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SB-206 Firefighters Procedural Bill of Rights Act: Department of Forestry and Fire Protection: temporary appointments. (2021-2022)

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Senate Bill No. 206

CHAPTER 722

An act to amend Sections 3251, 3254, and 18670 of, and to add Section 3254.6 to, the Government Code, relating to public employment.

[Approved by Governor October 08, 2021. Filed with Secretary of State October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 206, McGuire. Firefighters Procedural Bill of Rights Act: Department of Forestry and Fire Protection: temporary appointments.

Existing law, the Firefighters Procedural Bill of Rights Act, grants certain employment rights to firefighters, as defined. Under the act, when a firefighter is investigated and interrogated by the firefighter's commanding officer, or another member of the employing agency, on matters that could lead to punitive action, the interrogation must be conducted pursuant to certain requirements. The act defines "punitive action" for these purposes as any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Existing law excepts from the act any employee who has not successfully completed the probationary period established by the employee's employer as a condition of employment. The act prohibits taking punitive actions if the investigation of the allegation is not completed within one year of discovery by the employing fire department. Existing law authorizes the State Personnel Board to hold hearings and make investigations concerning all matters relating to the enforcement and effect of the state civil service and various related personnel issues.

This bill would include within the definition of "firefighter" a temporary, seasonal firefighter employed by the Department of Forestry and Fire Protection. The bill would apply the Firefighters Procedural Bill of Rights Act to an employee of the Department of Forestry and Fire Protection who holds a temporary firefighter appointment and who has commenced employment in a 2nd consecutive fire season with the department even though the person holding the position does not serve a probationary period. Under the bill, if an investigation involves a Department of Forestry and Fire Protection employee holding a temporary appointment to a firefighter position, the above-described one-year period would be tolled during the period that the employee is not employed by the department until the date the employee is rehired for a subsequent fire season. The bill would prohibit a Department of Forestry and Fire Protection employee holding a temporary appointment to a firefighter position from being terminated for cause without a right to appeal the termination to the State Personnel Board, subject to the board's rules, and the would prescribe a process in this regard. Under the bill, if the board finds that cause for termination was not supported by a preponderance of the evidence or that the termination was made in bad faith, the employee would be entitled to reinstatement, as specified, but would not be entitled to back pay. The bill would prohibit these provisions from being construed to create a property interest in a temporary appointment to a firefighter position or to a permanent position. The bill would authorize the State Personnel Board to held hearings and investigations for these purposes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 3251 of the Government Code is amended to read:

3251. For purposes of this chapter, the following definitions apply:

(a) (1) "Firefighter" means any firefighter employed by a public agency, including, but not limited to, any firefighter who is a paramedic or emergency medical technician, irrespective of rank. "Firefighter" also means an employee of the Department of Forestry and Fire Protection holding a temporary appointment to a firefighter position and employed as a seasonal firefighter.

(2) Notwithstanding paragraph (1), "firefighter" does not include an inmate of a state or local correctional agency who performs firefighting or related duties or persons who are subject to Chapter 9.7 (commencing with Section 3300).

(3) Except as provided in paragraph (4), this chapter does not apply to any employee who has not successfully completed the probationary period established by the employee's employer as a condition of employment.

(4) Notwithstanding paragraph (3), this chapter shall apply to an employee of the Department of Forestry and Fire Protection holding a temporary appointment to a firefighter position who has commenced employment in a second consecutive fire season with the department even though the person holding this position does not serve a probationary period.

(b) "Public agency" has the meaning given that term by Section 53101.

(c) "Punitive action" means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

SEC. 2. Section 3254 of the Government Code is amended to read:

3254. (a) A firefighter shall not be subjected to punitive action, or denied promotion, or be threatened with that 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.

(b) Punitive action or denial of promotion on grounds other than merit shall not be undertaken by any employing department or licensing or certifying agency against any firefighter who has successfully completed the probationary period without providing the firefighter with an opportunity for administrative appeal.

(c) A fire chief shall not be removed by a public agency or appointing authority without providing that person with written notice, the reason or reasons for removal, and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a fire chief 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, or 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, if one does not otherwise exist by rule or law, in the job of fire chief.

(d) Punitive action or denial of promotion on grounds other than merit shall not be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of discovery by the employing fire department or licensing or certifying agency. This one-year limitation period shall apply only if the discovery of the act, omission, or other misconduct occurred on or after January 1, 2008. If the employing department or licensing or certifying agency determines that discipline may be taken, it shall complete its investigation and notify the firefighter of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the firefighter voluntarily waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(2) 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.

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

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

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

(6) If the investigation involves a matter in criminal litigation in which 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.

(7) If the investigation involves an allegation of workers' compensation fraud on the part of the firefighter.

(8) If an investigation involves an employee of the Department of Forestry and Fire Protection holding a temporary appointment to a firefighter position, as described in paragraph (4) of subdivision (a) of Section 3251, the one-year limitation period prescribed by this subdivision shall be tolled during any period that the employee is not employed by the department until the date the employee is rehired for a subsequent fire season.

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

(f) If, after investigation and any predisciplinary response or procedure, the employing department or licensing or certifying agency decides to impose discipline, that agency shall notify the firefighter in writing of its decision to impose discipline within 30 days of its decision, but not less than 48 hours prior to imposing the discipline.

(g) Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a firefighter 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 exists:

(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 firefighter's predisciplinary response or procedure.

SEC. 3. Section 3254.6 is added to the Government Code, to read:

3254.6. (a) (1) An employee of the Department of Forestry and Fire Protection holding a temporary appointment to a firefighter position, as described in paragraph (4) of subdivision (a) of Section 3251, shall not be terminated for cause without a right to appeal the termination to the State Personnel Board subject to the board's rules.

(2) The State Personnel Board shall hold a formal evidentiary hearing concerning an appeal under this section, following the same procedure as in state civil service proceedings. The employee shall have the burden of proof to show that the termination was not supported by a preponderance of the evidence or was implemented in bad faith.

(3) If the State Personnel Board finds that cause for termination was not supported by a preponderance of the evidence or that the termination was made in bad faith, the employee shall be entitled to a decision from the board that the termination was without fault. The employee shall also be entitled to reinstatement to the employee's position within seven days of the board's decision, if the fire season during which the employee was working has not ended. If the fire season during which the employee was working has ended as of the date of the decision, the employee shall have the right to reemployment to a new temporary appointment for the next fire season, provided the employee meets minimum qualifications for the position and temporary appointments are made. The employee shall not be entitled to back pay.

(b) Nothing in this section shall be construed to create a property interest in any temporary appointment to a firefighter position or to a permanent position within the state.

SEC. 4. Section 18670 of the Government Code is amended to read:

18670. The board may hold hearings and make investigations concerning all matters relating to the enforcement and effect of this part and rules prescribed under this part and under Section 3254.6. It may inspect any state institution, office, or other place of employment affected by this part to ascertain whether this part and the board rules are obeyed.

The board shall make investigations and hold hearings at the direction of the Governor or the Legislature or upon the petition of an employee or a citizen concerning the enforcement and effect of this part and to enforce the observance of Article VII of the Constitution and of this part and the rules made under this part.