
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Dave Cortese, Chair

2021 - 2022 Regular

Bill No:	AB 313	Hearing Date:	July 12, 2021
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Urgency:	No	Fiscal:	Yes
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SUBJECT: Civil service: Limited Examination and Appointment Program

KEY ISSUE

Should the Legislature significantly expand the Limited Exam and Appointment Program (LEAP) for persons with disabilities administered by the California Department of Human Resources (CalHR)?

ANALYSIS

Existing law:

- 1) Creates the state civil service that includes every officer and employee of the State except a limited number of specified, exempted officers and employees. Existing law also requires that the state make “permanent appointment and promotion in the civil service under a general system based on merit ascertained by competitive examination.” Case law and custom refer to this provision as the merit principle and it governs the administration of the state’s civil service system. (CA CONST. art. VII, §1 and §4)
- 2) Creates the State Personnel Board (SPB) to enforce the civil service statutes and prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions. (CA CONST. art. VII, § 2 and §3)
- 3) Establishes the State Civil Service Act to facilitate the operation of the Constitution’s merit principle for the state civil service. (GC § 18500).
- 4) Creates the California Department of Human Resources (CalHR) and vests it with the powers, duties, and authorities necessary to operate the state civil service system pursuant to Article VII of the California Constitution, the Government Code, the merit principle, and applicable rules duly adopted by the State Personnel Board. (GC § 18502)
- 5) Authorizes CalHR to designate an appointing power to design, announce, or administer examinations for the establishment of employment lists as specified. Existing law also permits a designated appointing power to contract with CalHR or another designated appointing power for the purpose of designing, publicizing, or administering an examination. (GC § 18930.5)
- 6) Requires SPB to prescribe rules consistent with a merit based civil service system to govern appointments classifications, examinations, probationary periods, disciplinary actions, and other matters related to SPB’s authority under Article VII of the California Constitution. Existing law also authorizes SPB to conduct audits and investigations of the personnel

practices of CalHR and appointing authorities to ensure compliance with civil service policies, procedures, and statutes. (GC § 18502)

- 7) Permits CalHR and SPB to delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement. (GC §18502)
- 8) Requires SPB to establish minimum qualifications for determining the fitness and qualifications of employees for each class of position. Existing law also authorizes CalHR to require applicants for examination or appointment to provide documentation as it deems necessary to establish the applicants' qualifications. (GC § 18931)
- 9) Establishes the Limited Examination and Appointment Program (LEAP) in the state civil service, which provides an alternative to the civil service general exam and appointment process. LEAP allows disabled individuals to compete for a position in state service by proving eligibility and meeting other specified criteria (GC §19240 et seq.).
- 10) Requires the CalHR to combine respective civil service general exam employment lists and LEAP lists into one list of candidates for state agencies to consider when filling employment positions (GC §19057.1).

This bill:

1. Requires CalHR to provide an appointing power a LEAP referral list without combining it with any parallel employment list, as specified, if requested by the appointing power.
2. Requires CalHR to establish guidelines for the provision of reasonable accommodation to applicants and employees with disabilities and adopt a model reasonable accommodation policy that state agencies and departments may modify as necessary to suit their specific circumstances.
3. Requires CalHR to identify 10 state agencies or departments that, as of June 2021, have 100 or more employees and the lowest representation of persons with known disabilities, averaged over a five-year period from July 1, 2016, through June 30, 2021.
4. Requires, by June 30, 2022, that CalHR confer with each appointing power of an agency or department identified and requires the appointing power to adopt or revise the required plan, as specified, to set new goals and timetables for hiring persons with disabilities. As part of the plan, each appointing power must specify two or more of the following strategies, and must agree to use them until at least June 30, 2025:
 - a) Use LEAP-only hiring for any hiring in classifications if parallel LEAP-certified classes are available.
 - b) Work with its disability advisory committee and the department to identify department-specific classifications that CalHR can designate as LEAP-certified classes and commit to hiring from LEAP for those classes.

- c) Ensure that at least 16 percent of those interviewed for each position are individuals with disabilities, if those individuals apply and are eligible for appointment.
 - d) Commit to hiring a qualified person with a disability who is as qualified as other reachable candidates on the employment list, unless the appointing power can demonstrate that the person cannot perform the essential functions of the job, even with reasonable accommodation and appropriate training.
 - e) Make vacant positions available for internships for persons with disabilities and make every effort to hire those who successfully complete the internships.
 - f) Expand outreach to the disability community and agree that no hiring process will proceed, unless the applicant pool adequately represents qualified individuals with disabilities.
 - g) Work with CalHR to review all duty statements to ensure that they do not use discriminatory criteria.
 - h) Consult with the Department of Rehabilitation (DOR), the State Council on Developmental Disabilities (SCDD), the State Independent Living Council (SILC), and other state agencies or organizations with expertise in employment of persons with disabilities, and implement a strategy recommended by the agency or organization that the department and appointing power, after consulting with organizations representing persons with disabilities, determine to be potentially effective in hiring persons with disabilities.
5. Requires CalHR to promptly make the plans developed or amended, as specified, publicly available.
6. Requires, by December 31, 2025, CalHR, in consultation with SPB, DOR, SCDD, and organizations representing persons with disabilities, to report to the Legislature the following:
- a) The number of persons with disabilities hired by each appointing power, as specified, that have developed the required plans during the three-year period ending June 30, 2025,
 - b) The number retained as of the end of that period,
 - c) A comparison to the hiring of persons with disabilities by the same agency in the three-year period ending June 30, 2022,
 - d) An analysis of which strategies were most effective, and

- e) Recommendations for future efforts to improve the hiring of persons with disabilities for all state agencies.
7. Repeals the requirements in item numbers 3 through 6, inclusive, above, on December 31, 2029.
8. Establishes the LEAP Expansion Plan, which does the following:
- a) Requires CalHR, by July 1 2022, to develop and implement a plan to expand the LEAP after consultation with the SPB, DOR, Department of Developmental Services (DDS), SCDD, and organizations representing persons with disabilities. The plan must do both of the following:
 - i) Identify statewide classifications (both entry level and promotional) which are not currently included in the program; determine those that offer the greatest potential to increase employment opportunities for persons with disabilities interested in a range of employment opportunities (including clerical, vocational, and professional), and, by December 31, 2022, designate at least five additional classifications that would address those needs as new LEAP-certified classes pursuant to SPB rules.
 - ii) Ensure that CalHR designate all new identified statewide LEAP-certified classifications, as specified, that offer the greatest potential employment opportunities as LEAP-certified classes by June 30, 2024.
 - b) Requires CalHR, upon the request of an individual who has been determined as LEAP-eligible, to promptly conduct an assessment to determine whether that individual meets the minimum requirements for any job classification.

If the individual is found to meet the minimum qualifications, but the classification has not been designated as a LEAP-certified class, CalHR must promptly designate the classification as LEAP-certified, establish a referral list for that class, and include the individual's name in that referral list.
 - c) Requires CalHR to post current information concerning LEAP on its website, including, but not limited to, a list of all LEAP-certified classes; information on how to request an assessment of minimum qualifications, as specified; information about a candidate's option to disclose or keep their LEAP status confidential during the hiring process, and the procedure for disclosing LEAP status if the candidates wants to do so.
9. Makes conforming changes for these purposes.

COMMENTS**1. Background.**

This bill is substantially the same as AB 365 (C. Garcia, 2019), which was vetoed by the Governor and AB 2328 (C. Garcias, 2020) which has held in Assembly PERS committee.

The LEAP program is an exception to the traditional civil service exam and appointment process to permit a person with a disability to compete for a position in state service. Under LEAP, CalHR first certifies candidates as disabled and then the candidates must meet certain minimum qualifications before CalHR places them on a referral list. CalHR then refers the names of eligible candidates to agencies that are seeking employees for LEAP-eligible positions. Appointing powers appoint LEAP employees on a temporary and provisional basis to allow them to demonstrate their abilities to perform the duties of their positions. Upon successful completion of this period, the appointing power can appoint the LEAP employee to the civil service position. In 2016, 11.8% (29,941) of civil service employees identified themselves as disabled.

Existing law requires each state agency to develop and implement an affirmative action employment plan for persons with disabilities, which must include goals and timetables. Agencies with a disability representation below 80% of the disability parity rate (16.6%) must set a hiring goal and develop an action plan to increase representation of persons with disabilities. According to the bill's proponents, of the state's roughly 150 departments about 30 currently meet the 16.6% parity rate.

2. Need for this bill?

According to the author,

In 2015 CalHR, the State Personnel Board (SPB) and the Department of Rehabilitation (DOR), as a joint project, issued a report and set of recommendations to increase the employment of persons with disabilities in state government. Despite the recommendations of the joint report, many have not been implemented.

3. Proponent Arguments

According to Disability Rights California,

Historically, working age people with disabilities are among the most unemployed and underemployed members of society. Even though there have been major civil rights advancements, like the federal Americans with Disabilities Act and the state Disabled Persons Act, people with disabilities are underrepresented in state civil service. Without equal employment opportunities, many persons with disabilities are forced to rely on public benefits and services. Unfortunately, state agencies have failed to ensure that persons with disabilities are afforded equal opportunities and the benefits and privileges of state employment. One reason for that failure is that LEAP has not been effectively implemented and does not practically support the hiring of persons with disabilities.

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 2328 (C. Garcia, 2020), was substantially similar to this bill. The Assembly Public Employment and Retirement Committee held the bill in committee before its first hearing.

AB 365 (C. Garcia, 2019), was similar to this bill. The Governor vetoed the bill stating in his veto message:

Being inclusive and accommodating of people with disabilities is critical to creating a diverse workforce. Assembly Bill 365, however, would make permanent, at a significant cost, a pilot program that is still in need of improvement. Furthermore, this effort can be addressed administratively.

As a result, I am directing the Government Operations Agency, in collaboration with CalHR, to ensure that disability policies are included in the newly established Diversity Taskforce. This Taskforce has been created in order to ensure we achieve a state workforce that reflects the Californians we serve. The Taskforce will bring together civil and public servants to improve the State's hiring and retention of persons with disabilities, among other diversity issues.

For these reasons, I am unable to sign this bill but remain determined in our efforts to address this important issue.

SUPPORT

Disability Rights California (*Sponsor*)
The Association of Regional Center Agencies
Association of State Employees with Disabilities
California Council of the Blind
State Council on Developmental Disabilities

OPPOSITION

None on file.

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