

Assembly Bill No. 2528

CHAPTER 472

An act to amend Section 89539 of the Education Code, and to amend Sections 18671.2, 18676, 19582, 19586, and 19803 of the Government Code, relating to public employees.

[Approved by Governor September 12, 1996. Filed with Secretary of State September 13, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2528, Miller. Public employees: investigations and hearings.

(1) Existing civil service law provides that when ordered to do so, a person shall not be excused from testifying or from producing any book or paper in that investigation or hearing upon the ground that the testimony, evidence, book, or paper required of him or her may tend to incriminate or subject him or her to penalty or forfeiture.

This bill, instead, would provide that when ordered to do so, a witness shall not be excused from testifying or from producing any documentary evidence in that investigation or hearing upon the ground that the testimony or documentary evidence required of the witness may tend to incriminate or subject the witness to penalty or forfeiture, provided the witness is granted use and derivative use immunity.

This bill would also revise procedures relating to petitions for rehearing and service of decisions, as specified.

(2) Existing law requires that the State Personnel Board be reimbursed for the entire cost of hearings conducted by the hearing office pursuant to statutes administered by the board, or by interagency agreement, and authorizes the board to bill the appropriate state agencies for the costs incurred in conducting hearings involving employees of those state agencies.

This bill would provide that the board shall be reimbursed for the costs incurred in conducting hearings involving employees of the California State University and employees of counties not administering their own merit systems, and would authorize the board to bill the California State University and state departments having responsibility for the overall administration of grant-in-aid programs for these costs.

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

SECTION 1. Section 89539 of the Education Code is amended to read:



89539. Any employee dismissed, suspended, or demoted for cause may request a hearing by the State Personnel Board by filing such a request, in writing, with the board within 20 days of being served with the notice. The request may be on the grounds that the required procedure was not followed; that there is no ground for dismissal, suspension, or demotion; that the penalty is excessive, unreasonable, or discriminatory; that the employee did not do the acts or omissions alleged as the events or transactions upon which the causes are based; or that the acts or omissions alleged as the events or transactions upon which the causes are based were justified.

The State Personnel Board shall hold a hearing, following the same procedure as in state civil service proceedings and shall render a decision affirming, modifying or revoking the action taken. In a hearing, the burden of proof shall be on the party taking the dismissal action.

An administrative employee reassigned pursuant to Section 66609 may request a hearing by the trustees by filing a request for a hearing, in writing, with the trustees within 20 days of being served with the notice. The request may be on the grounds that the required procedure was not followed or that the position to which the employee is reassigned is not commensurate with his or her qualifications. The trustees shall hold a hearing, and shall render a decision affirming, modifying, or revoking the action taken.

The State Personnel Board may bill the California State University for the costs incurred in conducting hearings involving employees of the California State University pursuant to Sections 89535 to 89542, inclusive.

SEC. 2. Section 18671.2 of the Government Code is amended to read:

18671.2. (a) The total cost to the state of maintaining and operating the hearing office of the board shall be determined by the board, in advance or upon any other basis as it may determine, utilizing information from the state agencies for which services are provided by the hearing office.

(b) The board shall be reimbursed for the entire cost of hearings conducted by the hearing office pursuant to statutes administered by the board, or by interagency agreement. The board may bill the appropriate state agencies for the costs incurred in conducting hearings involving employees of those state agencies, and employees of the California State University pursuant to Sections 89535 to 89542, inclusive, of the Education Code, and may bill the state departments having responsibility for the overall administration of grant-in-aid programs for the costs incurred in conducting hearings involving employees not administering their own merit systems pursuant to Chapter 1 (commencing with Section 19800) of Part 2.5. All costs collected by the board pursuant to this section shall only be used for



purposes of maintaining and operating the hearing office of the board.

SEC. 3. Section 18676 of the Government Code is amended to read:

18676. When ordered to do so, a witness shall not be excused from testifying or from producing any documentary evidence in that investigation or hearing upon the ground that the testimony or documentary evidence required of the witness may tend to incriminate or subject the witness to penalty or forfeiture, provided the witness is granted use and derivative use immunity.

SEC. 4. Section 19582 of the Government Code is amended to read:

19582. (a) Hearings may be held by the board, or by any authorized representative, but the board shall render the decision that in its judgment is just and proper.

During a hearing, after the appointing authority has completed the opening statement or the presentation of evidence, the employee, without waiving his or her right to offer evidence in the event the motion is not granted, may move for a dismissal of the charges.

If it appears that the evidence presented supports the granting of the motion as to some but not all of the issues involved in the action, the board or the authorized representative shall grant the motion as to those issues and the action shall proceed as to the issues remaining. Despite the granting of the motion, no judgment shall be entered prior to a final determination of the action on the remaining issues, and shall be subject to final review and approval by the board.

(b) If a contested case is heard by an authorized representative, he or she shall prepare a proposed decision in a form that may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the board as a public record and furnished to each party within 10 days after the proposed decision is filed with the board. The board itself may adopt the proposed decision in its entirety, may remand the proposed decision, or may reduce the adverse action set forth therein and adopt the balance of the proposed decision.

(c) If the proposed decision is not remanded or adopted as provided in subdivision (b), each party shall be notified of the action, and the board itself may decide the case upon the record, including the transcript, with or without taking any additional evidence, or may refer the case to the same or another authorized representative to take additional evidence. If the case is so assigned to an authorized representative, he or she shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the proposed decision shall be furnished to each party. The board itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present



oral and written argument before the board itself. If additional oral evidence is introduced before the board itself, no board member may vote unless he or she heard the additional oral evidence.

(d) In arriving at a decision or a proposed decision, the board or its authorized representative may consider any prior suspension or suspensions of the appellant by authority of any appointing power, or any prior proceedings under this article.

(e) The decision shall be in writing and contain findings of fact and the adverse action, if any. The findings may be stated in the language of the pleadings or by reference thereto. Copies of the decision shall be served on the parties personally or by mail.

SEC. 5. Section 19586 of the Government Code is amended to read:

19586. Within 30 days after the day a copy of the decision rendered by the board in a proceeding under this article is served by the board upon the parties to the decision, either party may petition the board for rehearing of the decision. The petition for rehearing shall be in writing and shall contain all of the grounds upon which a rehearing should be granted.

Within 30 days after the filing of a petition for rehearing with the board, the board shall cause notice thereof to be served upon the other parties to the proceeding by mailing to each a copy of the petition for rehearing. The other parties to the proceeding shall have 20 calendar days from the date of service of a copy of the petition for rehearing to file with the board and serve upon the petitioner a response to the petition for rehearing.

Within 60 days after service of notice of filing of a petition for rehearing, the board shall either grant or deny the petition in whole or in part. Failure to act upon a petition for rehearing within this 60-day period is a denial of the petition.

SEC. 6. Section 19803 of the Government Code is amended to read:

19803. The merit system for employees engaged in administering programs under Section 19800 in a local agency not administering its own merit system approved under this chapter shall be administered by the board. This may include, but is not limited to, recruitment, examination, certification, appointment and other transactions, position classification, compensation standards, and disciplinary actions. As part of such administration, the board shall hear and decide appeals of any applicant for employment or officer or employee from the decision of a local agency or the board's executive officer affecting the employment rights of such persons. Any decision rendered in such an appeal shall be binding upon the local agency.

The board may bill the state departments having responsibility for the overall administration of grant-in-aid programs for the costs incurred in conducting hearings involving employees of local



agencies not administering their own merit systems pursuant to this chapter.

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