

AMENDED IN SENATE APRIL 2, 1997

SENATE BILL

No. 1192

Introduced by Senator Dills

February 28, 1997

An act to amend Sections ~~19050.5, 19173, 19253.5, 19572, 19574.1, 19574.2, 19581.5, 19582, 19584, 19635, 19996, 68097, 68097.1, and 68097.2~~ of, and to repeal and add Section 19589 of, ~~19572, 19574.1, and 19582~~ of the Government Code, relating to state civil service.

LEGISLATIVE COUNSEL'S DIGEST

SB 1192, as amended, Dills. State civil service: disciplinary proceedings.

~~(1) Existing law permits an appointing power to transfer any employee under his or her jurisdiction to another position in a different class designated as appropriate by the board, notwithstanding certain memoranda of understanding.~~

~~This bill would permit an appointing power to transfer certain state peace officer employees only if certain conditions are met.~~

~~(2) Existing law lists various actions that constitute cause for discipline of an employee by a state employer.~~

This bill would add to this list imposing or threatening reprisals, discriminating or threatening to discriminate, interfering or threatening to interfere, restraining or threatening to restrain, or coercing or threatening to coerce any state officer or employee who exercises his or her right to appeal to the State Personnel Board or testifies in a State Personnel Board hearing.

~~(3)~~

(2) Under existing law, a state employee who has been served with notice of adverse action has the right to inspect any documents in the possession of, or under the control of, the appointing power that are relevant to the adverse action, and to interview other employees having knowledge of the acts or omissions upon which the adverse action was based.

This bill would, *in addition to the rights provided in existing law*, provide to an employee the right to ~~also inspect the scene of the incident, or any records, audio or video tapes, or other real evidence of the appointing power,~~ and to contact and interview other employees in private and outside the presence of the appointing power, subject to certain specified conditions.

~~(4)~~

(3) Existing law permits disciplinary hearings to be held by the State Personnel Board, or an authorized representative, but the board is required to render the decision which in its judgment is just and proper.

~~This bill would include an administrative law judge or an arbitrator selected by certain methods, as an authorized representative who may hold disciplinary hearings. The bill would require that in cases of employee termination, the burden of proof would rest with the employer, and the standard of proof would be clear and convincing evidence, and unless expressly provided by statute, the burden of proof in all other adverse action cases would rest with the employer, and the standard of proof would be preponderance of evidence.~~

The bill would also prohibit the State Personnel Board or its authorized representative from sustaining any adverse action that is found to be, among other things, arbitrary, capricious, or that does not follow principles of progressive discipline, as specified.

~~(5) Existing law provides that whenever the State Personnel Board revokes or modifies an adverse action and orders that the employee be returned to his or her position, it shall direct the payment of salary and all interest accrued thereto, and the reinstatement of all benefits that otherwise would have normally accrued.~~



~~This bill would specify the rate of interest to be paid, would require the retroactive reinstatement of all benefits, and would include back pay, as specified, among these benefits. The bill would also provide for the restoration of an employee to any employment, transfer, or promotional lists on which the employee was listed prior to the revocation or modification of an adverse action.~~

~~(6) Existing law requires that letters of reprimand be removed from the personnel file of the state employee and destroyed not later than 3 years from the date the adverse action was issued.~~

~~This bill would instead require that all adverse actions, other than termination, be removed from the personnel and supervisory file of an employee, as well as from any Controller's records, and be destroyed not later than three years from the date the adverse actions were issued. After three years from the date the adverse actions were issued, the employer would be prohibited from using the adverse action against the employee for purposes of transfer, promotion, or further adverse actions.~~

~~(7) Existing law contains provisions relating to the procedures for the testimony of witnesses in civil actions or other specified proceedings.~~

~~This bill would make these provisions inapplicable to specified administrative hearings and labor arbitrations, unless contrary to a memorandum of understanding.~~

~~The bill, in addition, would make various changes with respect to time periods for the service of adverse actions, filing of specified petitions, and provision of notice of certain other employment actions.~~

~~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 19050.5 of the Government
2 Code is amended to read:
3 19050.5. Notwithstanding Section 3517.6, an
4 appointing power may transfer any employee under his
5 or her jurisdiction to another position in a different class~~



1 designated as appropriate by the board. However, in the
2 case of each state peace officer classification, as defined
3 in Chapter 4.5 (commencing with Section 830) of Title 3
4 of Part 2 of the Penal Code, an appointing power may
5 transfer an employee under his or her jurisdiction to an
6 entry level or nonexempt promotional position only if the
7 employee meets all of the minimum qualifications for
8 entry into that classification and its series, and in the case
9 of nonexempt promotional classifications, only if the
10 employee meets the minimum qualifications from
11 promotion into the classification and meets any other
12 requirements for the position as designated by the board.

13 SEC. 2. Section 19173 of the Government Code is
14 amended to read:

15 19173. (a) Any probationer may be rejected by the
16 appointing power during the probationary period for
17 reasons relating to the probationer's qualifications, the
18 good of the service, or failure to demonstrate merit,
19 efficiency, fitness, and moral responsibility, but he or she
20 shall not be rejected for any cause constituting prohibited
21 discrimination as set forth in Sections 19700 to 19703,
22 inclusive.

23 (b) (1) A rejection during probationary period is
24 effected by the service upon the probationer of a written
25 notice of rejection that shall include: (A) an effective date
26 for the rejection that shall not be later than the last day
27 of the probationary period; and (B) a statement of the
28 reasons for the rejection. Service of the notice shall be
29 made prior to the effective date of the rejection, as
30 defined by board rule for service of notices of adverse
31 actions. Notice of rejection shall be served prior to the
32 conclusion of the prescribed probationary period. The
33 probationary period may be extended when necessary to
34 provide the full notice period required by board rule.
35 Within 30 days after the effective date of the rejection, a
36 copy thereof shall be filed with the board.

37 (2) Effective January 1, 1996, notwithstanding
38 paragraph (1), this paragraph shall only apply to state
39 employees in State Bargaining Unit 5. A rejection during
40 probationary period is effected by the service upon the



1 ~~probationer of a written notice of rejection that shall~~
2 ~~include: (A) an effective date for the rejection that shall~~
3 ~~not be later than the last day of the probationary period;~~
4 ~~and (B) a statement of the reasons for the rejection.~~
5 ~~Service of the notice shall be made prior to the effective~~
6 ~~date of the rejection. Notice of rejection shall be served~~
7 ~~prior to the conclusion of the prescribed probationary~~
8 ~~period. The probationary period may be extended when~~
9 ~~necessary to provide the full notice period required by~~
10 ~~board rule. Within 30 days after the effective date of the~~
11 ~~rejection, a copy thereof shall be filed with the board.~~

12 ~~SEC. 3. Section 19253.5 of the Government Code is~~
13 ~~amended to read:~~

14 ~~19253.5. (a) In accordance with board rule, the~~
15 ~~appointing power may require an employee to submit to~~
16 ~~a medical examination by a physician or physicians~~
17 ~~designated by the appointing power to evaluate the~~
18 ~~capacity of the employee to perform the work of his or her~~
19 ~~position.~~

20 ~~(b) Fees for the examination and for the services of~~
21 ~~medical specialists or technicians, if necessary, shall be~~
22 ~~paid by the state agency. The employee may submit~~
23 ~~medical or other evidence to the examining physician or~~
24 ~~to the appointing power. The examining physician shall~~
25 ~~make a written report of the examination to the~~
26 ~~appointing power. The appointing power shall provide a~~
27 ~~copy to the physician designated by the employee.~~

28 ~~(c) When the appointing power, after considering the~~
29 ~~conclusions of the medical examination and other~~
30 ~~pertinent information, concludes that the employee is~~
31 ~~unable to perform the work of his or her present position,~~
32 ~~but is able to perform the work of another position~~
33 ~~including one of less than full time, the appointing power~~
34 ~~may demote or transfer the employee to such a position.~~

35 ~~Except as authorized by the Department of Personnel~~
36 ~~Administration under Section 19837, the employee~~
37 ~~demoted or transferred pursuant to this section shall~~
38 ~~receive the maximum of the salary range of the class to~~
39 ~~which he or she is demoted or transferred, provided that~~



1 ~~the salary is not greater than the salary he or she received~~
2 ~~at the time of his or her demotion or transfer.~~

3 ~~(d) When the appointing power after considering the~~
4 ~~conclusions of the medical examination provided for by~~
5 ~~this section or medical reports from the employee's~~
6 ~~physician, and other pertinent information, concludes~~
7 ~~that the employee is unable to perform the work of his or~~
8 ~~her present position, or any other position in the agency,~~
9 ~~and the employee is not eligible or waives the right to~~
10 ~~retire for disability and elects to withdraw his or her~~
11 ~~retirement contributions or to permit his or her~~
12 ~~contributions to remain in the retirement fund with~~
13 ~~rights to service retirement, the appointing power may~~
14 ~~terminate the appointment of the employee.~~

15 ~~(e) The appointing power may demote, transfer, or~~
16 ~~terminate an employee under this section without~~
17 ~~requiring the employee to submit to a medical~~
18 ~~examination, when the appointing power relies upon a~~
19 ~~written statement submitted to the appointing power by~~
20 ~~the employee as to the employee's condition or upon~~
21 ~~medical reports submitted to the appointing power by~~
22 ~~the employee.~~

23 ~~(f) The employee shall be given written notice of any~~
24 ~~demotion, transfer, or termination under this section at~~
25 ~~least 30 days prior to the effective date thereof. No later~~
26 ~~than 15 days after service of the notice, the employee may~~
27 ~~appeal the action of the appointing power to the board.~~
28 ~~The board, in accordance with its rules, shall hold a~~
29 ~~hearing. The board may sustain, disapprove, or modify~~
30 ~~the demotion, transfer, or termination.~~

31 ~~(g) Whenever the board revokes or modifies a~~
32 ~~demotion, transfer, or termination, the board shall direct~~
33 ~~the payment of salary to the employee calculated on the~~
34 ~~same basis and using the same standards as provided in~~
35 ~~Section 19584.~~

36 ~~(h) Upon the request of an appointing authority or the~~
37 ~~petition of the employee who was terminated, demoted,~~
38 ~~or transferred in accordance with this section, the~~
39 ~~employee shall be reinstated to an appropriate vacant~~
40 ~~position in the same class, in a comparable class or in a~~



1 ~~lower related class if it is determined by the board that the~~
2 ~~employee is no longer incapacitated for duty. A~~
3 ~~reinstatement to a position in a different agency may be~~
4 ~~made only with the concurrence of that agency. In~~
5 ~~approving or ordering the reinstatements, the board may~~
6 ~~require the satisfactory completion of a new probationary~~
7 ~~period. When the board finds the employee who was~~
8 ~~terminated, demoted, or transferred is no longer~~
9 ~~incapacitated for duty but there is no vacant position to~~
10 ~~which the employee appropriately can be appointed, the~~
11 ~~name of the employee shall be placed upon such~~
12 ~~reemployment lists as are determined to be appropriate~~
13 ~~by the board.~~

14 ~~SEC. 4.—~~

15 *SECTION 1.* Section 19572 of the Government Code
16 is amended to read:

17 19572. Each of the following constitutes cause for
18 discipline of an employee, or person whose name appears
19 on any employment list:

- 20 (a) Fraud in securing appointment.
- 21 (b) Incompetency.
- 22 (c) Inefficiency.
- 23 (d) Inexcusable neglect of duty.
- 24 (e) Insubordination.
- 25 (f) Dishonesty.
- 26 (g) Drunkenness on duty.
- 27 (h) Intemperance.
- 28 (i) Addiction to the use of controlled substances.
- 29 (j) Inexcusable absence without leave.
- 30 (k) Conviction of a felony or conviction of a
31 misdemeanor involving moral turpitude. A plea or
32 verdict of guilty, or a conviction following a plea of nolo
33 contendere, to a charge of a felony or any offense
34 involving moral turpitude is deemed to be a conviction
35 within the meaning of this section.
- 36 (l) Immorality.
- 37 (m) Discourteous treatment of the public or other
38 employees.
- 39 (n) Improper political activity.
- 40 (o) Willful disobedience.



1 (p) Misuse of state property.

2 (q) Violation of this part or board rule.

3 (r) Violation of the prohibitions set forth in
4 accordance with Section 19990.

5 (s) Refusal to take and subscribe any oath or
6 affirmation that is required by law in connection with the
7 employment.

8 (t) Other failure of good behavior either during or
9 outside of duty hours which is of such a nature that it
10 causes discredit to the appointing authority or the
11 person's employment.

12 (u) Any negligence, recklessness, or intentional act
13 that results in the death of a patient of a state hospital
14 serving the mentally disabled or the developmentally
15 disabled.

16 (v) The use during duty hours, for training or target
17 practice, of any material that is not authorized for
18 training or target practice by the appointing power.

19 (w) Unlawful discrimination, including harassment,
20 on the basis of race, religious creed, color, national origin,
21 ancestry, disability, marital status, sex, or age, against the
22 public or other employees while acting in the capacity of
23 a state employee.

24 (x) Unlawful retaliation against any other state officer
25 or employee or member of the public who in good faith
26 reports, discloses, divulges, or otherwise brings to the
27 attention of, the Attorney General, or any other
28 appropriate authority, any facts or information relative to
29 actual or suspected violation of any law of this state or the
30 United States occurring on the job or directly related
31 thereto.

32 (y) Imposing or threatening reprisals, discriminating
33 or threatening to discriminate, interfering or threatening
34 to interfere, restraining or threatening to restrain, or
35 coercing or threatening to coerce, any state officer or
36 employee who exercises his or her right to appeal to the
37 State Personnel Board or testifies in a State Personnel
38 Board hearing.

39 ~~SEC. 5.—~~



1 SEC. 2. Section 19574.1 of the Government Code is
2 amended to read:

3 19574.1. (a) An employee who has been served with
4 notice of adverse action, or a representative designated
5 by the employee, shall have the right to inspect ~~the scene~~
6 ~~of the incident, or any documents, records, audio, or video~~
7 ~~tapes, or other real evidence in the possession of, or under~~
8 *any documents in the possession of, or under* the control
9 of, the appointing power that are relevant to the adverse
10 action taken or that would constitute “relevant evidence”
11 as defined in Section 210 of the Evidence Code.

12 The employee, or the designated representative, shall
13 also have the right to contact and interview in private and
14 outside the presence of the appointing power or their
15 designee other employees under the control of, or in the
16 custody of, the appointing power having knowledge of
17 the acts or omissions upon which the adverse action was
18 based. Interviews of other employees and witnesses, and
19 inspection of documents shall be at times and places
20 reasonable for the employee or witness and for the
21 appointing power. Inspection of documents shall be
22 made during the regular business hours of the appointing
23 authority. Interviews of staff witnesses shall be made
24 during the regular work hours of these employees.

25 (b) The appointing power shall make all reasonable
26 efforts necessary to assure the ~~attendance and~~
27 ~~cooperation of any other employees or witnesses under~~
28 ~~the control of, or in the custody of, the appointing power~~
29 *cooperation of any other employees* interviewed
30 pursuant to this section.

31 ~~SEC. 6. Section 19574.2 of the Government Code is~~
32 ~~amended to read:~~

33 ~~19574.2. (a) Any party claiming that his or her~~
34 ~~request for discovery pursuant to Section 19574.1 has not~~
35 ~~been complied with may serve and file a petition to~~
36 ~~compel discovery with the Hearing Office of the State~~
37 ~~Personnel Board, naming as respondent the party~~
38 ~~refusing or failing to comply with Section 19574.1. The~~
39 ~~petition shall state facts showing that the respondent~~
40 ~~party failed or refused to comply with Section 19574.1, a~~



1 ~~description of the matters sought to be discovered, the~~
2 ~~reason or reasons why the matter is discoverable under~~
3 ~~Section 19574.1, and the ground or grounds of~~
4 ~~respondent's refusal so far as known to petitioner.~~

5 ~~(b) The petition shall be served upon respondent~~
6 ~~party and filed within 14 days after the respondent party~~
7 ~~first evidenced his or her failure or refusal to comply with~~
8 ~~Section 19574.1 or within 30 days after the request was~~
9 ~~made and the party has failed to reply to the request,~~
10 ~~whichever period is longer. However, no petition may be~~
11 ~~filed within 10 days of the date set for commencement of~~
12 ~~the administrative hearing, except upon a petition and a~~
13 ~~determination by the administrative law judge of good~~
14 ~~cause. In determining good cause, the administrative law~~
15 ~~judge shall consider the necessity and reasons for the~~
16 ~~discovery, the diligence or lack of diligence of the moving~~
17 ~~party, whether the granting of the petition will delay the~~
18 ~~commencement of the administrative hearing on the~~
19 ~~date set, and the possible prejudice of the action to any~~
20 ~~party. The respondent shall have a right to file a written~~
21 ~~answer to the petition. Any answer shall be filed with the~~
22 ~~Hearing Office of the State Personnel Board and the~~
23 ~~petitioner within 10 days of service of the petition.~~

24 ~~Unless otherwise stipulated by the parties and as~~
25 ~~provided by this section, the administrative law judge~~
26 ~~shall review the petition and any response filed by the~~
27 ~~respondent and issue a decision granting or denying the~~
28 ~~petition within 20 days after the filing of the petition.~~
29 ~~Nothing in this section shall preclude the administrative~~
30 ~~law judge from determining that an evidentiary hearing~~
31 ~~shall be conducted prior to the issuance of a decision on~~
32 ~~the petition. In the event that a hearing is ordered, the~~
33 ~~decision of the administrative law judge shall be issued~~
34 ~~within 20 days of the closing of the hearing.~~

35 ~~A party aggrieved by the decision of the administrative~~
36 ~~law judge may, within 30 days of service of the decision,~~
37 ~~file a petition to compel discovery in the superior court~~
38 ~~for the county in which the administrative hearing will be~~
39 ~~held, in the county in which the headquarters of the~~
40 ~~appointing power is located, or in a county in which an~~



1 office of the Attorney General is located. The petition
2 shall be served on the respondent party.

3 (c) If from a reading of the petition the court is
4 satisfied that the petition sets forth good cause for relief,
5 the court shall issue an order to show cause directed to the
6 respondent party; otherwise the court shall enter an
7 order denying the petition. The order to show cause shall
8 be served upon the respondent and his or her attorney of
9 record in the administrative proceeding by personal
10 delivery or certified mail and shall be returnable no
11 earlier than 10 days from its issuance nor later than 30
12 days after the filing of the petition. The respondent party
13 shall have the right to serve and file a written answer or
14 other response to the petition and order to show cause.

15 (d) The court may, in its discretion, order the
16 administrative proceeding stayed during the pendency of
17 the proceeding, and, if necessary, for a reasonable time
18 thereafter to afford the parties time to comply with the
19 court order.

20 (e) Where the matter sought to be discovered is under
21 the custody or control of the respondent party and the
22 respondent party asserts that the matter is not a
23 discoverable matter under Section 19574.1, or is
24 privileged against disclosure under Section 19574.1, the
25 court may order lodged with it matters which are
26 provided in subdivision (b) of Section 915 of the Evidence
27 Code and shall examine the matters in accordance with
28 the provisions thereof.

29 (f) The court shall decide the case on the matters
30 examined by the court in camera, the papers filed by the
31 parties, and any oral argument and additional evidence
32 as the court may allow.

33 (g) Unless otherwise stipulated by the parties, the
34 court shall no later than 45 days after the filing of the
35 petition file its order denying or granting the petition.
36 However, the court may on its own motion for good cause
37 extend the time an additional 45 days. The order of the
38 court shall be in writing setting forth the matters or parts
39 the petitioner is entitled to discover under Section
40 19574.1. A copy of the order shall forthwith be served by



1 ~~mail by the clerk upon the parties. Where the order~~
2 ~~grants the petition in whole or in part, the order shall not~~
3 ~~become effective until 10 days after the date the order is~~
4 ~~served by the clerk. Where the order denies relief to the~~
5 ~~petitioning party, the order shall be effective on the date~~
6 ~~it is served by the clerk.~~

7 ~~(h) The order of the superior court shall be final and,~~
8 ~~except for this subdivision, shall not be subject to review~~
9 ~~by appeal. A party aggrieved by the order, or any part~~
10 ~~thereof, may within 30 days after the service of the~~
11 ~~superior court's order serve and file in the district court~~
12 ~~of appeal for the district in which the superior court is~~
13 ~~located, a petition for a writ of mandamus to compel the~~
14 ~~superior court to set aside, or otherwise modify, its order.~~
15 ~~Where a review is sought from an order granting~~
16 ~~discovery, the order of the trial court and the~~
17 ~~administrative proceeding shall be stayed upon the filing~~
18 ~~of the petition for writ of mandamus. However, the court~~
19 ~~of appeal may dissolve or modify the stay thereafter, if it~~
20 ~~is in the public interest to do so. Where the review is~~
21 ~~sought from a denial of discovery, neither the trial court's~~
22 ~~order nor the administrative proceeding shall be stayed~~
23 ~~by the court of appeal except upon a clear showing of~~
24 ~~probable error.~~

25 ~~(i) Where the superior court finds that a party or his~~
26 ~~or her attorney, without substantial justification, failed or~~
27 ~~refused to comply with Section 19574.1, or, without~~
28 ~~substantial justification, filed a petition to compel~~
29 ~~discovery pursuant to this section, or, without substantial~~
30 ~~justification, failed to comply with any order of court~~
31 ~~made pursuant to this section, the court may award court~~
32 ~~costs and reasonable attorney fees to the opposing party.~~
33 ~~Nothing in this subdivision shall limit the power of the~~
34 ~~superior court to compel obedience to its orders by~~
35 ~~contempt proceedings.~~

36 ~~SEC. 7. Section 19581.5 of the Government Code is~~
37 ~~amended to read:~~

38 ~~19581.5. Prior to the scheduling of a contested adverse~~
39 ~~action or rejection on probation for hearing, the board~~
40 ~~may require or any party may request a prehearing or~~



1 ~~settlement conference, or a mediation hearing with a~~
2 ~~mediator from the California State Mediation and~~
3 ~~Conciliation Service. The administrative law judge~~
4 ~~presiding over the settlement conference shall not~~
5 ~~preside over any subsequent hearing on the contested~~
6 ~~adverse action or rejection on probation unless agreed to~~
7 ~~by both parties.~~

8 ~~SEC. 8.—~~

9 *SEC. 3.* Section 19582 of the Government Code is
10 amended to read:

11 19582. (a) Hearings may be held by the board, or by
12 any authorized representative, ~~including an~~
13 ~~administrative law judge or an arbitrator selected~~
14 ~~pursuant to a memorandum of understanding, by mutual~~
15 ~~agreement of the parties, or by the California State~~
16 ~~Mediation and Conciliation Service, but the board shall~~
17 *but the board shall* render the decision that in its
18 judgment is just and proper. ~~Authorized representatives~~
19 ~~hired or selected after January 1, 1998, shall have a~~
20 ~~minimum of five years experience in the practice of labor~~
21 ~~law.~~

22 During a hearing, after the appointing authority has
23 completed the opening statement or the presentation of
24 evidence, the employee, without waiving his or her right
25 to offer evidence in the event the motion is not granted,
26 may move for a dismissal of the charges.

27 If it appears that the evidence presented supports the
28 granting of the motion as to some but not all of the issues
29 involved in the action, the board or the authorized
30 representative shall grant the motion as to those issues
31 and the action shall proceed as to the issues remaining.
32 Despite the granting of the motion, no judgment shall be
33 entered prior to a final determination of the action on the
34 remaining issues, and shall be subject to final review and
35 approval by the board.

36 ~~In cases of employee termination, the burden of proof~~
37 ~~shall rest with the employer, and the standard of proof~~
38 ~~shall be clear and convincing evidence. Unless expressly~~
39 ~~provided by statute, the burden of proof in all other~~



1 ~~adverse action cases shall rest with the employer, and the~~
2 ~~standard of proof shall be preponderance of evidence.~~

3 (b) If a contested case is heard by an authorized
4 representative, he or she shall prepare a proposed
5 decision in a form that may be adopted as the decision in
6 the case. A copy of the proposed decision shall be filed by
7 the board as a public record and furnished to each party
8 within 10 days after the proposed decision is filed with the
9 board. The board itself may adopt the proposed decision
10 in its entirety, may remand the proposed decision, or may
11 reduce the adverse action set forth therein and adopt the
12 balance of the proposed decision.

13 (c) If the proposed decision is not remanded or
14 adopted as provided in subdivision (b), each party shall
15 be notified of the action, and the board itself may decide
16 the case upon the record, including the transcript, with
17 or without taking any additional evidence, or may refer
18 the case to the same or another authorized representative
19 to take additional evidence. If the case is so assigned to an
20 authorized representative, he or she shall prepare a
21 proposed decision as provided in subdivision (b) upon
22 the additional evidence and the transcript and other
23 papers that are part of the record of the prior hearing. A
24 copy of the proposed decision shall be furnished to each
25 party. The board itself shall decide no case provided for
26 in this subdivision without affording the parties the
27 opportunity to present oral and written argument before
28 the board itself. If additional oral evidence is introduced
29 before the board itself, no board member may vote unless
30 he or she heard the additional oral evidence.

31 (d) In arriving at a decision or a proposed decision, the
32 board or its authorized representative may consider any
33 prior suspension or suspensions of the appellant by
34 authority of any appointing power, or, to the extent
35 permitted by Section 19589, by any prior proceedings
36 under this article. The board or its authorized
37 representative shall not sustain any adverse action that is
38 found to be arbitrary, capricious, disparate between
39 classes, disparate between similarly situated employees,
40 discriminatory in nature, or otherwise unjust or



1 improper, or that does not follow principles of progressive
2 discipline as outlined in ~~paragraphs (1) and (2)~~.

3 ~~(1) Progressive~~ *the following paragraph.*

4 *Progressive* discipline encompasses the standard that
5 adverse action should be appropriate to the nature and
6 severity of the violation, keeping in mind the
7 circumstances under which the misconduct took place,
8 the length of the employee's service, prior related
9 discipline within the last three years of the adverse action,
10 and any mitigating circumstances. Progressive discipline
11 includes, as part of its definition, the concept that timely
12 correction, rehabilitation, and retainment of employees
13 is at the heart of the disciplinary process.

14 ~~(2) Discipline should be based upon rules, standards,~~
15 ~~and instructions that reasonably relate to the job and~~
16 ~~departmental standards and goals. The rules and~~
17 ~~standards shall be publicized and enforced uniformly~~
18 ~~without discrimination. If enforcement has been lax, the~~
19 ~~appointing authority shall not suddenly change direction~~
20 ~~and enforce the rules, without first warning the employee~~
21 ~~of the department's intent.~~

22 (e) The decision shall be in writing, ~~contain findings of~~
23 ~~fact, address relevant standards of discipline contained in~~
24 ~~subdivision (d), and state the adverse action, and contain~~
25 ~~findings of fact and the adverse action,~~ if any. The findings
26 may be stated in the language of the pleadings or by
27 reference thereto. Copies of the decision shall be served
28 on the parties personally or by mail.

29 ~~(f) The board shall adopt rules for disqualification or~~
30 ~~recusal of board members or the authorized~~
31 ~~representative.~~

32 ~~SEC. 9. Section 19584 of the Government Code is~~
33 ~~amended to read:~~

34 ~~19584. Whenever the board revokes or modifies an~~
35 ~~adverse action and orders that the employee be returned~~
36 ~~to his or her position, it shall direct the payment of salary~~
37 ~~and all interest accrued thereto, as specified in Section~~
38 ~~685.010 of the Code of Civil Procedure, and the~~
39 ~~retroactive reinstatement of all benefits, including~~
40 ~~backpay, that otherwise would have normally accrued.~~



1 ~~“Backpay” shall include, but not be limited to, salary, as~~
 2 ~~defined in Section 18000, overtime compensation, merit~~
 3 ~~salary adjustments, salary adjustments and shift~~
 4 ~~differential and other special differentials or~~
 5 ~~compensations, if the backpay is sufficiently predictable.~~
 6 ~~“Salary” shall include salary, as defined in Section 18000,~~
 7 ~~salary adjustments and shift differential, and other special~~
 8 ~~salary compensations, if sufficiently predictable. Benefits~~
 9 ~~shall include, but shall not be limited to, retirement,~~
 10 ~~medical, dental, and seniority benefits, and benefits~~
 11 ~~pursuant to memoranda of understanding, state~~
 12 ~~regulations, or departmental regulations or practices, for~~

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All matter omitted in this version of the bill appears in the bill as introduced in the Senate, February 28, 1997 (JR 11)

