The Implications of California's Firefighters Procedural Bill of Rights Act on the Colton Fire Department

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CERTIFICATION STATEMENT

I hereby certify that this paper constitutes my own product, that where the language of others is set forth, quotation marks so indicate, and that appropriate credit is given where I have used the language, ideas, expressions, or writings of another.

Signed: ____________________
Abstract

The problem was that the Colton Fire Department (CFD) had not updated its disciplinary policies to comply with California Assembly Bill 220, the Firefighter’s Procedural Bill of Rights Act (FBOR). The purpose of this research was to update CFD policies, procedures, and the Memorandum of Understanding (MOU) to assure that discipline was applied correctly to each firefighter. Action research was conducted to determine the legislative history of the FBOR, changes that should be made to the CFD policies, procedures and the MOU, and how to communicate these changes to CFD personnel. Updated policy was written, changes to the MOU were recommended for the next negotiation, and a PowerPoint presentation was made.
Introduction

For the past twenty-two years, the tradition in the Colton Fire Department (CFD) has been a harmonious relationship between International Association of Fire Fighters Local 935 (Union) and CFD Administration. During the writing of the CFD strategic plan in 2006, Union members had a direct role in forming the vision and core values for the department. Maintaining the tradition of trust, respect, and efficiency was a value so important that it was memorialized in policy during the writing of the department’s strategic plan. The CFD vision statement and core values note, “The Fire Department will provide comprehensive emergency services to Colton’s citizens, visitors, and employees. We will cultivate leaders at all levels of the department through education, training, and high ethical standards. We will treat all others as we would want to be treated;” it goes on in the core values, “Maintaining the organizational culture of trust, respect, and efficiency through the mutual cooperation of labor and management,” Colton Fire Department (2006, p. 4).

In January of 2008, California Governor Arnold Schwarzenegger signed into law Assembly Bill 220, the California Firefighter’s Procedural Bill of Rights Act (FBOR). The FBOR established formal procedures for investigations, interrogations, and administrative appeal processes (Mayer &
Johnson, 2008). Due to the potential for significant change to the investigation process within the CFD and the need to maintain the organizational culture, the Administration of the CFD needed to understand the implications of this new legislation.

The problem is that the CFD has not updated its disciplinary policies, procedures, or the Memorandum of Understanding (MOU) to comply with the new FBOR. The purpose of this research is to update current CFD policies, procedures, and the MOU to assure that discipline is applied correctly to each firefighter.

The research method will be the Action Research Method. The research approach will be to research and describe the legislative history of the FBOR, update all affected polices, procedures and the MOU to assure compliance with the FBOR, and implement and communicate the new changes to all CFD personnel.

The following research questions will be answered:

1. What is the legislative history of the FBOR?
2. What changes must be made to the current CFD policies, procedures, and the MOU to comply with the FBOR?
3. How can the identified changes to CFD policies, procedures, and the MOU be implemented and communicated to CFD personnel?
Background and Significance

The CFD was formed on November 21, 1889 to serve a city that was growing up around the railroad and several local industries in Southern California. Colton was known as the Hub City due to its central location and two rail routes that crossed in the city. The City of Colton has always been a middle class blue-collar home to the many workers of Colton’s companies. From four stations, the fire department in Colton now protects a population of 50,000 people with a mix of residential homes, large industrial operations, wildland urban interface, freeways, the County’s hospital, and many other operations within its boundaries.

The CFD current staffing consists of forty-seven safety and four non-safety personnel for a total of fifty-one. The department is divided in to three shifts of fifteen firefighters. Each shift has one battalion chief, four captains, four engineers, five paramedics and one firefighter. The administrative staff consists of one fire chief, one fire marshal, one administrative assistant, one fire safety specialist, one receptionist, and one disaster preparedness coordinator.

The FBOR is such new legislation in California that the Fire Chief was advised that there is not any case law specifically related to the misapplication of the FBOR. CFD
Fire Chief Hendrix noted that he did not want the CFD to be the first department in California to set precedence with relation to the FBOR (Tom Hendrix, personal interview, January 12, 2009). It is vitally important for the CFD to comprehend the implications of and change policy to conform to the FBOR.

Since the implications of the FBOR are currently evolving, past impacts to the CFD will be described in light of the relationship between the predecessor to the current Union, the Colton Firefighter’s Association (Association) and the former Administration. The past impacts of poor relationships caused the unionization of the Association in 1986 (Tom Hendrix, personal interview, January 12, 2009). Leading up to the decision of the Association to form the Union, there had been several instances where the Administration had made unpopular decisions that could have been implemented with simple notifications and explanations of motive to the Association. At the time, the Administration had not routinely coordinated policy issues with the Association and utilized a more authoritative approach to management. The authoritative approach had worked previously; however, the trends in the fire service in Southern California at the time were changing to a more collaborative approach between fire administrations and their employees. The Association wanted some influence in decisions made regarding its members.
The final incident that caused the formation of the Union was the Administration’s resistance to changing the color of the department’s uniform shirts from gray to light blue. CFD was the only department in the local area to have gray shirts and Association members took a poll and presented the results to the Administration in an attempt to influence a change to a modern shirt color. The Administration at the time told the Association that they were not going to change the uniform color. Shortly after the Union formed, the shirt color was changed from gray to light blue.

As previously noted, Colton is a blue-collar town, meaning that the majority of its citizens are working class people who look favorably on unions. The Union has and maintains political influence on the City Council in Colton. The City Council does not look favorably on conflict between any department administration and its subordinates. It is therefore beneficial for any department head to maintain a good working relationship with its employees in the City of Colton. With the passing of the FBOR it is now urgent that the CFD comply with and understand the implications of this legislation.

Present impacts of the FBOR within the CFD are influenced by warnings given during a seminar attended by all chief officers of the CFD in November 2007. The Professional Law Corporation Liebert Cassidy Whitmore (LCW) noted:
The issues addressed in this workbook were pinpointed for discussion because of their complexity and/or because of the practical implications on fire employment. Familiarity with these issues will aid in the management of your agency and help to minimize its liability exposure and costs. Agencies should consult with a labor relations attorney familiar with the FBOR concepts before applying them in a particular case (2007).

All CFD personnel are presently covered by the FBOR; however, the policies and MOU of the department have not been modified to comply. There is potential for a violation of the FBOR, presently, due to the current state of policy.

Regarding future impacts of the FBOR, Fire Chief Hendrix noted that personnel problems within the CFD are very rare owing to the good relationship between the Union and the Administration (Tom Hendrix, personal interview, January 12, 2009). If the Administration were to incorrectly apply the FBOR, the relationship with the Union could be jeopardized and relationships might return to the previously tumultuous infighting. The ability of the Union and the Administration to work together is especially important because, as of the date of this writing, the City of Colton and the CFD are entering into a difficult financial situation not seen since the Great Depression. The potential of budget cuts and other reductions
are real and a relationship of trust, respect, and efficiency will be paramount to a mutually beneficial decision making process.

Additionally, the following prediction as to future violations of the FBOR is noted:

The remedies for the FBOR are the same as for the POBR (Public Safety Officers Bill of Rights). The superior court has initial jurisdiction over alleged FBOR claims. The court may order injunctive or other extraordinary relief to remedy the violation and prevent future violations. If the court finds a fire department or its employees, with respect to acts taken within the scope of employment, have maliciously violated the FBOR, the fire department can be liable for a civil penalty of up to $25,000 for each violation. The fire department may also be liable for any actual damages a firefighter has suffered as a result of a FBOR violation (Liebert Cassidy Whitmore, 2007).

A misapplication of the FBOR has the potential impact of costing the CFD and the City of Colton a significant amount of money in addition to damaging the present, productive relationship between the Administration and the Union.

This applied research project on California’s FBOR is related to the content of the Executive Leadership Student
Manual in a number of ways. Power as described in Executive Leadership Student Manual is divided into two kinds: position power and personal power. The implementation of the FBOR will be better enhanced by utilizing personal power, that is, the power granted to us by others when they see a personal benefit (National Fire Academy, 2005).

Furthermore, the manual notes under the chapter on influencing styles that influence is a strategy used to educate and involve another person about our point of view so that he/she will want what we want (National Fire Academy, 2005). Maintaining discipline and incorporating the FBOR will be enhanced by the Administration’s method of influence with the Union.

Of the five operational objectives of the United States Fire Administration (USFA), understanding the implications of the FBOR assists California fire departments in responding in a timely manner to emerging issues.

The FBOR affects the CFD and other fire departments in California presently. Understanding the FBOR, changing policy to conform to it and educating CFD personnel on the FBOR will help to meet the vision statement of the CFD.

Literature Review

The literature regarding the FBOR is presented in the following method: background of the bill, those who support and
oppose the bill, summary of the FBOR, and the effects of the FBOR on fire departments.

Relating the background of the FBOR, a presentation given by the California Professional Firefighters (CPF) noted both the FBOR and the POBR were patterned after a landmark 1975 court case in California, *Skelly v. State Personnel Board*. The case found that due process must be given to certain public employees and those employees are entitled to a pre-disciplinary hearing allowing them to respond to charges and seek a reduction or elimination of the charges. Since the 1980’s the POBR has covered peace officers, granting them certain safeguards during the disciplinary process (CPF PowerPoint, 2007).

California Assemblywomen Karen Bass sponsored AB 220, known as the FBOR, in 2007. In 2006, AB 2857 would have extended the same protections of the POBR to firefighters; however it died in the Assembly Appropriations Committee. Similarly, in the year 2000, a similar bill, AB 1411 had been proposed and died in the Senate Appropriations Committee in Sacramento (AB 220 Assembly Bill-Bill Analysis, 2007).

It is noteworthy that supporters of the FBOR stated the following as some of the justification for FBOR:

When providing life saving services to the public, firefighters execute numerous job safety procedures and protocols, which have the potential of being compromised or
altered in a highly charged atmosphere of critical incident stressors. As a result, firefighters are subjected to investigation and interrogation that could ultimately lead to unwarranted punitive actions such as transfers, demotions, or suspensions, without being extended appropriate due process safeguards (AB 220 Assembly Bill-Bill Analysis, 2007).

On the CPF website the following was noted regarding the FBOR:

The landmark measure is designed to apply common-sense principles of fairness and professionalism to the process of investigating and disciplining first responders. As with the original Peace Officers Bill of Rights approved in the 1980s, AB 220 puts in place basic procedural safeguards that recognize the unique role of first responders (California Professional Firefighters, 2007).

The article continued to describe the struggle over the past two decades of the California Professional Firefighters (CPF) to enact protections for firefighters during investigations and discipline. Consistent procedural standards were a theme throughout the article for police officers, firefighters, and public agency EMS professionals. Noted also in the article was the joint support by both political parties and Governor Schwarzenegger. Finally, an acknowledgement of the following politicians and their contribution to the passage of the FBOR
was noted: Governor Schwarzenegger, Assemblywoman Karen Bass, Assembly Speaker Fabian Nunez, Senate President Don Perata and Assembly GOP Leader Mike Villines. As noted, on October 13, 2007, after several failed attempts by the CPF and others, Governor Schwarzenegger signed the FBOR into law in California (California Professional Firefighters, 2007).

Prior to being signed into law, several constituent groups were in support of and opposed to the FBOR. The CPF was the major sponsor of the FBOR and is mentioned frequently in literature. Others who supported the FBOR were the American Federation of State, County and Municipal Employees, the California Labor Federation, and the United Firefighters of Los Angeles City. Those opposed to the act were the League of California Cities (League), California State Association of Counties, Fire Districts Association of California, and the Emergency Medical Services Administrators Association of California (EMSAAC) (AB 220 Assembly Bill-Bill Analysis, 2007).

It is worth mentioning that the California Fire Chief’s Association (Cal Chiefs), after reviewing the FBOR did not take a formal position on the bill (California Fire Chief's Association, 2007).

Supporters of the FBOR argued that:
Not only are firefighters required to have an expertise in the area of fire and emergency protection and prevention, but
they also must trust their instincts in volatile emergency situations. Overall, they deserve the same protection level and due process rights as their peace officer colleagues when administrative actions are taken against them (AB 220 Assembly Bill-Bill Analysis, 2007).

Opponents of the FBOR, specifically the League noted the following:

This bill is both unnecessary and burdensome. Firefighters are not the subject of investigations and interrogations to the same extent as peace officers. County employees, including firefighter employees, already have substantial procedural and due process rights. In addition to property interest, due process rights, and civil service or merit protections, firefighter employees have collective bargaining rights including due process procedures (AB 220 Assembly Bill-Bill Analysis, 2007).

Those against the bill believed that it would impose substantial unfunded and reimbursable state mandate costs on local government. EMSAAC was especially against the FBOR unless the bill specifically excluded licensing agencies. They noted, “…AB 220 imposes unnecessary and expensive mandates upon agencies by requiring…administrative law procedures” (Emergency Medical Services Administrator's Association of California, 2007).
In a *White Paper* written by the League they noted that there were potential costs associated with the FBOR and that these costs could rise to the level of $1.3 million annually in reimbursable costs to jurisdictions. The League also identified the FBOR as one of the, “Worst of the worst,” employee relations bills of 2007 (League of California Cities, 2007).

In an effort to summarize the FBOR, author and national fire service speaker, Kimberly Alyn, when asked what the FBOR means for firefighters and departments noted, “It means a few changes in disciplinary process, that’s all.” Alyn continues, “...now, a firefighter is entitled to union representation if they enter a meeting or interview where their answers could land them with a written reprimand or any stronger form of discipline” (2008).

The FBOR comprises the following subjects: punitive action, timelines of investigation, interrogation rights, administrative appeals process, personnel files, political rights, and employer penalties (League of California Cities, 2007). In an attachment to this research paper is the complete language of the FBOR.

The FBOR also contains a provision for reimbursement of funds to a local agency for compliance. It is unclear to this author how the process of reimbursement would occur; further research would be beneficial.

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 (AB 220 Assembly Bill-Bill Analysis, 2007).

Due to the contemporary nature of the FBOR, its effects on California fire departments are not fully known. The Municipal Management Association of Northern California noted the following:

There is no case law interpreting the FBOR. While courts will undoubtedly rely upon three decades of case law associated with the POBR to define the Act’s parameters, there are some significant differences between the two statutory schemes which will undoubtedly generate additional case law for years to come. The current challenge to public agencies is to anticipate issues that might create expensive and time-consuming litigation and to work with firefighters and their union representatives to resolve these issues before that occurs (Municipal Management Association of Northern California, 2007).

In a Riverside County, California fire association newsletter the following was stated regarding the new FBOR and its effects, “It has only been a few months and the new FBOR is in full swing. I can’t help to notice the panic in our
In their book, Mayer and Johnson note with relation to the effects of FBOR:

Law enforcement agencies generally do not educate their managers and supervisors with regard to POBR unless they are assigned to Internal Affairs. Consequently, many of the court decisions interpreting POBR are the direct result of managers and supervisors violating the rights afforded to their officers under the Act. To avoid this same consequence, it is imperative that fire managers and supervisors are familiar with FBOR (2008).

In the City of Oceanside, California, the fear of violating the FBOR caused a city to reverse a decision to move several Division Chiefs to Battalion Chief positions. The North County Times reported, “In the wake of failed reorganization, questions remain about whether the chief opened the city to lawsuits and whether, under the new law, he has any real power to reassign supervisors.” The fire chief of Oceanside seemed especially frustrated, noting, “Now the FBOR has eliminated any at-will positions...it’s unfortunate that the individuals involved attached property rights to those positions, when at the time they accepted the positions, they understood they were at-will” (Gordon, 2008).
According to an article in the *San Bernardino County Sun* in January 2009, the Rialto, California fire department faced an arbitrator’s ruling against the former administration of the department. Fire Chief Bob Espinosa noted that the FBOR paves the way for more consistent practices in arbitration cases, from department to department (Dulaney, 2009).

In the forward to *Conducting Effective Personnel Investigations*, the following is noted regarding the pursuit of fair investigations:

> From my experience, of two and a half decades in this field, I have seen and come to know that an employer can have one of the most profound impacts on enhancing the level of employee morale and improving employee loyalty and enthusiasm if the employees believe that their employer has a steadfast and unqualified commitment to give them a fair shake if and when someone points the accusatory finger in their direction (Sloan, 2008).

Alyn (2008) also noted as a side effect of the FBOR and the fear of implementing discipline:

> Do you know what the number one morale killer is in every fire department? It’s lack of discipline. Firefighters hate having to drag around other firefighters who keep breaking policy and getting away with it. As managers and company officers, you need to step up and administer...
discipline as needed. You are not helping your firefighters by taking away the consequences of their bad choices. You are only hurting them by trying to cushion the fall.

The literature review for this project showed that the CPF wanted specific methods and safeguards, mandated by State law, in place for all professional firefighters identical to their police department co-workers. Managers, on the other hand, were concerned with the possible burden of litigation and retaining the ability to manage fire operations which can and do include disciplinary procedures. Since it has been noted that little case law exists regarding the FBOR, time will tell if the opponents to the FBOR were correct in their belief that compliance with this bill will inhibit discipline and cost jurisdictions money for compliance.

Procedures

The process of conducting research into the FBOR consisted of the following:

1. Awareness of and education regarding the FBOR.
2. Determination of the history of the FBOR.
3. Search for case law or other relevant history involving the FBOR.
4. Determination of updates to policies, procedures, and the MOU.
5. Compiling an instrument to educate CFD on the subject of FBOR.

In the fall of 2007, this author became aware of the pending legislation that would become known as the FBOR. Through the San Bernardino County Fire Chief’s Association, the California Fire Chief’s Association, and fliers from Liebert Cassidy Whitmore, a law firm that provides human resource training throughout California, the chief officers of CFD knew that some changes were pending.

To provide training for management, the CFD sent all chief officers to the Firefighter’s Procedural Bill of Rights Act Seminar, in San Diego in December 2007. The half-day seminar was hosted by Liebert Cassidy Whitmore and provided a PowerPoint overview of suspected implications of FBOR to jurisdictions, a laminated quick reference guide, and a booklet with the full bill and some comments.

Upon completion of the training seminar, this author began an internet search for anything on the topic of the FBOR in California. For the first six months of 2008, little, if any written material regarding the FBOR, other than a legislative history, were found during internet searches. Other than the seminars that were completed in fall 2007, it appeared that the California fire service was holding its breath to see what would happen with the new legislation.
In June 2008 an article appeared in *Southern California Firehouse Life Magazine* whose title summarized the feelings of some chief officers: *AB220: The Good…the Bad…and the Scary*. This article was the first one found that specifically described FBOR and possible implications.

In August 2008, through an internet search, two new books and website were located. The two books, one titled *Manager’s Guide to the California Firefighters Bill of Rights Act* and the other *Supervisor’s Guide to the California Firefighters Bill of Rights Act* were found. At the time, the books were the only ones of their type available.

Also in August 2008, through a detailed search of Amazon.com, the only other book regarding FBOR for this research was found. *Conducting Effective Personnel Investigations* was written by a San Francisco public law group; the book dedicated a chapter to POBR and FBOR.

The legislative history of the FBOR was found on the *Official California Legislative Information* (Legislature) website. This useful site gave the legislative background, timeline, possible fiscal impact, in addition to the full text of the FBOR. The CPF website was also reviewed to determine history along with an exhaustive internet search. The proponents and opponents of the FBOR were listed on the Legislature’s website and further research into each
stakeholder’s website revealed documents explaining their respective positions.

As noted by this author and in the literature review, case law involving the FBOR does not yet exist. This dearth of information was a limiting factor in this research. Two newspaper articles were found that mentioned the possible effects of the FBOR, the previously mentioned from North County Times article and one from San Bernardino County Sun.

Updating policy, procedures and the MOU for CFD was the next undertaking. CFD Fire Chief Hendrix assigned this author the task of contrasting FBOR with the CFD policies at that time. Utilizing the handout from the FBOR seminar, in addition to the bill’s text, a line-by-line review of policy, procedures, and FBOR was initiated. References to California’s Government Code are made in the FBOR; therefore, a review of the specific codes was made on the Legislature’s website. The changes were identified also to the MOU in order to comply with the FBOR. The changes found are described later in the recommendations section of this research paper.

Additionally, the Human Resources Director for the City of Colton was also interviewed to discuss his concerns and to solicit input for any changes to policy and the MOU.

Finally, an instrument was needed to communicate the FBOR and changes to policies, procedures, and the MOU to CFD
personnel. This task was accomplished by reviewing two PowerPoint presentations; one by the CPF and the other by Liebert Cassidy Whitmore. The PowerPoint presentation that was written by this author is included in the Appendix to this document.

As with most research presently, the internet provided a valuable tool to the completion of this project.

Results

1. What is the legislative history of the FBOR?

   The FBOR was legislation passed in California that provides certain legal rights to firefighters similar to the POBR. The FBOR was passed in 2007, adopted January 1, 2008 and currently covers firefighters in California.

   The FBOR was sponsored by Senator Bass in conjunction with the CPF. The legislation was opposed by the League, California State Association of Counties, Fire Districts Association of California, and EMSAAC. Cal Chiefs took a neutral stance to the legislation.

   CPF attempted to pass this legislation in 2000 and 2006 but was finally successful in 2007 with implementation in 2008.

   As of this writing, there is no case law specific to FBOR.

2. What changes must be made to the current CFD policies, procedures, and the MOU to comply with the FBOR?

   The changes necessary to CFD policies include: changes in
certain language that the former policy used to include specific
terms used in the FBOR legislation. Updates on timeframes
previously spelled out in policy to comply with FBOR. Addition
of certain forms required to comply with the Administrative
Appeal process in the FBOR.

These polices were updated by going line-by-line through the
policy to assure that the main points addressed in the FBOR were
represented in policy. Additionally, a copy of the FBOR was
placed in the policy manual.

Changes to procedures were also incorporated into the policy
changes. In particular, the new form titled, Notice of Defense,
was added to policy as a new procedure during the appeal
process.

MOU changes were identified after consultation with Human
Resources Director Arroyo as a notation that the City of Colton
would comply with the FBOR. This change would not be possible
until the next negotiations with the Union later in 2009.

3. How can the identified changes to CFD policies, procedures,
and the MOU be implemented and communicated to CFD personnel?

Implementation of the previously described changes were made
by providing a mandatory two-hour training presentation to each
of CFD’s three shifts. The training consisted of presenting the
FBOR legislation, the updated CFD policy, and a PowerPoint
presentation of the highlights of the FBOR and new processes.
Additionally, all chief officers reviewed this FBOR research, attended the PowerPoint presentation along with representatives of the Union to foster communication and to enforce the CFD’s desire to understand FBOR and apply discipline fairly according the legislation.

Discussion

Few books have been written on the implications of the FBOR on fire departments in California. Within the local fire community near Colton, this author found that there was some concern and fear of the unknown with relation to the impact of FBOR; specifically, no chief officers wanted to be the test case for violating FBOR. After completion of the research, this author noted that compliance with FBOR would be feasible without any big changes to policies and procedures within the CFD.

Fear of the unknown was a theme found throughout the research. As previously noted in an association newsletter from Riverside County, that organization had both firefighters and their managers in a panic and over reacting to the new FBOR (CAL Fire-Riverside County, 2008). The concern found in CFD was again based on the worry that someone may inadvertently violate the FBOR and expose themselves and the organization to liability. After a line-by-line review of FBOR and a review of the Legislative Overview of the bill’s history, this author found that the fear was unwarranted.
Alyn (2008) noted in her literature that there was a possibility of not disciplining due to the fear of FBOR. Her conclusion was that a supervisor is only hurting the organization and morale by letting the offender get away with violations. This author concurs with her belief. If violations are allowed due to fear of FBOR, the CFD Administration will lose credibility with personnel.

The personnel in the CFD want to know, as Sloan pointed out in *Conducting Effective Personnel Investigations*, that they will get a fair shake when discipline is handed out. That fair shake may mean that they are disciplined, but for the most part, firefighters with CFD will take their punishment for violations in policy. They will take the results as long as they know others will be treated the same.

The referenced article from the *North County Times* quoted the fire chief of Oceanside, California saying, “Now the firefighter’s bill of rights has eliminated any at-will positions...It’s unfortunate that the individuals involved attached property rights to those positions, when at the time they accepted the positions, they understood they were at-will positions” (Gordon, 2008). The article went on to describe rotational changes in chief officer positions and the understanding by that city that the FBOR makes it impossible to
move personnel. The FBOR states that personnel movements that are of a punitive action are subject to an appeal process.

This author realizes that a newspaper article is a one-dimensional picture of a multidimensional situation. With that said, the reaction in Oceanside appears to be overly cautious and influenced by someone not fully comprehending the provisions of the FBOR. The City of Oceanside had a need to move personnel to fit the organization’s needs. If the movement of chief officers was not punitive, the FBOR does not come into play and therefore the quote by the chief that they cannot move personnel is incorrect.

Implications of this research show that there is a great need for all CFD employees and Human Resource personnel of Colton to understand what, exactly, is affected by the FBOR. Specifically, supervisors should know how to use the FBOR in interactions with their subordinates and subordinates should know exactly what to expect of their supervisors when punitive actions are pending. This understanding of the FBOR will decrease the stress associated with punitive actions when they occur.

Recommendations

Based on the results of this research, this author recommends that the following occur:
1. The updated policy should be reviewed by the Labor-Management Committee in the CFD.

2. The updates recommended to the disciplinary procedures policy in the CFD should be implemented by officially adopting the policy.

3. Two-hour training sessions should occur on each of the three shifts within the department utilizing the PowerPoint presentation written for this research.

4. At the next staff meeting, each chief officer should be given a copy of this research paper, the updated policy, and a copy of the PowerPoint presentation.

It is anticipated that implementation of these recommendations will have the immediate results of calming tensions within the ranks of supervisors and subordinates in CFD. There has been little discussion of the FBOR in the past year and it is hoped that this research will demystify this Act. Additionally, this research opened communications with Human Resources staff regarding the FBOR that will prove beneficial in the future.

Additional research regarding the FBOR will be needed as courts review violations or alleged violations of the Act. The timing of the research will be led by the filing of cases. Until case-law is made, mostly speculation about the Act will be opined, based on POBR cases.
Follow-up evaluation as to the effectiveness of this research will be made by the processing of punitive actions within CFD. If punitive actions are taken by supervisors in CFD, there are objections to the process and the objections are warranted, further training of all personnel will be needed.

This author recommends that others completing research on California’s FBOR focus on who pushed for the legislation and the motivations of the supporters. Legal counsel’s opinions, specifically those who deal with firefighters in the state where the research is occurring, will be very valuable to the researcher. Research outside of California related to FBOR was not helpful.
References


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doi:http://www.cacities.org/ab220whitepaper


7.01 PURPOSE: To establish a uniform method of employee discipline and due process requirements that comply with the Firefighter’s Procedural Bill of Rights Act (FBOR).

7.02 AUTHORITY: As a result of FBOR and other court decisions, public agencies must comply with certain due process procedures before taking punitive action against firefighters who have successfully completed their probationary period. These procedures require that:

A. The employee receive a preliminary written notice of the proposed action stating the date it is intended to become effective and the specific grounds and particular facts upon which the action will be taken.

B. The employee to be provided with any known written materials, reports or documents upon which the action is based.

C. The employee to be accorded the right to respond either orally, in writing, or both to the proposed charges.

D. The employee will be provided a “Notice of Defense”.

7.03 PROCEDURE:

A. It is the policy of this City that all permanent employees shall be afforded due process. Firefighters are under state law entitled to an “Administrative appeal” of all punitive actions.

B. Short suspensions are partially exempt. Management is accorded greater flexibility in implementing short suspensions, less than four (4) days. The action may be immediately implemented so long as the “Skelly” procedure is then promptly followed.

C. Punitive action is broadly described as a dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for purpose of punishment. Punitive action does not apply to counseling, instruction, or informal verbal admonishment by, or other routine contact with, a supervisor or any other firefighter.
1. Actions such as warnings, reprimands, improvement performance evaluations and failure to attain or retain licenses required as a condition of the job, may be administered according to established practices. (Firefighters are entitled to an “Administrative appeal” even for written reprimands).

D. Written notice is required for punitive action. An employee must receive advance written notice of the proposed action. A sample of the “Notice of Intent Letter” follows. The notice must:

1. State the date the proposed action will be effective and the specific grounds and particular facts upon which the action is taken.

2. Inform the employee of his right to respond to the proposed action and of his right to receive a copy of the written materials alleged to support the action.

3. Include a “Notice of Defense” which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense.

E. Employees must be allowed a reasonable time to respond. There is no fixed rule stating how much time an employee may be given to exercise his right to respond. Time to respond is fixed by management and must be “reasonable” under all circumstances.

1. “Reasonableness” is determined by the complexity of the issues involved, the volume of written materials relied upon, and good judgment. Generally fifteen (15) days is adequate time to respond.

2. Employee requests for extensions of time should be granted if the request is justifiable.

F. Failure to respond within the time specified may result in the employee’s waiver of his or her procedural rights. Circumstances surrounding the waiver should be thoroughly documented.

G. Supervisor reviewing employee response should be appropriate to level of employee responding:

1. No fixed rule exists.

2. This may be one or two levels above the employee’s immediate supervisor.
3. The supervisor should have enough authority to make effective recommendation concerning the proposed action.

4. The supervisor should not have been personally involved in the investigation and recommendation process.

5. The supervisor should not be more than one or two organizational levels removed from the City Manager.

H. The policy of this City is to allow the employee to be accompanied or represented by anyone of his choice when responding orally.

I. Interrogation processes will follow the mandates of FBOR.

J. The City generally has one year to complete its investigation of acts, omissions, or other allegations of misconduct.

K. A firefighter shall not have his or her locker or other space for storage that may be assigned to him or her searched except in his or her presence, or with his or her consent.

L. The rights described in FBOR shall only apply to a firefighter during events and circumstances involving the performance of his or her official duties.
SECTION I -- NOTICE OF INTENT:

A form letter for pre-action “Notice of Intent”, follows. After the letter of notice, a second letter is given. The second letter takes the punitive action, and so notifies the employee. A sample of such a letter also follows.

(To inform employee of intended punitive action prior to taking such action).

To:          Employee’s name
From:        Name of disciplinary authority
Subject:     Notice of Intent to (Terminate, suspend, demote, reduce salary, transfer, or reprimand).
Date:

This memo is presented to you pursuant to Skelly v. State Personnel Board (1975) 15Cal.3d 194, as notice of my intent to ___________(Terminate, suspend, demote, reduce salary, transfer, or reprimand) you from your job of ( job title), effective at the end of your regular work shift on (date) – at least fifteen (15) work days from date letter is given employee and at least one (1) day after date to respond.

The action is proposed to be taken for the following listed grounds: (List all applicable rule numbers).

1. Violation of Administrative Rule IV, Section 1 through 26.

2. Violation of Personnel Rule V, Section 1 - Abuse of Sick Leave.

3. Violation of Rules and Regulations VI, Section 1 through 7 - Hours of work.

   The above grounds are based on the following acts or omissions: (set forth clearly and specifically all of the details, dates, places, and events which give rise to the action).

   As you will recall, on (date) (list all previous or reprimands, written reprimands, and suspensions relevant to this disciplinary action).

   Copies of the following documents which I consider in making this recommendation are attached. (List of Documents).

   Copies of all documents, your personnel file, and other materials which support the proposed action will be make available in the (location) upon request during regular office hours.

   If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code in the
possession, custody or control of the agency, you may contact: (insert name and address of appropriate person).

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within fifteen (15) days after the accusation was personally served on you or mailed to you, the City of Colton may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled “Notice of Defense”, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to: Colton Fire Department 303 East E Street Colton, CA 92324. You may, but need not, be represented by counsel at any or all stages of these proceedings.
SECTION II -- NOTICE OF DEFENSE

To: 
From: 
Subject: 
Date: 

I, the undersigned, the employee named in the proposed punitive action, hereby acknowledge receipt of a copy of the Accusation, Statement to Respondent, Government Code sections 11506.5, 11506.6, and 11507.7, and two copies of a Notice of Defense.

Check all that may apply:

☐ I object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.

☐ I object to the form of the accusation on the ground that it is so indefinite or uncertain that I cannot identify the transaction or prepare a defense.

☐ I admit the accusation:

☐ In whole.

☐ In part as follows (specify):

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

(If space provided is insufficient, additional pages may be attached.)

☐ I present the following new matter(s) by way of defense (specify):

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

(If space provided is insufficient, additional pages may be attached.)

☐ I object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.
I acknowledge that failure to file this notice at the Colton Fire Department 303 East E Street, Colton CA 92324, within fifteen (15) days, and failure to file a notice of defense within fifteen (15) days shall constitute a waiver of a hearing.

I hereby request a hearing in said proceeding to permit me to present my defense to the charges contained in said Accusation.

Date:__________________________

(FIREFIGHTERS TYPED NAME)

Address__________________________

__________________________

If you plan to present counsel, please fill in the name, address, and telephone number below.

Name:__________________________

Telephone:__________________________

Address:__________________________

__________________________
SECTION III -- FINAL NOTICE OF INTENT

Sample of Reduction of Salary, Transfer, Reprimand, Termination, Suspension or Demotion)

To: Employee’s Name
From: Name of Disciplinary Authority
Subject: Notice of (Reduction of Salary, Transfer, Reprimand, Termination, Suspension or Demotion)
Date:

After carefully considering your oral/written response on (date), to the “Notice of Intent” to (Reduce Salary, Transfer, Reprimand, Terminate, Suspend or Demote) letter dated (date), I have decided that it is appropriate to proceed with the action (Reduce Salary, Transfer, Reprimand, Terminate, Suspend or Demote) you from your job of (job title) effective at the end of your regular work shift on (date).

This action is based on the following listed grounds: (List all applicable rule numbers).

1. Violation of Administrative Rule IV, Section 1 through 26.

2. Violation of Personnel Rule V, Section 1 - Abuse of Sick Leave.

3. Violation of Rules and Regulations VI, Section1 through 7 - Hours of Work.

The above grounds are based on the following acts or omissions, (Set forth clearly and specifically the details, dates, places, and events which give rise to the action; essentially, you may duplicate the provisions of the Notice of Intent letter).

This action took into consideration the fact that the following prior actions provided ineffective: (List all previous oral reprimands, written reprimands, and suspensions relevant to this disciplinary action; essentially you may duplicate the provisions of the Notice of Intent letter).

Pursuant to the Memorandum of Understanding between the City of Colton and the Fire Fighters Association, Article 1, Section 4, V, you have ten (10) days to file your appeal if you wish to appeal this matter. A copy of the Grievance Procedure is attached for your reference.

7.05 OBJECTIVE: To provide and establish a uniform method of employee discipline and due process requirements that are compliant with FBOR.
Appendix B, Firefighters Bill of Rights Act

CALIFORNIA CODES
GOVERNMENT CODE
SECTION 3250-3262

3250. This chapter shall be known, and may be cited, as the Firefighters Procedural Bill of Rights Act.

3251. For purposes of this chapter, the following definitions apply:
   (a) "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. However, "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). This chapter does not apply to any employee who has not successfully completed the probationary period established by his or her employer as a condition of employment.
   (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.

3252. (a) Except as otherwise provided in Chapter 9.5 (commencing with Section 3201), or whenever on duty or in uniform, no firefighter shall be prohibited from engaging, or be coerced or required to engage, in political activity.
   (b) A firefighter shall not be prohibited from seeking election to, or serving as a member of, the governing board of a school district, or any local agency where the firefighter is not employed, including, but not limited to, any city, county, city and county, or special district, or political subdivision thereof.

3253. When any firefighter is under investigation and subjected to interrogation by his or her commanding officer, or any other member designated by the employing department or licensing or certifying agency, that could lead to punitive action, the interrogation shall be conducted under the following conditions:
   (a) The interrogation shall be conducted at a reasonable hour, at a time when the firefighter is on duty, unless an imminent threat to the safety of the public requires otherwise. If the interrogation does occur during off-duty time of the firefighter being interrogated, the firefighter shall be compensated for any off-duty time in accordance with regular department procedures. The firefighter's compensation shall not be reduced as a result of any work missed while being interrogated.
   (b) The firefighter under investigation shall be informed, prior to the interrogation, of the rank, name, and command of the officer
or other person in charge of the interrogation, the interrogating officer, and all other persons to be present during the interrogation. All questions directed to the firefighter under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The firefighter 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 the gravity and complexity of the issue being investigated. The person under interrogation shall be allowed reasonable breaks to attend to his or her own personal physical necessities.

(e) (1) The firefighter under interrogation shall not be subjected to offensive language or threatened with punitive action. A promise of reward shall not be made as an inducement to answering any question. The employer shall provide to, and obtain from, an employee a formal grant of immunity from criminal prosecution, in writing, before the employee may be compelled to respond to incriminating questions in an interrogation. Subject to that grant of immunity, a firefighter refusing to respond to questions or submit to interrogations shall be informed that the failure to answer questions directly related to the investigation or interrogation may result in punitive action.

(2) The employer shall not cause the firefighter under interrogation to be subjected to visits by the press or news media without his or her express written consent free of duress, and the firefighter's photograph, home address, telephone number, or other contact information shall not be given to the press or news media without his or her express written consent.

(f) A statement made during interrogation by a firefighter under duress, coercion, or threat of punitive action shall not be admissible in any subsequent judicial proceeding, subject to the following qualifications:

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

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

(g) The complete interrogation of a firefighter may be recorded. If a recording is made of the interrogation, the firefighter shall have access to the recording if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The firefighter 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 portions that are otherwise required by law to be kept confidential. Notes or reports that are deemed to be confidential shall not be entered in the firefighter's personnel file. The firefighter 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 firefighter, it
is contemplated 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 may result in punitive action against any firefighter, that firefighter, 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, or be subject to any punitive action for refusing to disclose, any information received from the firefighter under investigation for noncriminal matters.

This section shall not be construed to apply to counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other firefighter.

(j) A firefighter shall not be loaned or temporarily reassigned to a location or duty assignment if a firefighter in his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

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.

(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.

3254.5. An administrative appeal instituted by a firefighter under this chapter shall be conducted in conformance with rules and procedures adopted by the employing department or licensing or certifying agency that are in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2.
3255. A firefighter shall not have any comment adverse to his or her interest entered in his or her personnel file, or any other file used for any personnel purposes by his or her employer, without the firefighter having first read and signed the instrument containing the adverse comment indicating he or she is aware of the comment. However, the entry may be made if after reading the instrument the firefighter refuses to sign it. That fact shall be noted on that document, and signed or initialed by the firefighter.

3256. A firefighter shall have 30 days within which to file a written response to any adverse comment entered in his or her personnel file. The written response shall be attached to, and shall accompany, the adverse comment.

3256.5. (a) Every employer shall, at reasonable times and at reasonable intervals, upon the request of a firefighter, during usual business hours, with no loss of compensation to the firefighter, permit that firefighter to inspect personnel files that are used or have been used to determine that firefighter's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer shall keep each firefighter'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 firefighter.

(c) If, after examination of the firefighter's personnel file, the firefighter believes that any portion of the material is mistakenly or unlawfully placed in the file, the firefighter 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 firefighter 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 firefighter.

(d) Within 30 calendar days of receipt of a request made pursuant to subdivision (c), the employer shall either grant the firefighter'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 firefighter.

3257. (a) A firefighter shall not be compelled to submit to a lie detector test against his or her will.

(1) Disciplinary action or other recrimination shall not be taken against a firefighter refusing to submit to a lie detector test.

(2) No comment shall be entered anywhere in the investigator's notes or anywhere else that the firefighter refused to take, or did not take, a lie detector test.
(3) Testimony or evidence to the effect that the firefighter refused to take, or was subjected to, a lie detector test shall not be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative.

(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.

3258. A firefighter shall not be required or requested for purposes of job assignment or other personnel action to disclose any item of his or her property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his or her family or household, unless that information is otherwise required to be furnished under state law or obtained pursuant to court order.

3259. A firefighter shall not have his or her locker or other space for storage that may be assigned to him or her searched except in his or her presence, or with his or her consent, or unless a valid search warrant has been obtained or unless he or she 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 department or licensing or certifying agency.

3260. (a) It shall be unlawful for any employing department or licensing or certifying agency to deny or refuse to any firefighter the rights and protections guaranteed by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any firefighter against any employing department or licensing or certifying agency for alleged violations of this chapter.

(c) (1) If the superior court finds that the employing department or licensing or certifying agency 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 or preliminary or permanent injunction prohibiting the employing department or licensing or certifying agency from taking any punitive action against the firefighter.

(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 party's 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 fire 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 fire 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 firefighter, the fire 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 firefighter 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 firefighter whose right or protection was denied, the fire department shall also be liable for the amount of the actual damages. Notwithstanding these provisions, a fire 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 fire department and the contractor, a "hold harmless" or similar provision that protects the fire department from liability for the actions of the contractor. An individual shall not be liable for any act for which a fire department is liable under this section.

3261. Nothing in this chapter shall in any way be construed to limit the ability of any employing department, licensing or certifying agency, or any firefighter to fulfill mutual aid agreements with other jurisdictions or agencies, and this chapter shall not be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where that activity is deemed necessary or desirable by the jurisdictions or agencies involved.

3262. The rights and protections described in this chapter shall only apply to a firefighter during events and circumstances involving the performance of his or her official duties.
CALIFORNIA CODES
GOVERNMENT CODE
SECTION 11507

11507.5. The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

11507.6. After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

   (a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;
   
   (b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;
   
   (c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;
   
   (d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;
   
   (e) Any other writing or thing which is relevant and which would be admissible in evidence;
   
   (f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.
11507.7. (a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.
Slide 2

What is it?

The bill prescribes rights related to, among others, political activity, interrogation, punitive action, and administrative appeals, with specified requirements imposed upon the employing agency and the imposition of a civil penalty for a violation thereof.

Slide 3

- Firefighters are often called upon to render aid in hostile emergency situations rife with conflict and confrontation.
- Firefighters who trust their instincts in volatile emergency situations are deserving of due process rights and protections.
The effective protection of property and the safety of the public depends upon the maintenance of reasonable and consistent procedural protections applicable to all employers with respect to the disciplinary process.

**HISTORY OF FBOR**
- Sponsored by California Professional Firefighters (CPF) & Senator Bass
- Implemented January 1, 2008

From the CPF website
Who’s covered?

- Any firefighter employed by a public agency, including any firefighter who is a paramedic or emergency medical technician, irrespective of rank.
- Does not apply to any employee who has not successfully completed the probationary period.

Definitions

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

Interrogations

- This section shall not be construed to apply to counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other firefighter.
- When any firefighter is under investigation and subjected to interrogation by their department or a licensing or certifying agency, that could lead to punitive action, the interrogation shall be conducted under the following conditions.
**Slide 10**

- Shall be conducted at a reasonable hour
- For interrogations, firefighter shall be compensated for any off-duty time in accordance with regular department procedures
- Firefighter’s compensation shall not be reduced as a result of any work missed while being interrogated

**Slide 11**

- Firefighter shall be informed of the officer or other person in charge of the interrogation and all other persons to be present during the interrogation
- The interrogation shall be for a reasonable period of time, and the Firefighter must be allowed reasonable breaks

**Slide 12**

- Firefighter under investigation shall be informed of the nature of the investigation prior to any interrogation
- Firefighter shall not be subjected to offensive language or threatened with punitive action
Slide 13
- Cannot be subjected to visits by the press or news media without consent
- Photograph, home address, telephone number, or other contact information shall not be given to the media without consent

Slide 14
- Interrogation may be recorded
- If a recording is made the firefighter shall have access to the recording
- Firefighter shall have the right to bring his or her own recording device
- Transcribed notes shall be made available with some exceptions

Slide 15
- If, prior to or during the interrogation of a firefighter, it is contemplated that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights
Slide 16

- Interrogation that may result in punitive action, firefighter, 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.

Slide 17

- Punitive action or denial of promotion on grounds other than merit shall not be undertaken against any firefighter without providing an opportunity for appeal.

Slide 18

- A fire chief shall not be removed without providing that person with written notice, the reason or reasons for removal, and an opportunity for appeal.
- Punitive action shall not be undertaken if the investigation is not completed within one year of discovery, with exceptions.
Slide 19

- An administrative appeal instituted by a firefighter shall be conducted in conformance with rules and procedures adopted by the department or licensing or certifying agency that are in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2.

Slide 20

- A firefighter shall not have any adverse comment entered in his or her personnel file without having first read and signed the instrument containing the adverse comment indicating he or she is aware of the comment, the entry may be made if the firefighter refuses to sign it. That fact shall be noted on that document, and signed or initialed by the firefighter.

Slide 21

- A firefighter shall have 30 days to file a written response to any adverse comment in his or her personnel file.
- The written response shall be attached to the adverse comment.
Slide 22

- A firefighter shall not be compelled to submit to a lie detector test against his or her will.
- A firefighter shall not be required to disclose any item of his or her property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his or her family or household.

Slide 23

- A firefighter shall not have his or her locker or other space for storage searched except in his or her presence, or with his or her consent, or unless a valid search warrant has been obtained or unless he or she has been notified that a search will be conducted.

Slide 24

- It shall be unlawful for any department or licensing or certifying agency to deny or refuse to any firefighter the rights and protections guaranteed by this chapter.
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Changes to policy

- Updated Chapter 5, Subject 7, *Disciplinary Procedures*, of the Operations Manual to reflect changes imposed by FBOR.
- Added a new form, *Notice of Defense*, that will be filled out by the Firefighter after receiving *Notice of Intent to Discipline*.

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Needed change to MOU

- Add language that states the City will comply with FBOR in all punitive actions.

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Questions?