DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: March 24, 2008
POSITION: Neutral

BILL NUMBER: AB 3042
AUTHOR: Assembly Public Employees, Retirement and Social Security

SPONSOR: State Personnel Board

BILL SUMMARY

This bill would amend existing law that provides specified process for service by mail of charges in a disciplinary proceeding, notice of an employee's suspension, and of a probationers rejection. This bill would require appointing power to provide service of notice of certain actions, including disciplinary action, rejection during probation, medical action, and various termination actions by personal service or by express mail. This bill would also repeal certain disciplinary procedures and certain other provisions relating to probationary periods.

FISCAL SUMMARY

State Personnel Board (SPB) staff indicates that this costs associated with this bill would be minor and absorbable.

COMMENTS

The Department of Finance is neutral on this bill.

This bill would revise and recast the provision governing the service of personnel actions on civil service employees to allow the notices to be served in person, by mail, or express service carrier, as specified.

This bill would also repeal specified disciplinary procedures and other provisions relations to probationary periods that were held to be unconstitutional.

ANALYSIS

A. Programmatic Analysis

This bill would amend Government Code section 18575 to specify that notices of disciplinary action and notices of rejections during probation that are served on state civil service employees by mail can be served by means other than United States mail, registered with return receipt requested. This bill would further amend section 18575 to take into account, and provide a specific service method for, the wide variety of personnel actions that may now be taken against state civil service employees, in addition to disciplinary actions and rejections during probationary period (i.e., medical transfer/demotion/termination; non-punitive transfer/demotion/termination; termination of career executive assignment; termination with fault of a limited term, seasonal, or TAU appointment; termination of an appointment under the Limited Examination and Appointment Program (LEAP); and termination or automatic resignation of a Permanent Intermittent employee).

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Governor's Office: By: Date: Position Approved_____
Position Disapproved_____

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ANALYSIS (continued)

A. Programmatic Analysis (continued)

The bill would also invalidate provisions of existing law held unconstitutional by the California Supreme Court in *State Personnel Board v. Department of Personnel Administration* (2005) 37 C.4th 512.

The purpose of this bill is to update the manner in which personnel actions can be served on civil service employees by recognizing service methods that are well accepted in other judicial and quasi-judicial forums, and to eliminate provisions of existing law declared unconstitutional by the California Supreme Court.

Under the State Civil Service Act (Gov. Code, §§ 18500 et seq.), state appointing powers are authorized to file the following types of actions against state civil service employees, all of which will result in a material impact on an employee's employment status: disciplinary actions; rejections during probationary period; medical transfer/demotion/termination; non-punitive transfer/demotion/termination; termination of career executive assignment; termination with fault of a limited term, seasonal, or TAU appointment; termination of an appointment under the Limited Examination and Appointment Program (LEAP); and termination or automatic resignation of a Permanent Intermittent employee. Any state employee receiving notice of such an action may appeal the action to the SPB.

Government Code section 18575 sets forth the manner in which disciplinary actions and rejections during probationary period may be served on employees, and allows for both personal service and service by mail. For purposes of service by mail, however, the statute only recognizes one service method – United States mail, return receipt requested. This sole type of permissible service by mail fails to take into account the now well-accepted business practice of utilizing express service couriers, such as Federal Express or United Parcel Service, for delivering documents in a more timely manner than standard United States mail services. Express service couriers also provide parcel tracking information equivalent to or exceeding that provided by the United States mail.

In addition, although Section 18575 addresses the service of notices of disciplinary actions and notices of rejection during probationary periods, it fails to address the method of service required for the wide variety of other formal personnel actions that may now be taken against civil service employees, such as medical actions under Government Code section 19253.5 and non-punitive actions taken under Government Code section 19585. Although due process protections, including appropriate service of notice of the personnel action, apply to all such personnel actions, the existing statutes fail to take such actions into consideration.

In short, as currently drafted, Government Code section 18575 fails to take into account the wide variety of service methods recognized and accepted by the California judiciary for service of documents in judicial and quasi-judicial proceedings. This bill would simply update SPB service procedures to conform to those service methods accepted as valid by the California courts.

In *State Personnel Board v. Department of Personnel Administration* (2005) 37 C.4th 512, the California Supreme Court invalidated the provisions of several memoranda of understanding (MOUs) and implementing legislation that unconstitutionally interfered with the SPB's constitutional authority to review disciplinary actions taken against state civil service employees. These MOUs involved State Bargaining Units 8, 11, 12, and 13. This bill would make amendments necessary to comply with the court's order that specified statutes exempting disciplinary actions for these bargaining units from SPB review are invalid and would further amend existing law to eliminate several other statutory provisions that contain similar exemptions from SPB review procedures.

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ANALYSIS (continued)

A. Programmatic Analysis (continued)

Article VII of the California Constitution confers upon the SPB the authority to, "enforce the civil service statutes and [to] prescribe probationary periods and classifications, [to] adopt other rules authorized by statute, [and to] review disciplinary actions." Government Code section 18575 specifies the manner in which state employers are required to serve notices of disciplinary action and notices of rejection during probation on state employees, but fails to specify the manner in which service of any other personnel actions may be made on state employees.

This bill will have a minor impact on SPB proceedings, as it simply expands the types of service deemed acceptable by the SPB when the service of process issue is raised on appeal. With regard to the amendments made to comport existing statutes with the California Supreme Court decision in *State Personnel Board v. Department of Personnel Administration*, stakeholders have been complying with the decision since it was announced in 2005. This bill would simply strike from existing statutes provisions the court invalidated at that time and eliminates confusion that may exist by having invalid statutes still on the books.

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) PROP 98	FC	2007-2008	FC	2008-2009	FC	2009-2010	Fund Code
1880/SPB	SO	No	---------- No/Minor Fiscal Impact ----------						0995

Fund Code	Title
0995	Reimbursements