

AMENDED IN SENATE MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 9, 2015

AMENDED IN ASSEMBLY MARCH 17, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 651

Introduced by Assembly Member Cooper

February 24, 2015

An act to add Sections 3253.5 and 3303.5 to the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 651, as amended, Cooper. Public safety officers and firefighters: investigations and interviews.

The Firefighters Procedural Bill of Rights Act and the Public Safety Officers Procedural Bill of Rights Act grant certain rights to firefighters and public safety officers, as defined. The acts require that, when a firefighter or public safety officer is under investigation and is interrogated by his or her commanding officer, or another member of the employing agency, on matters that could lead to punitive action, the interrogation be conducted under certain conditions. Upon the filing of a formal written statement of charges or when an interrogation focuses on matters that, in the case of a firefighter, may result in punitive action or, in the case of a public safety officer, are likely to result in punitive action, the acts grant the firefighter or public safety officer a right to be represented by a person of his or her choice, except as specified, who may be present at all times during the interrogation. The acts prohibit requiring the representative to make certain disclosures or

subjecting the representative to punitive action for refusing to make those disclosures.

This bill, in an investigation that focuses on matters that may result in punitive action against a firefighter or public safety officer who is not formally under investigation but is interviewed as a witness in an investigation of another firefighter or public safety officer, would ~~authorize~~ grant the firefighter or public safety officer who is a witness *the right to have representation in the interview, as specified: interview at the time that he or she has reasonable cause to believe that the interrogation may result in punitive action against him or her. If the firefighter or public safety officer requests representation and the request is denied, the bill would prohibit statements taken after the request is made from being used against the firefighter or public safety officer in a disciplinary proceeding or in determining or imposing a punitive action.*

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

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

1 SECTION 1. Section 3253.5 is added to the Government Code,
 2 to read:
 3 3253.5. (a) (1) In an investigation to which Section 3253
 4 applies that focuses on matters that may result in punitive action
 5 against a firefighter who is not formally under investigation but is
 6 interviewed as a witness regarding an investigation of another
 7 firefighter, the firefighter who is a witness ~~may~~ shall have the right
 8 to representation in the interview ~~when representation has been~~
 9 ~~mutually agreed upon by one of the methods described in~~
 10 ~~subdivision (b). If representation has been mutually agreed upon,~~
 11 ~~the~~ *at the time that the witness firefighter has reasonable cause to*
 12 *believe that the interrogation may result in punitive action against*
 13 *him or her. The firefighter may choose a representative who is*
 14 *reasonably available to represent the firefighter at an interview*
 15 *that has been reasonably scheduled and the representative shall be*
 16 *permitted to be present at all times during the interview. The*
 17 *representative shall not be a person subject to the same*
 18 *investigation. The representative shall not be required to disclose,*
 19 *or be subject to punitive action for refusing to disclose, any*

1 information received from the firefighter being interviewed as part
2 of the investigation for noncriminal matters.

3 *(2) If a firefighter requests representation in an interview,*
4 *pursuant to paragraph (1), and the request is denied, statements*
5 *taken during the interview after the request is made shall not be*
6 *used against the firefighter in a disciplinary proceeding and shall*
7 *not be used in determining or imposing a punitive action against*
8 *the firefighter.*

9 (b) This section shall not be construed to impair any right or
10 privilege established pursuant to a memorandum of understanding
11 between a public agency and a recognized bargaining unit or
12 pursuant to an action by the governing body or by mutual
13 agreement between the governing body and recognized bargaining
14 unit, or limit the ability of the parties to negotiate and agree to a
15 higher standard of rights or privileges.

16 SEC. 2. Section 3303.5 is added to the Government Code, to
17 read:

18 3303.5. (a) (1) In an investigation to which Section 3303
19 applies that focuses on matters that may result in punitive action
20 against a public safety officer who is not formally under
21 investigation but is interviewed as a witness regarding an
22 investigation of another public safety officer, the public safety
23 officer who is a witness ~~may shall have the right to~~ representation
24 in the interview ~~when representation has been mutually agreed~~
25 ~~upon by one of the methods described in subdivision (b).~~ If
26 ~~representation has been mutually agreed upon,~~ *at the time that*
27 *the witness public safety officer has reasonable cause to believe*
28 *that the interrogation may result in punitive action against him or*
29 *her. The public safety officer may choose a representative who is*
30 *reasonably available to represent the public safety officer at an*
31 *interview that has been reasonably scheduled and the representative*
32 *shall be permitted to be present at all times during the interview.*
33 *The representative shall not be a person subject to the same*
34 *investigation. The representative shall not be required to disclose,*
35 *or be subject to punitive action for refusing to disclose, any*
36 *information received from the public safety officer being*
37 *interviewed as part of the investigation for noncriminal matters.*

38 *(2) If a public safety officer requests representation in an*
39 *interview, pursuant to paragraph (1), and the request is denied,*
40 *statements taken during the interview after the request is made*

1 *shall not be used against the public safety officer in a disciplinary*
2 *proceeding and shall not be used in determining or imposing a*
3 *punitive action against the public safety officer.*

4 (b) This section shall not be construed to impair any right or
5 privilege established pursuant to a memorandum of understanding
6 between a public agency and a recognized bargaining unit or
7 pursuant to an action by the governing body or by mutual
8 agreement between the governing body and recognized bargaining
9 unit, or limit the ability of the parties to negotiate and agree to a
10 higher standard of rights or privileges.