

ASSEMBLY BILL

No. 3042

**Introduced by Committee on Public Employees, Retirement and
Social Security (Hernandez (Chair), Mullin, Soto, and Torrico)**

February 25, 2008

An act to repeal and add Section 18575 of the Government Code, relating to civil service.

LEGISLATIVE COUNSEL'S DIGEST

AB 3042, as introduced, Committee on Public Employees, Retirement and Social Security. Civil service: notices, appeals, and complaints: service.

Existing law, with regard to the civil service, generally provides that whenever a notice, paper, or other document, except a subpoena, is directed to be given to or served upon any person or state agency, the notice, paper, or document may be personally served or served by mail to the last known residence or business address of the addressee. Existing law requires that giving of notice of matters to be heard or considered by the State Personnel Board or the Department of Personnel Administration be governed by board or department rule. Existing law provides a specified process for service by mail of the charges in a disciplinary proceeding, the notice of an employee's suspension, and the notice of a probationer's rejection.

This bill would revise and recast these provisions. The bill would require the appointing power to provide service of notice of certain actions, including a disciplinary action, a rejection during probation, a medical action, and various termination actions, by personal service or by mail or express service carrier, pursuant to a specified process. The bill, in permitting service by Express Mail, as specified, and by overnight

delivery by express service carrier, would provide that any period of notice or any right or duty to do any act or make any response is extended as specified. The bill would also require service of an appeal or complaint filed with the board to follow this process. The bill would require a signed affidavit, in a specified form, of the person making service as proof of service for all papers, including appeals and complaints. The bill would require additional information on the affidavit if service is made by mail or express service carrier. The bill would delete provisions regarding matters to be heard or considered by the State Personnel Board or the Department of Personnel Administration, described above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

1 SECTION 1. Section 18575 of the Government Code is
 2 repealed.
 3 ~~18575. Whenever any notice, paper, or other document, except~~
 4 ~~a subpoena, is directed to be given to or served upon any person~~
 5 ~~or state agency, such notice, paper, or document may be personally~~
 6 ~~served or it may be served by mail to the last known residence or~~
 7 ~~business address of the addressee. Unless otherwise specifically~~
 8 ~~provided in this part the giving of notice of matters to be heard or~~
 9 ~~considered by the board or the Department of Personnel~~
 10 ~~Administration shall be governed by board or department rule.~~
 11 Service by mail of the charges in a disciplinary proceeding, the
 12 notice of an employee's suspension, and the notice of a
 13 probationer's rejection is made by the enclosure of such charges
 14 or notice in a sealed envelope, addressed to the last known address
 15 of the person to be served, registered with return receipt requested,
 16 and the depositing of it in the United States mail with postage fully
 17 prepaid. Service is complete on mailing. Service by mail of any
 18 other notice, paper, or document is made in the manner provided
 19 by Sections 1012 and 1013 of the Code of Civil Procedure. Proof
 20 of service, either personal or by mail, shall be made by affidavit.
 21 SEC. 2. Section 18575 is added to the Government Code, to
 22 read:
 23 18575. (a) Except as otherwise provided in subdivisions (b)
 24 and (c), service by mail of any notice, paper, or document to be

1 served upon a person or appointing power shall be made in the
2 manner provided by Sections 1012 and 1013 of the Code of Civil
3 Procedure.

4 (b) (1) The appointing power shall provide service of the
5 following actions by personal service or by mail or express service
6 carrier as provided in this subdivision:

7 (A) Notice of disciplinary action.

8 (B) Notice of rejection during probationary period.

9 (C) Notice of medical action.

10 (D) Notice of nonpunitive action.

11 (E) Notice of career executive assignment termination.

12 (F) Notice of termination with fault of a limited term, seasonal,
13 or temporary authorization appointment.

14 (G) Notice of termination of an appointment under the Limited
15 Examination and Appointment Program.

16 (H) Notice of termination or automatic resignation of a
17 permanent intermittent employee.

18 (I) Notice of absence without leave resignation or separation
19 pursuant to Section 89541 of the Education Code.

20 (2) Service by mail of the notices listed in paragraph (1) shall
21 be made by enclosing the notice in a sealed envelope, addressed
22 to the last known residence address of the employee, and doing
23 any of the following:

24 (A) Deposit in the United States mail with postage fully prepaid,
25 certified with return receipt requested. Service is complete at the
26 time of deposit, but any period of notice or any right or duty to do
27 any act or make any response within any period or on a date certain
28 after the service of the document served by United States mail
29 shall be extended in accordance with subdivision (a) of Section
30 1013 of the Code of Civil Procedure.

31 (B) Deposit in the United States mail with Express Mail postage
32 fully prepaid. Service is complete at the time of deposit, but any
33 period of notice or any right or duty to do any act or make any
34 response within any period or on a date certain after the service
35 of the document served by Express Mail shall be extended by two
36 business days.

37 (C) Providing for overnight delivery, by deposit of the notice
38 in a box or other facility regularly maintained by an express service
39 carrier, or delivery to a courier or driver authorized by an express
40 service carrier to receive documents, in an envelope or package

1 designated by the express service carrier with delivery fees paid
2 or provided for, and with the employee or his or her designated
3 representative required to acknowledge receipt of the notice at the
4 time of delivery. Service is complete at the time of the deposit,
5 but any period of notice or any right or duty to do any act or make
6 any response within any period or on a date certain after the service
7 of the document served by overnight delivery shall be extended
8 by two business days.

9 (c) (1) Service of an appeal or complaint filed with the board
10 shall be made by personal service or by mail or express service
11 carrier as provided in this subdivision.

12 (2) Service by mail of an appeal or complaint filed with the
13 board shall be made by enclosing the notice in a sealed envelope,
14 addressed to the Appeals Division of the State Personnel Board,
15 and doing any of the following:

16 (A) Deposit in the United States mail with postage fully prepaid,
17 certified with return receipt requested. Service is complete at the
18 time of deposit, but any period of notice or any right or duty to do
19 any act or make any response within any period or on a date certain
20 after the service of the document served by United States mail
21 shall be extended in accordance with subdivision (a) of Section
22 1013 of the Code of Civil Procedure.

23 (B) Deposit in the United States mail with Express Mail postage
24 fully prepaid. Service is complete at the time of deposit, but any
25 period of notice or any right or duty to do any act or make any
26 response within any period or on a date certain after the service
27 of the document served by Express Mail shall be extended by two
28 business days.

29 (C) Providing for overnight delivery, by deposit of the appeal
30 or complaint in a box or other facility regularly maintained by an
31 express service carrier, or delivery to a courier or driver authorized
32 by an express service carrier to receive documents, in an envelope
33 or package designated by the express service carrier with delivery
34 fees paid or provided for, and with the authorized representative
35 of the State Personnel Board required to acknowledge receipt of
36 the appeal or complaint at the time of delivery. Service is complete
37 at the time of the deposit, but any period of notice or any right or
38 duty to do any act or make any response within any period or on
39 a date certain after the service of the document served by overnight
40 delivery shall be extended by two business days.

1 (d) (1) Proof of service of all papers, including appeals and
2 complaints, shall be an affidavit stating the title of the papers served
3 or filed, the name and address of the person making the service,
4 and that he or she is over 18 years of age and not a party to the
5 action. The proof of service shall be signed by the person making
6 it and contain the following statement above the signature, below
7 which the declarant's name shall be typed and signed:

8 "I declare under penalty of perjury under the laws of the State
9 of California that the foregoing is true and correct, and this
10 declaration was executed at (city, state) on (date)."

11 (2) (A) If service is made by mail or express service carrier, in
12 addition to the information provided in paragraph (1), the proof
13 of service shall show the date and place of deposit, the name and
14 address of the person served as shown on the mailing envelope,
15 and that the envelope was sealed and deposited in the mail or
16 provided for overnight delivery, as appropriate.

17 (B) A proof of service made in accordance with Section 1013a
18 of the Code of Civil Procedure complies with this paragraph.