

**ASSEMBLY BILL**

**No. 622**

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**Introduced by Assembly Member Dickinson**

February 16, 2011

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An act to amend Section 939.1 of, and to add Sections 932.5 and 939.22 to, the Penal Code, relating to grand juries.

LEGISLATIVE COUNSEL'S DIGEST

AB 622, as introduced, Dickinson. Civil grand juries.

Existing law requires each grand jury to submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year, as specified.

This bill would require a civil grand jury to meet with the chief executive or department head of an agency subject to its investigation at least 60 days prior to the issuance of its final report to discuss the nature of the investigation and to receive the comments of the chief executive or department head. By requiring additional duties of local government officials, this bill would impose a state-mandated local program.

Existing law provides that a grand jury acting through its foreman and the attorney general or the district attorney may make a joint written request for public sessions of the grand jury, as specified.

This bill would require that every civil grand jury investigation be open to the public and the press unless the grand jury investigation pertains to confidential personnel matters.

Under existing law, no person is permitted to be present during the criminal sessions of the grand jury except the members and witnesses actually under examination, and certain other specified persons,

including, among others, the district attorney, an interpreter, and the officer having custody of a prisoner witness while the prisoner is testifying.

This bill would authorize any witness before a civil grand jury who is or becomes the subject of a grand jury investigation that may result in an indictment, or in an accusation for willful or corrupt misconduct in office, to have counsel present on his or her behalf while he or she is testifying. The bill also would create in any witness who is the subject of a grand jury investigation the right to disclose, in writing, exculpatory evidence to the prosecutor.

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. Section 932.5 is added to the Penal Code, to read:  
2 932.5. A civil grand jury shall meet with the chief executive  
3 or department head of an agency under investigation to discuss  
4 the nature of the investigation and to receive input from the chief  
5 executive or department head at least 60 days prior to the issuance  
6 of its final report.

7 SEC. 2. Section 939.1 of the Penal Code is amended to read:

8 939.1. (a) The grand jury acting through its foreman and the  
9 attorney general or the district attorney may make a joint written  
10 request for public sessions of the grand jury. The request shall be  
11 filed with the superior court. If the court, or the judge thereof, finds  
12 that the subject matter of the investigation affects the general public  
13 welfare, involving the alleged corruption, misfeasance, or  
14 malfeasance in office or dereliction of duty of public officials or  
15 employees or of any person allegedly acting in conjunction or  
16 conspiracy with such officials or employees in such alleged acts,  
17 the court or judge may make an order directing the grand jury to  
18 conduct its investigation in a session or sessions open to the public.

1 The order shall state the finding of the court. The grand jury shall  
2 comply with the order.

3 *(b) Notwithstanding subdivision (a), every civil grand jury*  
4 *session shall be open to the public and the press unless the grand*  
5 *jury session pertains to confidential personnel matters.*

6 ~~The~~

7 *(c) The conduct of ~~such~~ an investigation and the examination*  
8 *of witnesses under a public session pursuant to this section shall*  
9 *be by the members of the grand jury and the district ~~attorney.~~*

10 ~~The deliberation of the grand jury and its voting upon such~~  
11 ~~investigation shall be in private session. The attorney. The grand~~  
12 ~~jury may find indictments based wholly or partially upon the~~  
13 ~~evidence introduced at such public session.~~

14 *(d) Notwithstanding subdivision (b), no persons other than the*  
15 *grand jurors shall be permitted to be present during the expression*  
16 *of the opinions of the grand jurors, or the giving of their votes, on*  
17 *any civil matter before them.*

18 SEC. 3. Section 939.22 is added to the Penal Code, to read:

19 939.22. (a) Any witness before a civil grand jury who is or  
20 becomes the subject of a grand jury investigation that may result  
21 in an indictment, or in an accusation pursuant to Section 3060 of  
22 the Government Code, may have counsel present on his or her  
23 behalf while he or she is testifying. Any counsel present before  
24 the grand jury pursuant to this subdivision shall comply with all  
25 of the following:

26 (1) Counsel shall not object to any questions asked of the witness  
27 or otherwise speak to the grand jury, but may advise the witness  
28 during the course of the examination.

29 (2) Counsel shall not disclose anything heard in the grand jury  
30 room.

31 (3) Counsel, or any law firm representing a witness pursuant to  
32 this subdivision, shall not represent more than one witness in the  
33 same proceeding.

34 (b) Subdivision (a) shall not apply if a corporation is the subject  
35 of the investigation and the witness is an employee or officer of  
36 the corporation and the witness is not the subject of the grand jury  
37 investigation.

38 (c) Any witness who is the subject of a grand jury investigation  
39 has the right to disclose, in writing, exculpatory evidence, including

1 the names and addresses of witnesses who possess exculpatory  
2 information, to the prosecutor.

3 (d) The prosecuting attorney may make a motion to the presiding  
4 judge for sanctions against counsel who is representing a witness  
5 pursuant to subdivision (a) for any violation of this section and  
6 refer the violation to the State Bar of California.

7 (e) Nothing in this section shall be construed to grant a witness  
8 a constitutional right to counsel under the United States or  
9 California Constitutions nor grant any right to discovery for the  
10 subpoenaed witness.

11 SEC. 4. If the Commission on State Mandates determines that  
12 this act contains costs mandated by the state, reimbursement to  
13 local agencies and school districts for those costs shall be made  
14 pursuant to Part 7 (commencing with Section 17500) of Division  
15 4 of Title 2 of the Government Code.