
THIRD READING

Bill No: AB 313
Author: Cristina Garcia (D)
Amended: 9/3/21 in Senate
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 5-0, 7/12/21
AYES: Cortese, Ochoa Bogh, Durazo, Laird, Newman

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/26/21
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, McGuire

ASSEMBLY FLOOR: 78-0, 5/27/21 - See last page for vote

SUBJECT: Civil service: Limited Examination and Appointment Program

SOURCE: Disability Rights California

DIGEST: This bill seeks to increase employment of individuals with disabilities (IWDs) in state employment by requiring the California Department of Human Resources (CalHR) to review department affirmative action employment plans for IWDs; approve or modify such plans if found deficient; identify departments that consistently fail to meet employment goals for IWDs; and work with identified departments to develop action plans within 180 days to address the department's deficiencies.

Senate Floor Amendments of 9/3/21 (1) eliminate from the required report the data on the retention of state employee IWDs during the three-year period ending June 30, 2022; (2) require CalHR to submit the report's data with an existing required report on the state's efforts regarding state employment of IWDS; and (3) require state departments' equal opportunity programs to include a reasonable accommodation policy.

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. (California Constitution. 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. (California Constitution. 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 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) Declares that it is the state's policy:
 - a) To encourage and enable IWDs to participate fully in the social and economic life of the state and to engage in remunerative employment. (GC § 19230 (a))
 - b) That public employers, including employers supported in whole or in part by public funds, shall employ qualified IWDs on the same terms and conditions as the nondisabled, consistent with applicable state or federal law. (GC § 19230 (b))
 - c) That a department, agency, or commission shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee who is an IWD, unless the hiring authority can demonstrate that the accommodation would impose an undue hardship on the operation of its program. A department shall not deny any employment opportunity to a qualified applicant or employee who is an IWD if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the applicant or employee. (GC § 19230 (c))
- 10) Requires each state agency to be responsible for establishing an effective affirmative action program to ensure IWDs, who are capable of remunerative employment, access to positions in state service on an equal and competitive basis with the general population. (GC § 19232)
- 11) Requires each state agency to develop and implement an affirmative action employment plan for IWDs, which shall include goals and timetables. The agency shall set these goals and timetables annually for disabilities identified pursuant to guidelines established by CalHR, and shall submit them to CalHR no later than June 1 of each year for review and approval or modification. The agency shall make goals and timetables available to the public upon request. (GC § 19232)
- 12) Requires CalHR to do the following:

- a) Outline specific actions to improve the representation of IWDs in the state workforce and to ensure equal and fair employment practices for employees who are IWDs. (GC § 19233 (a))
 - b) Survey the number of IWDs in each department by at least job category and salary range for the purpose of developing goals and timetables, as specified, and compare those numbers with the number of IWDs in the workforce. (GC § 19233 (b))
 - c) Establish guidelines for state agencies and departments to set goals and timetables to improve the representation of IWDs in the state workforce. Agencies and departments shall set goals and timetables by at least job category. (GC §19233 (c))
- 13) 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 IWDs to compete for a position in state service by proving eligibility and meeting other specified criteria (GC §19240 et seq.).
 - 14) 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).
 - 15) Establishes the State Civil Service Equal Employment Opportunity Program and requires each state agency to be responsible for an effective equal employment opportunity program. Existing law also requires CalHR to be responsible for statewide advocacy, coordination, enforcement, and monitoring of these programs. (GC § 19790)

This bill:

- 1) Makes legislative finding and declarations related to state efforts to improve and increase state employment for IWDs
- 2) Clarifies that each state agency is responsible for developing its own reasonable accommodation policy, consistent with state and federal law, to address requests for reasonable accommodations.
- 3) Requires CalHR to review by December 31 of each year agencies' affirmative action employment plans for IWDs, as specified, and to approve the plan or require appropriate modifications as necessary to set forth goals that will result

in a significant increase in hiring of IWDs and effective strategies to achieve those goals.

- 4) Requires CalHR to identify agencies and departments that have consistently failed to make progress in increasing their representation of IWDs and work with those agencies or departments to develop, within 180 days, action plans to address the deficiencies.
- 5) Requires CalHR to report by December 31, 2025, to the Legislature on all of the following:
 - a) The number of IWDs hired by each appointing power during the three-year period ending June 30, 2025, and a comparison to the hiring of IWDs in the three-year period ending June 30, 2022.
 - b) The names of departments or agencies required to submit corrected affirmative action plans and a summary of these plans and an analysis of their effectiveness.
 - c) A description of recommendations from the Governor's Diversity Task Force related to employment of IWDs that departments and agencies have implemented.
 - d) Recommendations for future efforts to improve the hiring of IWDs for all state agencies. In formulating recommendations for future action, the department shall consult with the Department of Rehabilitation, the State Council on Developmental Disabilities, and organizations representing IWDs.
- 6) Requires CalHR to submit the report's information in conjunction with information reportable under existing required information on the state's efforts to address employment of IWDs and in an existing report.
- 7) Provides that the provision requiring the CalHR report sunsets on December 31, 2029.
- 8) Requires each state agency and department's equal opportunity program to include a reasonable accommodation policy
- 9) Requires CalHR to be responsible for the development of model policies, including a model policy on reasonable accommodation.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, CalHR indicates that it would incur ongoing General Fund of an unknown magnitude to implement the provisions of the bill. The department would require additional staff to (1) develop new policies, procedures, and training for departments, (2) review department duty statements, and (3) analyze and report annual outcomes. A precise estimate of the additional costs has yet to be determined.

SUPPORT: (Verified 9/2/21)

Disability Rights California (source)
Association of California State Employees with Disabilities
Association of Regional Center Agencies
California Council of the Blind
California Foundation for Independent Living Centers
Disability Rights Education and Defense Fund
State Council on Developmental Disabilities

OPPOSITION: (Verified 9/2/21)

None received

ARGUMENTS IN SUPPORT: 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.”

ASSEMBLY FLOOR: 78-0, 5/27/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra,

Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

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