

AMENDED IN ASSEMBLY JUNE 21, 2000

AMENDED IN SENATE MAY 9, 2000

AMENDED IN SENATE APRIL 25, 2000

AMENDED IN SENATE APRIL 24, 2000

AMENDED IN SENATE APRIL 5, 2000

AMENDED IN SENATE MARCH 15, 2000

SENATE BILL

No. 1327

Introduced by Senator Escutia

**(Coauthors: Senators Burton, Hughes, Polanco, Sher, Solis,
and Soto)**

(Coauthors: Assembly Members Alquist, Aroner, Calderon, Cedillo, Correa, Dutra, Firebaugh, Havice, Keeley, Knox, Kuehl, Nakano, Reyes, Shelley, Steinberg, Vincent, and Washington)

January 3, 2000

An act to repeal and add Sections 44031 and 87031 of the Education Code, to add Sections 18001, 36501.5, and 53060.3 to, and to repeal and add Section 31011 of, the Government Code, and to repeal and add Section 1198.5 of the Labor Code, relating to inspection of personnel files.

LEGISLATIVE COUNSEL'S DIGEST

SB 1327, as amended, Escutia. Employees: inspection of personnel records by employees.

(1) Existing law requires employers to make employee personnel files available for inspection by employees, and

prescribes procedures for that inspection. Existing law exempts from this requirement, public employers, the state or any state agency, and specified public school districts. Other existing law requires public school districts, community colleges, cities, counties, or local agencies to also make personnel records available to employees, and prescribes various procedures for this inspection, depending on who the employer is.

This bill would harmonize the law applicable to all of the above employers with regard to inspection of personnel files. The bill would require an employer to make the contents of personnel files available to an employee at reasonable intervals and reasonable times, as provided, but would exempt from inspection, records relating to the investigation of a criminal offense, letters of reference, and specified ratings and reports.

This bill would also provide that, with respect to a public school district or a community college, information of a derogatory information shall not be entered into an employee's personnel records unless the employee is given an opportunity to review and comment on that information. The bill would exempt public safety officers *and employees of state agencies* from its provisions. By imposing new duties on local agencies, the bill would impose a state-mandated local program.

(2) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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 44031 of the Education Code is
2 repealed.

3 SEC. 2. Section 44031 is added to the Education Code,
4 to read:

5 44031. (a) Every employee has the right to inspect
6 personnel records pursuant to Section 1198.5 of the Labor
7 Code.

8 (b) In addition to subdivision (a), all of the following
9 shall apply to an employee of a school district:

10 (1) Information of a derogatory nature, ~~except~~
11 ~~material mentioned in subdivision (d) of Section 1198.5~~
12 ~~of the Labor Code~~, shall not be entered into an
13 employee's personnel records unless and until the
14 employee is given notice and an opportunity to review
15 and comment on that information. The employee shall
16 have the right to enter, and have attached to any
17 derogatory statement, his or her own comments. *The*
18 *review shall take place during normal business hours and*
19 *the employee shall be released from duties for this*
20 *purpose without salary reduction.*

21 (2) The employee shall not have the right to inspect
22 personnel records at a time when the employee is actually
23 required to render services to the district.

24 (3) A noncredentialed employee shall have access to
25 his or her numerical scores obtained as a result of a
26 written examination.

27 (4) *Except as provided in paragraph (3), nothing in*
28 *this section shall entitle an employee to review ratings,*
29 *reports, or records that (A) were obtained prior to the*
30 *employment of the person involved, (B) were prepared*
31 *by identifiable examination committee members, or (C)*
32 *were obtained in connection with a promotional*
33 *examination.*

34 SEC. 3. Section 87031 of the Education Code is
35 repealed.

36 SEC. 4. Section 87031 is added to the Education Code,
37 to read:



1 87031. (a) Every employee has the right to inspect
2 personnel records pursuant to Section 1198.5 of the Labor
3 Code.

4 (b) In addition to subdivision (a), all of the following
5 shall apply to an employee of a school district:

6 (1) Information of a derogatory nature, ~~except~~
7 ~~material mentioned in subdivision (d) of Section 1198.5~~
8 ~~of the Labor Code~~, shall not be entered into an
9 employee's personnel records unless and until the
10 employee is given notice and an opportunity to review
11 and comment on that information. The employee shall
12 have the right to enter, and have attached to any
13 derogatory statement, his or her own comments. *The*
14 *review shall take place during normal business hours and*
15 *the employee shall be released from duty for this purpose*
16 *without salary reduction.*

17 (2) The employee shall not have the right to inspect
18 personnel records at a time when the employee is actually
19 required to render services to the district.

20 (3) *Nothing in this section shall entitle an employee to*
21 *review ratings, reports, or records that (A) were obtained*
22 *prior to the employment of the person involved, (B)*
23 *were prepared by identifiable examination committee*
24 *members, or (C) were obtained in connection with a*
25 *promotional examination.*

26 SEC. 5. Section 18001 is added to the Government
27 Code, to read:

28 18001. Every employee has the right to inspect
29 personnel records pursuant to Section 1198.5 of the Labor
30 Code.

31 SEC. 6. Section 31011 of the Government Code is
32 repealed.

33 SEC. 7. Section 31011 is added to the Government
34 Code, to read:

35 31011. Every employee has the right to inspect
36 personnel records pursuant to Section 1198.5 of the Labor
37 Code.

38 SEC. 8. Section 36501.5 is added to the Government
39 Code, to read:



1 36501.5. Every employee has the right to inspect
2 personnel records pursuant to Section 1198.5 of the Labor
3 Code

4 SEC. 9. Section 53060.3 is added to the Government
5 Code, to read:

6 53060.3. (a) Every employee of a local agency has the
7 right to inspect personnel records pursuant to Section
8 1198.5 of the Labor Code.

9 (b) As used in this section:

10 (1) "City" means any city or municipal corporation,
11 whether general law city or charter city.

12 (2) "County" means any county, whether general law
13 county or charter county, including a city and county.

14 (3) "Local agency" means any city, county, city and
15 county, special district, authority, community
16 redevelopment agency, or other political subdivision of
17 the state.

18 SEC. 10. Section 1198.5 of the Labor Code is repealed.

19 SEC. 11. Section 1198.5 is added to the Labor Code, to
20 read:

21 1198.5. (a) Every employee has the right to inspect
22 the personnel records that the employer maintains
23 relating to the employee's performance or to any
24 grievance concerning the employee.

25 (b) The employer shall make the contents of those
26 personnel records available to the employee at
27 reasonable intervals and at reasonable times. Except as
28 provided in paragraph (3) of subdivision (c), the
29 employer shall not be required to make those personnel
30 records available at a time when the employee is actually
31 required to render service to the employer.

32 (c) The employer shall do one of the following:

33 (1) Keep a copy of each employee's personnel records
34 at the place where the employee reports to work.

35 (2) Make the employee's personnel records available
36 at the place where the employee reports to work within
37 a reasonable period of time following an employee's
38 request.

39 (3) Permit the employee to inspect the personnel
40 records at the location where the employer stores the



1 personnel records, ~~during the employee's normal~~
2 ~~working hours~~, with no loss of compensation to the
3 employee.

4 (d) The requirements of this section shall not apply to:

5 (1) Records relating to the investigation of a possible
6 criminal offense.

7 (2) Letters of reference.

8 (3) Ratings, reports, or records that were:

9 (A) Obtained prior to the employee's employment.

10 (B) Prepared by identifiable examination committee
11 members.

12 (C) Obtained in connection with a promotional
13 examination.

14 (4) Employees who are subject to the Public Safety
15 Officers Procedural Bill of Rights, Chapter 9.7
16 (commencing with Section 3300) of Division 4 of Title 1
17 of the Government Code.

18 (5) *Employees of agencies subject to the Information*
19 *Practices Act of 1977 (Title 1.8 (commencing with*
20 *Section 1798) of Part 4 of Division 3 of the Civil Code).*

21 (e) The Labor Commissioner may adopt regulations
22 that determine the reasonable times and reasonable
23 intervals for the inspection of records maintained by an
24 employer that is not a public agency.

25 (f) If a public agency has established an independent
26 employee relations board or commission, an employee
27 shall first seek relief regarding any matter or dispute
28 relating to this section from that board or commission
29 before pursuing any available judicial remedy.

30 (g) In enacting this section, it is the intent of the
31 Legislature to establish minimum standards for the
32 inspection of personnel records by employees. Nothing in
33 this section shall be construed to prevent the
34 establishment of additional rules for the inspection of
35 personnel records that are established as the result of
36 agreements between an employer and a recognized
37 employee organization.

38 SEC. 12. In adding Sections 36501.5 and 53060.3 to,
39 and in repealing and adding Section 31011 of, the
40 Government Code by this act, it is the intent of the



1 Legislature that those sections, in addition to applying to
2 a general law city or county, as appropriate, also apply to
3 a charter city or a charter county, including a city and
4 county. The Legislature further finds and declares that
5 the right of employees to inspect personnel records is a
6 fundamental right of employment and, as such,
7 constitutes an issue of statewide concern and is not a
8 municipal affair.

9 SEC. 13. Notwithstanding Section 17610 of the
10 Government Code, if the Commission on State Mandates
11 determines that this act contains costs mandated by the
12 state, reimbursement to local agencies and school
13 districts for those costs shall be made pursuant to Part 7
14 (commencing with Section 17500) of Division 4 of Title
15 2 of the Government Code.

