

AMENDED IN SENATE JULY 12, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

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 add ~~Sections 932.5 and 939.22 to~~ *Section 932.5 to, and to add and repeal Section 939.22 of,* 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 ~~45~~ *21* 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, *unless the meeting would be detrimental to the investigation, as specified*. By requiring additional duties of local government officials, this bill would impose a state-mandated local program.

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, *until January 1, 2017*, authorize any witness 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, *provided, however, that counsel or any law firm representing a witness shall not represent more than one witness in the same proceeding. The bill would impose other restrictions on counsel in connection with the grand jury proceedings. The bill would provide that a violation of these provisions by counsel is a violation of the Rules of Professional Conduct.* ~~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 ~~45~~ 21 days prior to the
- 6 issuance of its final report, *unless the presiding judge or*
- 7 *supervising judge, in his or her own determination or upon request*
- 8 *of the foreperson of the grand jury, determines that the meeting*
- 9 *would be detrimental to the investigation.*
- 10 SEC. 2. Section 939.22 is added to the Penal Code, to read:
- 11 939.22. (a) Any witness who is called to give testimony under
- 12 oath before a civil grand jury may have counsel present on his or
- 13 her behalf while he or she is testifying. Any counsel present before

1 the grand jury pursuant to this subdivision shall comply with all
2 of the following:

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

6 (2) Counsel shall not disclose *or use* anything heard in the grand
7 jury room *other than in the representation of the witness he or she*
8 *represents*.

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

12 ~~(b) Subdivision (a) shall not apply if a corporation is the subject~~
13 ~~of the investigation and the witness is an employee or officer of~~
14 ~~the corporation and the witness is not the subject of the grand jury~~
15 ~~investigation.~~

16 ~~(e) Any witness who is the subject of a grand jury investigation~~
17 ~~has the right to disclose, in writing, exculpatory evidence, including~~
18 ~~the names and addresses of witnesses who possess exculpatory~~
19 ~~information, to the prosecutor.~~

20 ~~(d) The prosecuting attorney may make a motion to the presiding~~
21 ~~judge for sanctions against counsel who is representing a witness~~
22 ~~pursuant to subdivision (a) for any violation of this section and~~
23 ~~refer the violation to the State Bar of California.~~

24 ~~(b) A violation of this section by counsel shall be a violation of~~
25 ~~the Rules of Professional Conduct and may be reported to the State~~
26 ~~Bar of California.~~

27 ~~(e)~~

28 (c) Nothing in this section shall be construed to grant a witness
29 a constitutional right to counsel under the United States or
30 California Constitutions nor grant any right to discovery for the
31 subpoenaed witness.

32 (d) *This section shall remain in effect only until January 1, 2017,*
33 *and as of that date is repealed, unless a later enacted statute, that*
34 *is enacted before January 1, 2017, deletes or extends that date.*

35 SEC. 3. If the Commission on State Mandates determines that
36 this act contains costs mandated by the state, reimbursement to
37 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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