

State of California		
COMMISSION ON STATE MANDATES		For Official Use Only
980 Ninth Street, Suite 300		
Sacramento, CA 95814		
(916) 323-3562		
CSM 1 (2 91)		
	TEST CLAIM FORM	
		Claim No.
Local Agency or School District Submitting Claim		
City of Newport Beach		
Contact Person		Telephone No.
Allan P. Burdick/Juliana F. Gmur (MAXIMUS, INC.)		(916) 485-8102
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Address		
4320 Auburn Blvd., Suite 2000		
Sacramento, CA 95841		
Representative Organization to be Notified		
League of California Cities		
This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.		
Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.		
Chapter 465, Statutes of 1976; Chapter 1259, Statutes of 1994; Chapter 148, Statutes of 1997; Chapter 786 Statutes of 1998; Chapter 263, Statutes of 1998; Chapter 112, Statutes of 1998; Chapter 338, Statutes of 1999; Chapter 209, Statutes of 2000; Chapter 1156, Statutes of 2002; and Chapter 170, Statutes of 2002		
IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.		
Name and Title of Authorized Representative		Telephone No.
Glen Everroad, Revenue Manager		(949) 644-3140
Signature of Authorized Representative		Date:
		<i>26 Sept 03</i>

**BEFORE THE
COMMISSION ON STATE MANDATES**

Test Claim of:
The City of Newport Beach

Peace Officers Procedural Bill of Rights II

RECEIVED

SEP 29 2003

**COMMISSION ON
STATE MANDATES**

Chapter 465, Statutes of 1976; Chapter 1259, Statutes of 1994; Chapter 148, Statutes of 1997; Chapter 786, Statutes of 1998; Chapter 263, Statutes of 1998; Chapter 112, Statutes of 1998; Chapter 338, Statutes of 1999; Chapter 209, Statutes of 2000; Chapter 1156, Statutes of 2002; and Chapter 170, Statutes of 2002

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

In 1976, the Public Safety Officers Procedural Bill of Rights Act (Government Code §3300 *et seq.*) was passed adding Chapter 9.7 to the Government Code. In 1991, a test claim was filed on the majority of the legislation that created the Act and modified its provisions through 1990. Since that time, there have been further changes to the Act. This additional legislation and those areas not addressed by the original test claim are the subject matter of the instant test claim.

Chapter 148, Statutes of 1997, and Chapter 786, Statutes of 1998, amend Government Code §3304 to ensure that the chief of police is given written notice and an opportunity to appeal removal, that investigations into misconduct conclude within one year, and that cases can be reopened for further investigation upon the finding of new evidence. Chapter 209, Statutes of 2000, adds §3306.5 which sets forth a procedure whereby an officer may inspect his personnel file and request corrections or deletions. Chapter 465, Statutes of 1976, adds §3309 which provides for notice, a search warrant, consent or the presence of the officer before the officer's locker can be searched. Finally, Chapter 170, Statutes of 2002, adds §3312 which provides notice to an officer before punitive action can be taken against an officer for displaying an American flag pin and an opportunity to appeal any punitive action.

Government Code §3300 states the title of the Act. Sections 3301 and 3302 set forth definitions, legislative intent, and an allowance for political activity of peace officers. Section 3303 sets forth the parameters of any investigation or interrogation of an officer

that may lead to punitive action. Section 3303 subdivision (f), as amended by Chapter 1259, Statutes of 1994, provides that statements made during interrogation by an officer shall not be admissible in subsequent civil proceedings.

Government Code §3304 currently reads:

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

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

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

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

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

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

(d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one 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. This one-year limitation period shall only

apply if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

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

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

(3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

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

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable.

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

(7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

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

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

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

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

- (1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.
- (2) One of the following conditions exist:
 - (A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.
 - (B) The evidence resulted from the public safety officer's predisciplinary response or procedure.
- (h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (e) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.

This section originally addressed the fact that an officer cannot be threatened by or subjected to punitive action for the exercise of his rights under this chapter. Two amendments, however, expanded this section considerably. First, there is now a provision that a chief of police cannot be removed without written notice and an opportunity for an administrative appeal. This is the case even when the removal is for such common reasons as change in administration and incompatibility of management styles. As a result, local government administrations are mandated to draft written notices prior to removing a chief of police for any reason. In addition, the chief must be afforded an opportunity to appeal the decision to remove. This inclusion of chiefs of police will necessitate the drafting, review and establishment of policies, procedures, forms, and protocols and the training to implement them for chiefs, investigators, employers, counsel and staff, as well as increase time spent on investigations, appeals and hearings. Second, the process set forth in the previous section regarding investigations of officers, is now mandated to be completed within one year otherwise discipline cannot be undertaken. As a result, local agency investigators will be required to put in more hours or the hiring additional personnel may be necessary. Also, to ensure that cases are completely investigated within one year will necessitate the drafting, review and establishment of policies, procedures, forms, protocols, and file tracking systems and the training to implement them for officers, investigators, supervisors, employers, clerical, counsel and staff. Finally, this section allows, under certain circumstances, the reopening of investigations, even beyond the one year time period. This will also require additional work hours or additional personnel and will necessitate the drafting, review and establishment of policies, procedures, forms, protocols, and file tracking systems and the training to implement them for officers, investigators, supervisors, employers, clerical, counsel and staff.

Section 3304.5, added by Chapter 263, Statutes of 1998, directs that administrative appeals be conducted in a manner consistent with the local agency's rules and procedures. Sections 3305 and 3306 address the handling of comments adverse to interest.

Section 3306.5 currently reads:

(a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to that officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each public safety officer's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request therefor by the officer.

(c) If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer.

This section mandates that employers maintain officers' personnel records or a copy where they can be inspected and pay the officer during the inspection time. Employers must also respond in writing to requests for corrections or deletions within 30 days. In the case where a request is wholly or partially denied, the denial must also set forth reasons. The requests, as well as the responses where the request is denied, must be filed in the officer's personnel file. This process will necessitate the drafting, review and establishment of policies, procedures, forms and protocols and the training to implement them for the officers, supervisors, employers, clerical, counsel and staff.

Section 3007, as amended by Chapter 112, Statutes of 1998, provides that an officer cannot be compelled to take any type of lie detector test. Section 3007.5, as added by Chapter 338, Statutes of 1999, addresses the use of an officer's image on the internet and

the remedies an officer can seek to prevent such use. Section 3008 ensures that an officer need not make any type of financial disclosure without proper legal procedure.

Section 3309 currently reads:

No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other storage space that are owned or leased by the employing agency.

This section mandates notice or legal process before an officer's locker can be searched. Thus a notice will have to be drafted, reviewed and presented to the officer or a request for a search warrant and supporting documentation will have to be drafted and review by a judge sought. This requirement will necessitate the drafting, review and establishment of policies, procedures, forms and protocols and the training to implement them for officers, supervisors, investigators, employers, counsel and staff.

Section 3309.5, as amended by Chapter 148, Statutes of 1997 and Chapter 1156, Statutes of 2002, sets forth the applicability of chapter, jurisdiction, violations of the provisions of the chapter and remedies. Sections 3310 and 3311 address the applicability of existing departmental procedures and mutual aid agreements.

Section 3312 currently reads:

Notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice that includes all of the following:

- (a) A statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag.
- (b) A citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates.
- (c) A statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to the applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.

This section mandates that prior to subjecting an officer to discipline for the displaying of an American flag, there must be written notice and an opportunity to appeal the discipline. This section will increase the number of appeals handled within a jurisdiction. This process will necessitate the drafting, review and establishment of policies, procedures, forms and protocols and the training to implement them for officers, supervisors, investigators, employers, counsel and staff.

The net effect of this legislation is to ensure officers cannot be subjected to discipline without procedural safeguards. In so doing, the legislation creates an increase in notices, written requests, written responses, search warrants, appeals, the speed at which an investigation proceeds, access to personnel records, reopened cases, and extends some of the safeguards to chiefs of police. Thus, the total costs of this program are reimbursable.

The City of Newport Beach does not have complete estimates on the cost of discharging this program, but estimates that the costs will exceed \$1000.00 per year.

B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no requirement prior to 1975, until the passage of Chapter 465, Statutes of 1976, which added Government Code, Chapter 9.7, §3300 *et seq.* creating the Public Safety Officers Procedural Bill of Rights Act. A test claim was filed with this Commission. *See* Peace Officers Procedural Bill of Rights, CSM-4499. The matter was resolved with a finding of a reimbursable state mandate..

Now, the passage of Chapter 148, Statutes of 1997, Chapter 786, Statutes of 1998, Chapter 209, Statutes of 2000, Chapter 465, Statutes of 1976, and Chapter 170, Statutes of 2002, filed on July 28, 1997, September 23, 1998, July 24, 2000, July 1, 1976, and July 12, 2002, respectively, mandate the additional programs for public safety officers and chiefs of police as described above.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

As related above, the mandated activities are contained in Government Code §§3304, 3306.5, 3309 and 3312. These sections directly relate to the reimbursable provisions of this test claim.

D. COST ESTIMATES

The City of Newport Beach does not have complete estimates on the cost of discharging this program, but estimates that the costs exceed \$1000.00 per year.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the City of Newport Beach as a result of the statute on which this test claim is based are all reimbursable costs as such costs are "costs mandated by the

State” under Article XIII B (6) of the California Constitution, and Government Code §17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines “costs mandated by the state”, and specifies the following three requirements:

1. There are “increased costs which a local agency is required to incur after July 1, 1980.”
2. The costs are incurred “as a result of any statute enacted on or after January 1, 1975.”
3. The costs are the result of “a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by this statute clearly meets both tests that the Supreme Court in the *County of Los Angeles v. State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the “unique to government” and the “carry out a state policy” tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

The sections of the law claimed involve public safety officers, chiefs of police and local government counsel. Only local government employs public safety officers and chiefs of police to maintain order and enforce law in their jurisdictions. And, only local government employs county counsels and city attorneys for legal advice and services for public entities. Thus, this requirement is unique to government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the Legislature wishes ensure that procedural safeguards are in place to protect the Constitutional rights of public safety officers and chiefs of police. The protection of Constitutional rights is a fundamental state policy.

In summary, these statutes mandate that local government bear the burden of an expansion of the Public Safety Officers Procedural Bill of Rights Act. This expansion increases the time spent drafting notices, written requests, written responses, search warrants, policies and procedures, as well as the time spent preparing for and putting

forth appeals, reopening and investigating cases, and training. The City of Newport Beach believes that the amendments to the Public Safety Officers Procedural Bill of Rights Act as set forth above satisfies the constitutional requirements for a mandate.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code §17556 which could serve to bar recovery of “costs mandated by the State”, as defined in Government Code §17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to the test claim herein stated by the City of Newport Beach.

CONCLUSION

The enactment of Chapter 148, Statutes of 1997, Chapter 786, Statutes of 1998, Chapter 209, Statutes of 2000, Chapter 465, Statutes of 1976, and Chapter 170, Statutes of 2002, imposed a new state mandated program and cost on the City of Newport Beach by establishing a program to expand the Public Safety Officers Procedural Bill of Rights Act which resulted in additional burdens on local government. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement have any application to this claim.

G. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

- Exhibit 1: Chapter 465, Statutes of 1976
- Exhibit 2: Chapter 1259, Statutes of 1994
- Exhibit 3: Chapter 148, Statutes of 1997
- Exhibit 4: Chapter 786, Statutes of 1998
- Exhibit 5: Chapter 263, Statutes of 1998
- Exhibit 6: Chapter 112, Statutes of 1998
- Exhibit 7: Chapter 338, Statutes of 1999
- Exhibit 8: Chapter 209, Statutes of 2000
- Exhibit 9: Chapter 1156, Statutes of 2002
- Exhibit 10: Chapter 170, Statutes of 2002

DECLARATION OF GLEN EVERROAD

I, Glen Everroad, make the following declaration under oath:

I am the Revenue Manager for City of Newport Beach. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

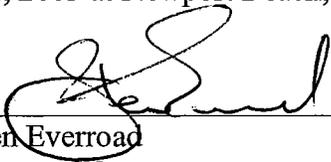
I declare that I have examined the City of Newport Beach's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "costs mandated by the State", as defined in Government Code, Section 17514:

“ ‘Costs mandated by the State’ means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

I am personally conversant with the foregoing facts, and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 26 day of September, 2003 at Newport Beach, California.

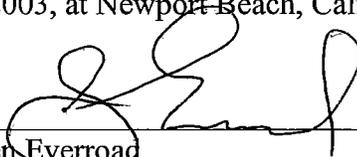


Glen Everroad
Revenue Manager
City of Newport Beach

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 06 day of September, 2003, at Newport Beach, California, by:



Glen Everroad
Revenue Manager
City of Newport Beach

SECTION 1. Section 27202 of the Vehicle Code is amended to read:

27202. For the purposes of Section 27200, the following noise limits shall apply to any motorcycle, other than a motor-driven cycle, manufactured:

(1) After 1969, and before 1973	88 dbA
(2) After 1972, and before 1975	86 dbA
(3) After 1974, and before 1981	83 dbA
(4) After 1980 and before 1986	80 dbA
(5) After 1985 and before 1990	75 dbA
(6) After 1989	70 dbA

CHAPTER 465

An act to add Chapter 9.7 (commencing with Section 3300) to Division 4 of Title 1 of the Government Code, relating to public safety officers.

[Approved by Governor August 18, 1976. Filed with Secretary of State August 18, 1976.]

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

SECTION 1. Chapter 9.7 (commencing with Section 3300) is added to Division 4 of Title 1 of the Government Code, to read:

CHAPTER 9.7. PUBLIC SAFETY OFFICERS

3300. This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

3301. For purposes of this chapter, the term public safety officer means all peace officers, as defined in Section 830.1 and subdivisions (a) and (b) of Section 830.2 of the Penal Code, including peace officers who are employees of a charter city or county. The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that such stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

3302. Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

3303. When any public safety officer is under investigation and

subjected to interrogation by his commanding officer, or any other member of the employing public safety department, which could lead to punitive action, such interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action is defined as any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for such off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to such interrogation of the rank, name and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his express consent nor shall his home address or photograph be given to the press or news media without his express consent.

(f) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports which are deemed to be confidential may be entered in the officer's personnel file. The public

safety officer being interrogated shall have the right to bring his own recording device and record any and all aspects of the interrogation.

(g) If prior to or during the interrogation of a public safety officer it is deemed that he may be charged with a criminal offense, he shall be immediately informed of his constitutional rights.

(h) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters which are likely to result in punitive action against any public safety officer, that officer, at his request, shall have the right to be represented by a representative of his choice who may be present at all times during such interrogation. The representative shall not be a person subject to the same investigation.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(i) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

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

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

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.

3305. No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

3306. A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

3307. No public safety officer shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other reprimand shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take a polygraph examination.

3308. No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

3309. No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

3310. Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

3311. Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

SEC. 2. There are no local costs in this act that require reimbursement under Section 2231 of the Revenue and Taxation Code because there are no duties, obligations or responsibilities imposed on local entities in the 1975-76 fiscal year by this act. However there are state-mandated local costs in this act in the 1976-77 fiscal year and subsequent years that require reimbursement under Section 2231 of the Revenue and Taxation Code which can be handled in the regular budget process.

BILL NUMBER: SB 1860 CHAPTERED 09/30/94
BILL TEXT

CHAPTER 1259
FILED WITH SECRETARY OF STATE SEPTEMBER 30, 1994
APPROVED BY GOVERNOR SEPTEMBER 30, 1994
PASSED THE SENATE AUGUST 27, 1994
PASSED THE ASSEMBLY AUGUST 23, 1994
AMENDED IN ASSEMBLY AUGUST 22, 1994
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AMENDED IN SENATE MAY 17, 1994

INTRODUCED BY Senator Leslie

FEBRUARY 24, 1994

An act to amend Section 3303 of the Government Code, relating to public safety officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1860, Leslie. Public safety officers: interrogation.

Existing law requires that certain conditions be met when any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action.

This bill would prohibit any statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action from being admissible in any subsequent civil proceeding, subject to specified qualifications.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3303 of the Government Code is amended to read:

3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer,

or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question.

The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer,

that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

Assembly Bill No. 1436

CHAPTER 148

An act to amend Sections 3304 and 3309.5 of the Government Code, relating to public safety officers.

[Approved by Governor July 27, 1997. Filed with Secretary of State July 28, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1436, Cardoza. Public safety officers: Procedural Bill of Rights.

(1) The Public Safety Officers Procedural Bill of Rights Act provides that no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.

This bill would prohibit any punitive action, or denial of promotion on grounds other than merit, from being undertaken for any act, omission, or other allegation of misconduct occurring on or after January 1, 1998, if the investigation of the allegation is not completed within one year of the public agency's discovery of the allegation of an act, omission, or other misconduct, except in specified circumstances. It would also provide that if, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline on a public safety officer, the public agency shall notify the public safety officer in writing of its intent to impose discipline, including the date the intended discipline will be imposed, within 30 days of its decision.

(2) Existing law provides that the superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of the Public Safety Officers Procedural Bill of Rights Act.

This bill would make a clarifying change in this provision.

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

(3) 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.

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

SECTION 1. Section 3304 of the Government Code is amended to read:

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

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

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.

(c) Except as provided in this subdivision and subdivision (f), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one 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. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

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

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

(3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

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

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable.

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

(7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

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

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

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

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

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

(2) One of the following conditions exist:

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

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

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

SEC. 2. Section 3309.5 of the Government Code is amended to read:

3309.5. (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to them by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(c) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a

temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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Senate Bill No. 2215

CHAPTER 786

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

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2215, Lockyer. Public safety officers: procedural bill of rights.

The Public Safety Officers Procedural Bill of Rights Act prohibits any punitive action, or denial of promotion on grounds other than merit of a public safety officer, as defined, without providing the public safety officer with an opportunity for administrative appeal.

This bill also would prohibit a punitive action or denial of probation on grounds other than merit with respect to a public safety officer who has successfully completed probation without providing the public safety officer with an opportunity for administrative appeal. The bill additionally would prohibit a public agency or appointing authority from removing a chief of police without providing that official with written notice and the reason or reasons therefor and an opportunity for administrative appeal. The bill would provide that for purposes of these provisions, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including incompatibility of management styles, or as a result of a change in administration, would be sufficient to constitute "reason or reasons." These additional requirements on local government would impose a state-mandated local 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, 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.

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

SECTION 1. Section 3304 of the Government Code is amended to read:

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

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

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

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

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

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

(d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one 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. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time

during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

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

(3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

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

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable.

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

(7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

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

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

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

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

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

(2) One of the following conditions exist:

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

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

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

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Senate Bill No. 1662

CHAPTER 263

An act to add Section 3304.5 to the Government Code, relating to public safety officers.

[Approved by Governor August 5, 1998. Filed with Secretary of State August 6, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1662, Ayala. Public safety officers: Procedural Bill of Rights.

The Public Safety Officers Procedural Bill of Rights Act provides that no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by a public agency without providing the public safety officer with an opportunity for administrative appeal.

This bill would provide that the administrative appeal shall be conducted in conformance with rules and procedures adopted by the local public agency. To the extent that these new requirements would apply to local government employers, the bill would impose a state-mandated local 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, 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.

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

SECTION 1. Section 3304.5 is added to the Government Code, to read:

3304.5. An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

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

the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Assembly Bill No. 2293

CHAPTER 112

An act to amend Section 3307 of the Government Code, relating to public safety officers.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2293, Scott. Public safety officers.

Under existing law, the Public Safety Officers Procedural Bill of Rights Act, no public safety officer may be compelled to submit to a polygraph examination against his or her will.

This bill instead would provide that no public safety officer may be compelled to submit to a lie detector test, as defined, against his or her will.

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

SECTION 1. Section 3307 of the Government Code is amended to read:

3307. (a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take, or was subjected to, a lie detector test.

(b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

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Assembly Bill No. 1586

CHAPTER 338

An act to add Section 3307.5 to the Government Code, relating to public safety officers.

[Approved by Governor September 7, 1999. Filed with Secretary of State September 7, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1586, Florez. Public safety officers: Procedural Bill of Rights.

The Public Safety Officers Procedural Bill of Rights Act provides that no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.

This bill would prohibit a public safety officer from being required by his or her employing public safety department or any other public agency, as a condition of employment, to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if the officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family. The bill would permit the officer to notify the department or agency to cease or desist from that disclosure and to seek an injunction and a civil penalty for unauthorized use after receipt of the notice to cease and desist.

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

SECTION 1. Section 3307.5 is added to the Government Code, to read:

3307.5. (a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.

(b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction

prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars (\$500) per day commencing two working days after the date of receipt of the notification to cease and desist.



Assembly Bill No. 2267

CHAPTER 209

An act to add Section 3306.5 to the Government Code, relating to personnel records.

[Approved by Governor July 24, 2000. Filed with
Secretary of State July 24, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2267, Cedillo. Public safety officers: personnel records.

(1) Existing law requires employers to make employee personnel files available for inspection by employees, but exempts from this requirement the state, school districts, and other specified public employers. The Public Safety Officers Procedural Bill of Rights requires that a public safety officer have read, and have the opportunity to respond to, any comment adverse to his or her interest before it is placed in his or her personnel file.

This bill would require employers of public safety officers to permit an officer to inspect his or her personnel file or a copy during usual business hours, with no loss of compensation. The bill would specify a procedure by which the officer could request correction or deletion of material that is mistakenly or unlawfully placed in his or her personnel file and would require employers, within 30 days of receiving the request, to either make the requested corrections or deletions or place a written explanation of the reasons for not granting the request in the file. The bill would create a state-mandated local program by imposing new duties on local agencies.

(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.

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

SECTION 1. Section 3306.5 is added to the Government Code, to read:

3306.5. (a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a public safety officer, during usual business hours, with no loss of compensation to the officer, permit that officer to inspect personnel files that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each public safety officer's personnel file or a true and correct copy thereof, and shall make the file or copy thereof available within a reasonable period of time after a request therefor by the officer.

(c) If, after examination of the officer's personnel file, the officer believes that any portion of the material is mistakenly or unlawfully placed in the file, the officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Any request made pursuant to this subdivision shall include a statement by the officer describing the corrections or deletions from the personnel file requested and the reasons supporting those corrections or deletions. A statement submitted pursuant to this subdivision shall become part of the personnel file of the officer.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the officer's request or notify the officer of the decision to refuse to grant the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Senate Bill No. 1516

CHAPTER 1156

An act to amend Section 3309.5 of the Government Code, relating to public safety officers.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1516, Romero. Public safety officers: procedural bill of rights.

The Public Safety Officers Procedural Bill of Rights Act makes it unlawful for any public safety department to deny or refuse to public safety officers the rights and protections guaranteed to them by the act.

This bill would provide that, upon a finding by a superior court, any public safety department, its employees, agents, or assigns, acting within the scope of employment, who maliciously violates any provision of the act with intent to injure a public safety officer, shall be liable to the public safety officer whose right or protection was denied for a civil penalty and attorney's fees. The department would also be liable for actual and exemplary damages if the court finds that actual damages are established. This bill would specifically authorize a court to order specified sanctions if the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to the act.

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

SECTION 1. Section 3309.5 of the Government Code is amended to read:

3309.5. (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(c) (1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the

public safety department from taking any punitive action against the public safety officer.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the parties attorney, or both pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department, as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(d) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages. Notwithstanding these provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the public safety department and the contractor, a "hold harmless" or similar provision that protects the public safety department from liability for the actions of the contractor. An individual shall not be liable for any act for which a public safety department is liable under this section.

Assembly Bill No. 2846

CHAPTER 170

An act to add Section 3312 to the Government Code, relating to public safety officers.

[Approved by Governor July 11, 2002. Filed with
Secretary of State July 12, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2846, Frommer. Public safety officers: American flag.

The Public Safety Officers Procedural Bill of Rights Act provides that no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by a public agency without providing the public safety officer with an opportunity for an administrative appeal. The act specifies, among other matters, procedures that are required in connection with an interrogation and investigation of a public safety officer.

This bill would provide that, notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice stating that the pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract identifying that rule, regulation, policy, or local agency agreement or contract, and stating that the officer may file an appeal against the employer challenging the alleged violation.

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

SECTION 1. The Legislature finds and declares both of the following:

(a) In the aftermath of the terrorist attacks on the World Trade Center in New York City and on the Pentagon in Washington, D.C., on September 11, 2001, police and other public safety officers wish to join with other Americans in expressing their grief over this horrific tragedy by wearing pins or displaying other items containing the American flag.

(b) The Legislature, by enacting this act, intends to prohibit punitive action against a public safety officer for wearing a pin or displaying any other item containing the American flag unless the officer has been given specified notice and warning that this action violates an existing rule, regulation, policy, or local agency agreement or contract.

SEC. 2. Section 3312 is added to the Government Code, to read:

3312. Notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice that includes all of the following:

(a) A statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag.

(b) A citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates.

(c) A statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.