

ASSEMBLY BILL

No. 955

Introduced by Assembly Member De Leon

February 26, 2009

An act to amend Section 3304 of the Government Code, relating to public safety officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 955, as introduced, De Leon. Public Safety Officers Procedural Bill of Rights Act: discipline.

The Public Safety Officers Procedural Bill of Rights Act prohibits any punitive action, or denial of promotion on grounds other than merit, to be undertaken for any act, omission, or other allegation of misconduct if an investigation of an allegation against a public safety officer is not completed within 1 year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct that occurred on or after January 1, 1998. Existing law requires the public agency to complete its investigation and notify the public safety officer of its proposed disciplinary action within that year if it determines that discipline may be taken.

This bill would specify that the public agency is not required to impose the discipline within that year.

To the extent that these new requirements would apply to local government employers, the bill would impose a state-mandated program.

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 3304 of the Government Code is amended
2 to read:

3 3304. (a) No public safety officer shall be subjected to punitive
4 action, or denied promotion, or be threatened with any such
5 treatment, because of the lawful exercise of the rights granted
6 under this chapter, or the exercise of any rights under any existing
7 administrative grievance procedure.

8 Nothing in this section shall preclude a head of an agency from
9 ordering a public safety officer to cooperate with other agencies
10 involved in criminal investigations. If an officer fails to comply
11 with such an order, the agency may officially charge him or her
12 with insubordination.

13 (b) No punitive action, nor denial of promotion on grounds other
14 than merit, shall be undertaken by any public agency against any
15 public safety officer who has successfully completed the
16 probationary period that may be required by his or her employing
17 agency without providing the public safety officer with an
18 opportunity for administrative appeal.

19 (c) No chief of police may be removed by a public agency, or
20 appointing authority, without providing the chief of police with
21 written notice and the reason or reasons therefor and an opportunity
22 for administrative appeal.

23 For purposes of this subdivision, the removal of a chief of police
24 by a public agency or appointing authority, for the purpose of
25 implementing the goals or policies, or both, of the public agency
26 or appointing authority, for reasons including, but not limited to,
27 incompatibility of management styles or as a result of a change in
28 administration, shall be sufficient to constitute "reason or reasons."

29 Nothing in this subdivision shall be construed to create a property
30 interest, where one does not exist by rule or law, in the job of Chief
31 of Police.

32 (d) (1) Except as provided in this subdivision and subdivision
33 (g), no punitive action, nor denial of promotion on grounds other

1 than merit, shall be undertaken for any act, omission, or other
2 allegation of misconduct if the investigation of the allegation is
3 not completed within one year of the public agency's discovery
4 by a person authorized to initiate an investigation of the allegation
5 of an act, omission, or other misconduct. This one-year limitation
6 period shall apply only if the act, omission, or other misconduct
7 occurred on or after January 1, 1998. In the event that the public
8 agency determines that discipline may be taken, it shall complete
9 its investigation and notify the public safety officer of its proposed
10 disciplinary action within that year, ~~except in any of the following~~
11 ~~circumstances:~~ *as provided in paragraph (2). The public agency*
12 *shall not be required to impose the discipline within that one-year*
13 *period.*

14 ~~(1)~~

15 (2) (A) If the act, omission, or other allegation of misconduct
16 is also the subject of a criminal investigation or criminal
17 prosecution, the time during which the criminal investigation or
18 criminal prosecution is pending shall toll the one-year time period.

19 ~~(2)~~

20 (B) If the public safety officer waives the one-year time period
21 in writing, the time period shall be tolled for the period of time
22 specified in the written waiver.

23 ~~(3)~~

24 (C) If the investigation is a multijurisdictional investigation that
25 requires a reasonable extension for coordination of the involved
26 agencies.

27 ~~(4)~~

28 (D) If the investigation involves more than one employee and
29 requires a reasonable extension.

30 ~~(5)~~

31 (E) If the investigation involves an employee who is
32 incapacitated or otherwise unavailable.

33 ~~(6)~~

34 (F) If the investigation involves a matter in civil litigation where
35 the public safety officer is named as a party defendant, the one-year
36 time period shall be tolled while that civil action is pending.

37 ~~(7)~~

38 (G) If the investigation involves a matter in criminal litigation
39 where the complainant is a criminal defendant, the one-year time

1 period shall be tolled during the period of that defendant's criminal
2 investigation and prosecution.

3 ~~(8)~~

4 (H) If the investigation involves an allegation of workers'
5 compensation fraud on the part of the public safety officer.

6 (e) Where a predisciplinary response or grievance procedure is
7 required or utilized, the time for this response or procedure shall
8 not be governed or limited by this chapter.

9 (f) If, after investigation and any predisciplinary response or
10 procedure, the public agency decides to impose discipline, the
11 public agency shall notify the public safety officer in writing of
12 its decision to impose discipline, including the date that the
13 discipline will be imposed, within 30 days of its decision, except
14 if the public safety officer is unavailable for discipline.

15 (g) Notwithstanding the one-year time period specified in
16 subdivision (d), an investigation may be reopened against a public
17 safety officer if both of the following circumstances exist:

18 (1) Significant new evidence has been discovered that is likely
19 to affect the outcome of the investigation.

20 (2) One of the following conditions exist:

21 (A) The evidence could not reasonably have been discovered
22 in the normal course of investigation without resorting to
23 extraordinary measures by the agency.

24 (B) The evidence resulted from the public safety officer's
25 predisciplinary response or procedure.

26 (h) For those members listed in subdivision (a) of Section 830.2
27 of the Penal Code, the 30-day time period provided for in
28 subdivision (f) shall not commence with the service of a
29 preliminary notice of adverse action, should the public agency
30 elect to provide the public safety officer with such a notice.

31 SEC. 2. If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.