

AMENDED IN ASSEMBLY MARCH 30, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 622

Introduced by Assembly Member Dickinson

February 16, 2011

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 amended, 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~~ 45 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. *Existing law provides that if the court, or the judge, finds that the subject matter of the investigation affects the general public welfare, involving the alleged corruption, misfeasance, or malfeasance in office or dereliction of duty of public officials or employees or of any person allegedly acting in conjunction or conspiracy with such officials or employees, the court*

or judge may make an order directing the grand jury to conduct its investigation in a session or sessions open to the public.

~~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.~~ *instead require every civil grand jury session in which testimony under oath is given to be open to the public. The bill would allow the grand jury, acting through its foreman, and the Attorney General or district attorney to make a joint request for closed sessions, as specified.*

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, who is called to give testimony under oath before a civil grand jury 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

1 executive or department head at least ~~60~~ 45 days prior to the
2 issuance of its final report.

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

4 ~~939.1. (a) The grand jury acting through its foreman and the~~
5 ~~attorney general or the district attorney may make a joint written~~
6 ~~request for public sessions of the grand jury. The request shall be~~
7 ~~filed with the superior court. If the court, or the judge thereof, finds~~
8 ~~that the subject matter of the investigation affects the general public~~
9 ~~welfare, involving the alleged corruption, misfeasance, or~~
10 ~~malfeasance in office or dereliction of duty of public officials or~~
11 ~~employees or of any person allegedly acting in conjunction or~~
12 ~~conspiracy with such officials or employees in such alleged acts,~~
13 ~~the court or judge may make an order directing the grand jury to~~
14 ~~conduct its investigation in a session or sessions open to the public.~~
15 ~~The order shall state the finding of the court. The grand jury shall~~
16 ~~comply with the order.~~

17 ~~(b) Notwithstanding subdivision (a), every civil grand jury~~
18 ~~session shall be open to the public and the press unless the grand~~
19 ~~jury session pertains to confidential personnel matters.~~

20 ~~(c) The conduct of an investigation and the examination of~~
21 ~~witnesses under a public session pursuant to this section shall be~~
22 ~~by the members of the grand jury and the district attorney. The~~
23 ~~grand jury may find indictments based wholly or partially upon~~
24 ~~the evidence introduced at such public session.~~

25 ~~(d) Notwithstanding subdivision (b), no persons other than the~~
26 ~~grand jurors shall be permitted to be present during the expression~~
27 ~~of the opinions of the grand jurors, or the giving of their votes, on~~
28 ~~any civil matter before them.~~

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

30 ~~939.1. (a) Every civil grand jury session in which~~
31 ~~testimony under oath is given shall be open to the public.~~

32 ~~(b) Notwithstanding subdivision (a), the grand jury acting~~
33 ~~through its foreman and the attorney general or the district attorney~~
34 ~~may make a joint written request for public closed sessions of the~~
35 ~~grand jury. The request shall be filed with the superior court. If~~
36 ~~the court, or the judge thereof, finds that the subject matter of the~~
37 ~~investigation affects the general public welfare, involving the~~
38 ~~alleged corruption, misfeasance, or malfeasance in office or~~
39 ~~dereliction of duty of public officials or employees or of any person~~
40 ~~allegedly acting in conjunction or conspiracy with such officials~~

1 ~~or employees in such alleged acts, the court or judge~~ *The court or*
 2 *judge, taking into consideration whether the testimony may involve*
 3 *confidential personnel matters or other confidential matters,* may
 4 make an order directing the grand jury to conduct its investigation
 5 in a session or sessions ~~open~~ *closed* to the public. The order shall
 6 state the finding of the court. The grand jury shall comply with
 7 the order.

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

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

16 *(d) Notwithstanding subdivision (a), the deliberation of the*
 17 *grand jury and its voting upon an investigation shall be in private*
 18 *session.*

19 SEC. 3. Section 939.22 is added to the Penal Code, to read:
 20 939.22. (a) ~~Any witness before a civil grand jury who is or~~
 21 ~~becomes the subject of a grand jury investigation that may result~~
 22 ~~in an indictment, or in an accusation pursuant to Section 3060 of~~
 23 ~~the Government Code,~~ *Any witness who is called to give testimony*
 24 *under oath before a civil grand jury may have counsel present on*
 25 *his or her behalf while he or she is testifying. Any counsel present*
 26 *before the grand jury pursuant to this subdivision shall comply*
 27 *with all of the following:*

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

31 (2) Counsel shall not disclose anything heard in the grand jury
 32 room.

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

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

1 (c) Any witness who is the subject of a grand jury investigation
2 has the right to disclose, in writing, exculpatory evidence, including
3 the names and addresses of witnesses who possess exculpatory
4 information, to the prosecutor.

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

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

13 SEC. 4. If the Commission on State Mandates determines that
14 this act contains costs mandated by the state, reimbursement to
15 local agencies and school districts for those costs shall be made
16 pursuant to Part 7 (commencing with Section 17500) of Division
17 4 of Title 2 of the Government Code.

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