforcement depends upon the maintenance of stable*
 25 *employer-employee relations between firefighters and their*
 26 *employers. In order to assure that stable relations are continued*
 27 *throughout the state and to further assure that effective services are*
 28 *provided to all people of the state, it is necessary that this chapter*
 29 *be applicable to all firefighters, as defined in this section, wherever*
 30 *situated within the State of California.*

31 *3402. (a) Except as otherwise provided by law, or whenever*
 32 *on duty or in uniform, no firefighter shall be prohibited from*
 33 *engaging, or be coerced or required to engage, in political activity.*

34 *(b) No firefighter shall be prohibited from seeking election to,*
 35 *or serving as a member of, the governing board of a school district.*

36 *3403. When any firefighter is under investigation and*
 37 *subjected to interrogation by his or her commanding officer, or any*
 38 *other member of the employing department, that could lead to*
 39 *punitive action, the interrogation shall be conducted under the*
 40 *following conditions. For the purpose of this chapter, “punitive*



1 *action” means any action that may lead to dismissal, demotion,*
2 *suspension, reduction in salary, written reprimand, or transfer for*
3 *purposes of punishment.*

4 *(a) The interrogation shall be conducted at a reasonable hour,*
5 *preferably at a time when the firefighter is on duty, or during the*
6 *normal waking hours for the firefighter, unless the seriousness of*
7 *the investigation requires otherwise. If the interrogation does*
8 *occur during off-duty time of the firefighter being interrogated, the*
9 *firefighter shall be compensated for any off-duty time in*
10 *accordance with regular department procedures, and the*
11 *firefighter shall not be released from employment for any work*
12 *missed.*

13 *(b) The firefighter under investigation shall be informed at*
14 *least seven days prior to the interrogation of the rank, name, and*
15 *command of the officer or other person in charge of the*
16 *interrogation, the interrogating officers, and all other persons to*
17 *be present during the interrogation. All questions directed to the*
18 *firefighter under interrogation shall be asked by and through no*
19 *more than two interrogators at one time.*

20 *(c) The firefighter under investigation shall be informed of the*
21 *nature of the investigation at least seven days prior to any*
22 *interrogation.*

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

27 *(e) The firefighter under interrogation shall not be subjected to*
28 *offensive language or threatened with punitive action. No promise*
29 *of reward shall be made as an inducement to answering any*
30 *question. The employer shall not cause the firefighter under*
31 *interrogation to be subjected to visits by the press or news media*
32 *without his or her express consent nor shall his or her home*
33 *address or photograph be given to the press or news media without*
34 *his or her express consent.*

35 *(f) No statement made during interrogation by a firefighter*
36 *under duress, coercion, or threat of punitive action shall be*
37 *admissible in any subsequent civil proceeding. This subdivision is*
38 *subject to the following qualifications:*

39 *(1) This subdivision shall not limit the use of statements made*
40 *by a firefighter when the employing department is seeking civil*



1 *sanctions against any firefighter, including disciplinary action*
2 *brought under Section 19572.*

3 *(2) This subdivision shall not prevent the admissibility of*
4 *statements made by the firefighter under interrogation in any civil*
5 *action, including administrative actions, brought by that*
6 *firefighter, or that firefighter's exclusive representative, arising out*
7 *of a disciplinary action.*

8 *(3) This subdivision shall not prevent statements made by a*
9 *firefighter under interrogation from being used to impeach the*
10 *testimony of that firefighter after an in camera review to determine*
11 *whether the statements serve to impeach the testimony of the*
12 *firefighter.*

13 *(4) This subdivision shall not otherwise prevent the*
14 *admissibility of statements made by a firefighter under*
15 *interrogation if that firefighter subsequently is deceased.*

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

28 *(h) If prior to or during the interrogation of a firefighter, it is*
29 *deemed that he or she may be charged with a criminal offense, he*
30 *or she shall be immediately informed of his or her constitutional*
31 *rights.*

32 *(i) Upon the filing of a formal written statement of charges, or*
33 *whenever an interrogation focuses on matters that are likely to*
34 *result in punitive action against any firefighter, that firefighter, at*
35 *his or her request, shall have the right to be represented by a*
36 *representative of his or her choice who may be present at all times*
37 *during the interrogation. The representative shall not be a person*
38 *subject to the same investigation. The representative shall not be*
39 *required to disclose, nor be subject to any punitive action for*



1 *refusing to disclose, any information received from the firefighter*
2 *under investigation for noncriminal matters.*

3 *This section shall not apply to any interrogation of a firefighter*
4 *in the normal course of duty, counseling, instruction, or informal*
5 *verbal admonishment by, or other routine or unplanned contact*
6 *with, a supervisor or any other firefighter; nor shall this section*
7 *apply to an investigation concerned solely and directly with*
8 *alleged criminal activities.*

9 *(j) No firefighter shall be loaned or temporarily reassigned to*
10 *a location or duty assignment if a sworn member of his or her*
11 *department would not normally be sent to that location or would*
12 *not normally be given that duty assignment under similar*
13 *circumstances.*

14 *3404. (a) No firefighter shall be subjected to punitive action,*
15 *or denied promotion, or be threatened with any such treatment,*
16 *because of the lawful exercise of the rights granted under this*
17 *chapter, or the exercise of any rights under any existing*
18 *administrative grievance procedure.*

19 *Nothing in this section shall preclude a head of an agency from*
20 *ordering a firefighter to cooperate with other agencies involved in*
21 *criminal investigations. If a firefighter fails to comply with such an*
22 *order, the agency may officially charge him or her with*
23 *insubordination.*

24 *(b) No punitive action, nor denial of promotion on grounds*
25 *other than merit, shall be undertaken by any public agency against*
26 *any firefighter who has successfully completed the probationary*
27 *period that may be required by his or her employing agency*
28 *without providing the firefighter with an opportunity for*
29 *administrative appeal.*

30 *(c) No head of a firefighter, paramedic, or emergency medical*
31 *technician unit may be removed by a public agency, or appointing*
32 *authority, without providing that person with written notice and*
33 *the reason or reasons therefor and an opportunity for*
34 *administrative appeal.*

35 *For purposes of this subdivision, the removal of the head of such*
36 *a unit by a public agency or appointing authority, for the purpose*
37 *of implementing the goals or policies, or both, of the public agency*
38 *or appointing authority, for reasons including, but not limited to,*
39 *incompatibility of management styles or as a result of a change in*



1 administration, shall be sufficient to constitute “reason or
2 reasons.”

3 Nothing in this subdivision shall be construed to create a
4 property interest, where one does not exist by rule or law, in the
5 position of the head of such a unit.

6 (d) Except as provided in this subdivision and subdivision (g),
7 no punitive action, nor denial of promotion on grounds other than
8 merit, shall be undertaken for any act, omission, or other
9 allegation of misconduct if the investigation of the allegation is not
10 completed within one year of the public agency’s discovery by a
11 person authorized to initiate an investigation of the allegation of
12 an act, omission, or other misconduct. This one-year limitation
13 period shall apply only if the act, omission, or other misconduct
14 occurred on or after January 1, 2002. In the event that the public
15 agency determines that discipline may be taken, it shall complete
16 its investigation and notify the firefighter of its proposed
17 disciplinary action within that year, except in any of the following
18 circumstances:

19 (1) If the act, omission, or other allegation of misconduct is
20 also the subject of a criminal investigation or criminal
21 prosecution, the time during which the criminal investigation or
22 criminal prosecution is pending shall toll the one-year time period.

23 (2) If the firefighter waives the one-year time period in writing,
24 the time period shall be tolled for the period of time specified in the
25 written waiver.

26 (3) If the investigation is a multijurisdictional investigation
27 that requires a reasonable extension for coordination of the
28 involved agencies.

29 (4) If the investigation involves more than one employee and
30 requires a reasonable extension.

31 (5) If the investigation involves an employee who is
32 incapacitated or otherwise unavailable.

33 (6) If the investigation involves a matter in civil litigation
34 where the firefighter is named as a party defendant, the one-year
35 time period shall be tolled while that civil action is pending.

36 (7) If the investigation involves a matter in criminal litigation
37 where the complainant is a criminal defendant, the one-year time
38 period shall be tolled during the period of that defendant’s
39 criminal investigation and prosecution.



1 (8) *If the investigation involves an allegation of workers’*
2 *compensation fraud on the part of the firefighter.*

3 (e) *Where a predisciplinary response or grievance procedure is*
4 *required or utilized, the time for this response or procedure shall*
5 *not be governed or limited by this chapter.*

6 (f) *If, after investigation and any predisciplinary response or*
7 *procedure, the public agency decides to impose discipline, the*
8 *public agency shall notify the firefighter in writing of its decision*
9 *to impose discipline, including the date that the discipline will be*
10 *imposed, within 30 days of its decision, except if the firefighter is*
11 *unavailable for discipline.*

12 (g) *Notwithstanding the one-year time period specified in*
13 *subdivision (d), an investigation may be reopened against a*
14 *firefighter if both of the following circumstances exist:*

15 (1) *Significant new evidence has been discovered that is likely*
16 *to affect the outcome of the investigation.*

17 (2) *One of the following conditions exist:*

18 (A) *The evidence could not reasonably have been discovered in*
19 *the normal course of investigation without resorting to*
20 *extraordinary measures by the agency.*

21 (B) *The evidence resulted from the firefighter’s predisciplinary*
22 *response or procedure.*

23 3404.5. *An administrative appeal instituted by a firefighter*
24 *under this chapter shall be conducted in conformance with rules*
25 *and procedures adopted by the local public agency.*

26 3405. *No firefighter shall have any comment adverse to his or*
27 *her interest entered in his or her personnel file, or any other file*
28 *used for any personnel purposes by his or her employer, without*
29 *the firefighter having first read and signed the instrument*
30 *containing the adverse comment indicating he or she is aware of*
31 *the comment, except that the entry may be made if after reading the*
32 *instrument the firefighter refuses to sign it. Should a firefighter*
33 *refuse to sign, that fact shall be noted on that document, and signed*
34 *or initialed by the firefighter.*

35 3406. *A firefighter shall have 30 days within which to file a*
36 *written response to any adverse comment entered in his or her*
37 *personnel file. The written response shall be attached to, and shall*
38 *accompany, the adverse comment.*

39 3407. (a) *No firefighter shall be compelled to submit to a lie*
40 *detector test against his or her will. No disciplinary action or other*



1 *recrimination shall be taken against a firefighter refusing to submit*
2 *to a lie detector test, nor shall any comment be entered anywhere*
3 *in the investigator's notes or anywhere else that the firefighter*
4 *refused to take, or did not take a lie detector test, nor shall any*
5 *testimony or evidence be admissible at a subsequent hearing, trial,*
6 *or proceeding, judicial or administrative, to the effect that the*
7 *firefighter refused to take, or was subjected to a lie detector test.*

8 *(b) For the purpose of this section, "lie detector" means a*
9 *polygraph, deceptograph, voice stress analyzer, psychological*
10 *stress evaluator, or any other similar device, whether mechanical*
11 *or electrical, that is used, or the results of which are used, for the*
12 *purpose of rendering a diagnostic opinion regarding the honesty*
13 *or dishonesty of an individual.*

14 *3408. No firefighter shall be required or requested for*
15 *purposes of job assignment or other personnel action to disclose*
16 *any item of his or her property, income, assets, source of income,*
17 *debts, or personal or domestic expenditures, including those of any*
18 *member of his or her family or household, unless that information*
19 *is obtained or required under state law or proper legal procedure,*
20 *tends to indicate a conflict of interest with respect to the*
21 *performance of his or her official duties, or is necessary for the*
22 *employing agency to ascertain the desirability of assigning the*
23 *firefighter to a specialized unit in which there is a strong possibility*
24 *that bribes or other improper inducements may be offered.*

25 *3409. No firefighter shall have his or her locker or other space*
26 *for storage that may be assigned to him or her searched except in*
27 *his or her presence, or with his or her consent, or unless a valid*
28 *search warrant has been obtained or where he or she has been*
29 *notified that a search will be conducted. This section shall apply*
30 *only to lockers or other space for storage that are owned or leased*
31 *by the employing agency.*

32 *3410. (a) It shall be unlawful for any department to deny or*
33 *refuse to any firefighter the rights and protections guaranteed by*
34 *this chapter.*

35 *(b) The superior court shall have initial jurisdiction over any*
36 *proceeding brought by any firefighter against any department for*
37 *alleged violations of this chapter.*

38 *(c) In any case where the superior court finds that a department*
39 *has violated any of the provisions of this chapter, the court shall*
40 *render appropriate injunctive or other extraordinary relief to*



1 *remedy the violation and to prevent future violations of a like or*
2 *similar nature, including, but not limited to, the granting of a*
3 *temporary restraining order or preliminary or permanent*
4 *injunction prohibiting the department from taking any punitive*
5 *action against the firefighter.*

6 *3411. Any public agency that has adopted, through action of*
7 *its governing body or its official designee, any procedure that at*
8 *a minimum provides to firefighters the same rights or protections*
9 *as provided pursuant to this chapter shall not be subject to this*
10 *chapter with regard to that procedure.*

11 *3412. Nothing in this chapter shall in any way be construed*
12 *to limit the use of any agency or any firefighter in the fulfilling of*
13 *mutual aid agreements with other jurisdictions or agencies, nor*
14 *shall this chapter be construed in any way to limit any*
15 *jurisdictional or interagency cooperation under any*
16 *circumstances where that activity is deemed necessary or desirable*
17 *by the jurisdictions or the agencies involved.*

