

SENATE THIRD READING
SB 206 (McGuire)
As Amended March 25, 2021
Majority vote

SUMMARY

Makes changes to the Firefighters Procedural Bill of Rights (FBOR) Act relating to the definition of "firefighter," and clarifies to whom the FBOR Act applies.

Major Provisions

- 1) Modifies the definition of "firefighter" to include a firefighter employed by the Department Forestry and Fire Protection (CAL FIRE) holding a temporary appointment to a firefighter position and employed as a seasonal firefighter.
- 2) Maintains that inmates of a state or local or correctional agency, as provided, who performs firefighting related duties are excluded from the definition of "firefighter."
- 3) Excludes an employee who has not successfully completed the probationary period established by the employer as a condition of employment; however, an employee holding a temporary appointment to a firefighter position by CAL FIRE and employed as a seasonal firefighter must be deemed to have successfully completed the requisite probationary period if CAL FIRE employs the firefighter in the same classification for a second temporary appointment immediately subsequent to the first.

COMMENTS

- 1) Brief History and Summary of the FBOR Act

The FBOR Act is modeled similarly to the Public Safety Officers Procedural Bill of Rights Act (commonly referred to as the Peace Officers Bill of Rights (POBOR)). In 2007, the Legislature enacted the FBOR Act which affords firefighters enhanced employment rights not generally available to other public employees because: a) firefighters are often called to render aid in hostile emergency conditions that are rife with conflict and confrontation; b) in providing lifesaving services to the public, firefighters are subject to numerous job safety procedures and protocols, which are compromised or altered at times, in a highly charged atmosphere of critical incident stressors, and c) firefighters who trust their instincts in these volatile situations are deserving of due process rights and protections should those circumstances arise.

The FBOR Act applies to the State, and any city (including charter city); county; city and county; municipal corporation; public district; charter city; or public authority located in whole or in part within the state that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services; and, establishes specific requirements for administrative investigations and discipline of firefighters, and protects the right of firefighters to engage in political activity.

The FBOR Act covers matters involving disciplinary investigations (i.e., interrogations, the procedural requirements for interrogations, and other supervisory acts, disclosure of

investigative materials, reassignment, and privacy), discipline (i.e., notice and a statute of limitations), administrative appeals, and personnel files.

2) Currently Pending and Directly Relevant Litigation

In ongoing litigation, a superior court found that a seasonal firefighter employed by CAL FIRE had no right to appeal his dismissal by CAL FIRE to the State Personnel Board based on a claim that CAL FIRE violated the employee's rights under the FBOR Act. The court disagreed with the firefighter and ruled that because the firefighter had never successfully "completed" a probationary period – having never had one at all – the threshold to qualify for FBOR protections had not been met. The matter is now pending appellate court review.

3) Please see the respective policy committee analyses for a full discussion of this bill.

According to the Author

According to the author, "As California faces longer and longer fire seasons every year, it is only becoming more crucial to take care of the important service members who are putting their lives on the line to fight fires.

"Seasonal firefighters may only serve up to 9 months per year due to their temporary classification, and many seasonal firefighters work seasonally for multiple years, sometimes upwards of 10 years or more. Over 4 million acres of California land burned in 2020 alone due to devastating wildfires. As these threats become increasingly common, the state depends more and more on seasonal firefighters. With 350 additional hired in 2020 and funding to hire 640 in the Governor's 2021 Budget Proposal, it is more crucial than ever to protect these frontline heroes."

The author concludes by stating that, "[This bill] will allow temporary and seasonal firefighters to be included in the protections provided in the [FBOR Act] passed in 2017, which grants firefighters access to a full and fair appeal process after being terminated, protection from unreasonable interrogation, protection from unwarranted searches of their personal property, and being forced to take a polygraph test. All these protections currently apply to only full-time firefighters. Seasonal firefighters are on the frontline, protecting Californians from the devastating fires that continue to ravage our State. It is past time for the state to protect them, as much as they protect us."

Arguments in Support

CAL FIRE Local 2881 states in part that, "Seasonal firefighters are an integral part of the CAL FIRE Emergency Response Team. For a variety of reasons, these men and women choose to come back year after year to protect the lives and property of Californians during peak fire season.

"These seasonal firefighters, employed by CAL FIRE, are not probationary employees. In fact, they are welcomed back each season. For example, a seasonal firefighter with six fire seasons would have four-and-a-half years of state service time. We have needed to use these firefighters more intensely as we deal with the historic fire seasons that have ravaged California. As hard as these seasonal firefighters work, they do not qualify under the [FBOR Act], which means that they can be dismissed virtually without consequence at any time. This legislation would allow temporary, seasonal firefighters to have an evidentiary hearing in response to a dismissal."

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, this bill would result in one-time General Fund (GF) costs of \$1.1 million and ongoing GF costs of \$1 million to CAL FIRE for additional staff and equipment. One-time costs are slightly higher to purchase equipment such as computers and software for new employees.

VOTES

SENATE FLOOR: 39-0-1

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Melendez

ASM PUBLIC EMPLOYMENT AND RETIREMENT: 7-0-0

YES: Cooper, Voepel, Calderon, Cooley, O'Donnell, Rodriguez, Seyarto

ASM JUDICIARY: 10-0-1

YES: Stone, Gallagher, Chau, Chiu, Davies, Lorena Gonzalez, Holden, Kalra, Maienschein, Reyes

ABS, ABST OR NV: Kiley

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Bryan, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Kalra

UPDATED

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