Assembly Bill No. 365

Passed the Assembly  September 9, 2019

________________________________________

Chief Clerk of the Assembly

Passed the Senate  September 4, 2019

________________________________________

Secretary of the Senate

This bill was received by the Governor this _____ day of ________________, 2019, at _____ o’clock ___м.

________________________________________

Private Secretary of the Governor
CHAPTER ______

An act to amend Sections 19057.1, 19241.5, 19242.05, and 19242.3 of, to amend and repeal Sections 19240, 19241, 19242, and 19242.2 of, to add and repeal Section 19238 of, and to add Article 4 (commencing with Section 19245) to Chapter 5.5 of Part 2 of Division 5 of Title 2 of, the Government Code, relating to state employment.

LEGISLATIVE COUNSEL’S DIGEST

AB 365, Cristina Garcia. State civil service: examination and hiring processes.

(1) Existing law creates the Department of Human Resources, which succeeds to and is vested with all of the powers and duties exercised and performed by the Department of Personnel Administration. Existing law specifically grants the department the powers, duties, and authority necessary to operate the state civil service system in accordance with Article VII of the California Constitution, the Government Code, the merit principle, and applicable rules duly adopted by the State Personnel Board.

Existing law requires the State Personnel Board to prescribe rules consistent with a merit-based civil service system to govern classifications, examinations, probationary periods, disciplinary actions, appointments, and other matters related to the board’s authority under the California Constitution.

Under existing state civil service law, the Department of Human Resources administers the Limited Examination and Appointment Program (LEAP) to provide an alternative to the traditional civil service examination and appointment process to facilitate the hiring of persons with disabilities. Until January 1, 2021, the program includes persons with a developmental disability, as defined. Existing law, until January 1, 2021, specifies that LEAP is a voluntary, additional method of applying for state employment and is not a mandate on any state agency employer or job applicant, except as specified. Existing law also, until January 1, 2021, requires the department to develop and create an internship program, in coordination with specified state entities, and establish several related requirements to that effect.
This bill would extend all of the above described LEAP program provisions indefinitely.

(2) Existing law requires the Department of Human Resources, when an appointing power seeks to fill a vacant position by using an employment list, to provide the appointing power with a certified list of the names and addresses of all eligible candidates whose scores at the time of certification represent the 3 highest ranks on the list and who have indicated a willingness to accept appointment. Under existing law, if there is more than one employment list or LEAP referral list, the department is required to provide a single certified list of eligible candidates that combines the names and addresses of all eligible candidates.

This bill would authorize an appointing power to fill a vacancy by making an examination appointment of a candidate from a LEAP referral list. The bill would also require the department, upon request of the appointing power, to provide the appointing power the referral list without combining that list with any parallel employment list.

The bill would also require the Department of Human Resources, by July 1, 2020, after consultation with specified state entities and organizations representing persons with disabilities, to develop and implement a plan for expansion of LEAP. The bill would require the plan to identify statewide classifications that are not currently in the LEAP program, as specified, and to ensure that all statewide classifications are designated as LEAP-certified classes by June 30, 2022.

The bill would authorize an individual who is eligible for LEAP to request the Department of Human Resources to assess if that individual meets the minimum qualifications and various other criteria for the program, and would require the department, if it concludes the individual meets those qualifications and criteria, to place that individual on the applicable referral list, as provided. The bill would also require the department to post information concerning LEAP on its internet website.

(3) Existing law requires each state agency to develop and implement an affirmative action employment plan for individuals with a disability, including goals and timetables.

The bill, until December 31, 2027, would additionally require the department to identify 5 state agencies or departments which, as of June 2019, have at least 100 employees and have the lowest
representation rate of persons with disabilities, averaged over the 5-year period from July 1, 2014, to June 30, 2019, inclusive. The bill would require the department, by June 30, 2020, to confer with each appointing power and require it to adopt or revise its affirmative action employment plan to ensure that individuals with disabilities have access to positions in state service, and to set new goals and timetables for hiring persons with disabilities. The bill would require each appointing power to specify in that plan 2 or more of specified hiring strategies, and to agree to utilize those strategies by June 30, 2023. The bill would further require the department, by December 31, 2023, in consultation with specified state entities and organizations representing persons with disabilities, to report to the Legislature on the number of persons with disabilities hired by each appointing power, along with other specified information.

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

SECTION 1. Section 19057.1 of the Government Code is amended to read:

19057.1. (a) Except for reemployment lists and State Restriction of Appointment lists, when an appointing power seeks to fill a vacant position by using an employment list, the department shall provide the appointing power with a certified list of the names and addresses of all eligible candidates whose scores at the time of certification represent the three highest ranks on the list and who have indicated a willingness to accept appointment under the conditions of employment specified. If there is more than one employment list or Limited Examination and Appointment Program referral list, the department shall, pursuant to applicable law and board rules, provide a single certified list of eligibles that combines the names and addresses of all eligible candidates.

(b) Notwithstanding subdivision (a) or any other law, an appointing power may fill a vacancy by making an examination appointment of a candidate from a Limited Examination and Appointment Program referral list. The department shall, if requested by the appointing power, provide to the appointing power a Limited Examination and Appointment Program referral list without combining it with any parallel employment list, as described in subdivision (a) of Section 19242.2.
For purposes of ranking, scores of eligible candidates on employment lists covered by this section shall be rounded to the nearest whole percent. A rank shall consist of one or more eligible candidates with the same whole percentage score.

If the names on the list from which certification is being made represent fewer than three ranks, then, consistent with board rules, additional eligible candidates may be certified from the various lists next lower in order of preference until names from three ranks appear. If there are fewer than three names available for certification, and the appointing authority does not choose to appoint from among these, the appointing authority may demand certification of three names. In that case, examinations shall be conducted until at least three names may be certified by the procedure described in this section, and the appointing authority shall fill the position by appointment of one of the persons certified.

(d) Fractional examination scores shall be provided to, and used by, the Department of the California Highway Patrol for its peace officer classes.

(e) The department may, consistent with board rules, provide for certifying more or less than three ranks where the size of the certified group is disproportionate to the number of vacancies.

SEC. 2. Section 19238 is added to the Government Code, to read:

19238. The department shall identify the five state agencies or departments which, as of June 2019, have 100 or more employees and have the lowest representation rate of persons with known disabilities, averaged over the five-year period from July 1, 2014, through June 30, 2019.

(a) By June 30, 2020, the department shall confer with each appointing power and require it to adopt or revise the plan required pursuant to Section 19232 to set new goals and timetables for hiring persons with disabilities. As part of the plan, each appointing power shall specify two or more of the following hiring strategies, and shall agree to utilize them until at least June 30, 2023:

(1) Use LEAP-only hiring for any hiring in classifications if parallel LEAP-certified classes are available.

(2) Work with its disability advisory committee and the department to identify department-specific classifications that can be designated as LEAP-certified classes and commit to hiring from LEAP for those classes.
(3) 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.

(4) 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.

(5) Make vacant positions available for internships for persons with disabilities and make every effort to hire those who successfully complete the internships.

(6) Expand outreach to the disability community and agree that no hiring process will proceed unless qualified individuals with disabilities are adequately represented in the applicant pool.

(7) Work with the department to review all duty statements to ensure that they do not use discriminatory criteria.

(8) Consult with the Department of Rehabilitation, the State Council on Developmental Disabilities, the State Independent Living Council, and other state agencies or organizations with expertise in employment of persons with disabilities, and implement any strategy recommended by such agency or organization that the department and the appointing power, after consultation with organizations representing persons with disabilities, determine to be potentially effective in hiring persons with disabilities.

(b) The department shall promptly make the plans developed or amended pursuant to subdivision (a) available as public records.

(c) By December 31, 2023, the department, in consultation with the State Personnel Board, the Department of Rehabilitation, the State Council on Developmental Disabilities, and organizations representing persons with disabilities, shall report to the Legislature on the number of persons with disabilities hired by each appointing power that have developed plans described in subdivision (a) during the three-year period ending June 30, 2023, the number retained as of the end of that period, a comparison to the hiring of persons with disabilities by the same agency in the three-year period ending June 30, 2020, an analysis of which strategies were most effective, and recommendations for future efforts to improve the hiring of persons with disabilities for all state agencies.
(d) (1) A report required to be submitted under subdivision (c) shall be submitted in compliance with Section 9795 of the Government Code.

(2) Pursuant to Section 10231.5 of the Government Code, this section is repealed on December 31, 2027.

SEC. 3. Section 19240 of the Government Code, as amended by Section 2 of Chapter 356 of the Statutes of 2015, is amended to read:

19240. (a) The department, consistent with board rules, shall be responsible for the administration of the Limited Examination and Appointment Program. This program shall provide an alternative to the traditional civil service examination and appointment process to facilitate the hiring of persons with disabilities in the state civil service.

(b) For purposes of this article, the following terms have the following meanings:

(1) “Developmental disability” has the definition set forth in Section 4512 of the Welfare and Institutions Code.

(2) “Disability” has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(3) “LEAP” means the Limited Examination and Appointment Program implemented and administered by the department pursuant to this chapter.

(4) “Person with a developmental disability” means a person who the State Department of Developmental Services deems eligible for services pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and who is a consumer of a regional center pursuant to Chapter 5 (commencing with Section 4620) of the act.

(c) Notwithstanding subdivision (b), if the definition of “disability” used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of persons with a mental or physical disability, as defined in subdivision (b), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definition in subdivision (b). The definition of “disability” contained in subdivision (b) shall not be deemed to refer to or include conditions excluded from the federal
definition of “disability” pursuant to Section 511 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

SEC. 4. Section 19240 of the Government Code, as added by Section 3 of Chapter 356 of the Statutes of 2015, is repealed.

SEC. 5. Section 19241 of the Government Code, as amended by Section 4 of Chapter 356 of the Statutes of 2015, is amended to read:

19241. The department, consistent with board rules, shall be responsible for the implementation of this chapter, which may provide for the establishment of eligibility criteria for participation, special job classifications, examination techniques, and the creation of a LEAP internship program for persons with developmental disabilities in coordination with the State Department of Developmental Services and the Department of Rehabilitation, and appointment and appeals procedures.

SEC. 6. Section 19241 of the Government Code, as amended by Section 161 of Chapter 86 of the Statutes of 2016, is repealed.

SEC. 7. Section 19241.5 of the Government Code is amended to read:

19241.5. This chapter establishes the Limited Examination and Appointment Program as a voluntary, additional method of applying for state employment and is not a mandate on any state agency employer or job applicant except to the extent specifically directed by the board.

SEC. 8. Section 19242 of the Government Code, as amended by Section 7 of Chapter 356 of the Statutes of 2015, is amended to read:

19242. (a) The department or its designee shall conduct competitive examinations to determine the qualifications and readiness of persons with disabilities for state employment. The examinations may include an on-the-job-performance evaluation and any other selection techniques deemed appropriate.

(b) (1) The department or its designee shall permit a person with a developmental disability to choose to complete a written examination or readiness evaluation, or to complete an internship as described in subparagraphs (A) and (B), in order to qualify for service in a position under the Limited Examination and Appointment Program. The use of an internship as a competitive examination of a person with a developmental disability shall consist of both of the following:
(A) Successful completion of an internship with a state agency of at least 512 hours in duration.

(B) Certification by the state agency that the employee has completed the internship and has demonstrated the skills, knowledge, and abilities necessary to successfully perform the requirements of the position.

(2) A person with a developmental disability who successfully completes the examination or internship required by this subdivision is deemed to meet the minimum qualifications, as determined by the board, for the position in which the internship was performed.

(c) Examination results may be ranked or unranked.

SEC. 9. Section 19242 of the Government Code, as added by Section 8 of Chapter 356 of the Statutes of 2015, is repealed.

SEC. 10. Section 19242.05 of the Government Code is amended to read:

19242.05. (a) The LEAP internship program created in accordance with Section 19241 shall be designed to allow persons with developmental disabilities to meet the minimum qualifications of the LEAP classification to which those persons seek an examination appointment. The length of a LEAP internship shall be for a minimum period of 512 working hours.

(b) A person with a developmental disability who successfully completes a LEAP internship upon certification by the appointing power shall be considered as meeting the referral requirements necessary to be eligible for an examination appointment, as specified in Section 19242.2, without being required to pass a written examination or readiness evaluation.

(c) The LEAP internship program may be accessed as an unpaid or paid internship if the state agency providing the internship has available funding authority within its personnel budget.

SEC. 11. Section 19242.2 of the Government Code, as amended by Section 10 of Chapter 356 of the Statutes of 2015, is amended to read:

19242.2. (a) The department or its designee shall refer the names of persons with disabilities who meet eligibility criteria for participation and the minimum qualifications of the job classification and any other requirements deemed appropriate by the board to appointing powers for examination appointments. At the request of the appointing power, the department shall furnish
a referral list described in this subdivision without combining it with parallel employment lists pursuant to Section 19057.1. Notwithstanding any other law, and to provide for appropriate job-person placement, all candidates meeting referral requirements shall be eligible for examination appointment. The department may prescribe the method for referring names to appointing powers.

(b) (1) The department or its designee shall refer the names of persons with developmental disabilities to appointing powers for selection for participation in an internship examination as set forth in subdivision (b) of Section 19242.

(2) The department or its designee may refer the names of persons with developmental disabilities who have successfully completed an internship examination to appointing powers for consideration for appointment in the same job classification as the position in which the applicant successfully completed that applicant’s internship.

(3) The department may prescribe the method for referring names to appointing powers, including, but not limited to, working with the appointing power to identify positions that could successfully be filled by persons with developmental disabilities.

SEC. 12. Section 19242.2 of the Government Code, as added by Section 11 of Chapter 356 of the Statutes of 2015, is repealed.

SEC. 13. Section 19242.3 of the Government Code is amended to read:

19242.3. (a) A state agency that provides an internship to a person with a developmental disability or appoints a person with a developmental disability to a position under the Limited Examination and Appointment Program may finance the internship or position with personnel or any other funds available for this purpose and assigned to a vacant or unfilled position. A state agency that transfers funds from a vacant or unfilled position pursuant to this section does not eliminate the vacant or unfilled position, and may return or assign funds to fill the position.

(b) (1) A state agency that provides an internship to a person with a developmental disability or appoints a person with a developmental disability to a position under the Limited Examination and Appointment Program shall allow the person to receive on-the-job support, as determined by the Department of Rehabilitation or the State Department of Developmental Services pursuant to existing rules and the service authorization of those
supported employment programs, as a reasonable accommodation for the person’s disability.

(2) On-the-job supportive services, in addition to the services set forth in subdivision (q) of Section 4851 of the Welfare and Institutions Code, may consist of, but need not be limited to, time spent with a job coach on any of the following:

(A) Conducting job analysis, specific training, and supervision of the intern while the intern is engaged in the internship.

(B) Conducting skills-building training, including, but not limited to, adaptive functional and social skills training and support as necessary to ensure internship adjustment.

(C) Working with families and other support networks to ensure internship adjustment.

(D) Evaluation of performance of the intern, including, but not limited to, communication with the internship supervisor.

(3) The services of the job coach are not the responsibility of the state agency providing the internship, unless the agency is otherwise the direct payer of those services.

(4) In order for the internship to meet the minimum qualifications of the desired position, the internship shall be successfully completed, as set forth in subdivision (b) of Section 19242, in the same job classification as the position the person is applying for.

(5) If a job examination period is required prior to the permanent hiring of a qualified person with a developmental disability, the appointing authority may apply some or all of the internship hours performed to meet some or all of the job examination period requirement.

(6) On-the-job supportive services are allowable to the extent authorized by other state programs and are not the financial or programmatic responsibility of any state agency engaged in establishing the LEAP internship process.

SEC. 14. Article 4 (commencing with Section 19245) is added to Chapter 5.5 of Part 2 of Division 5 of Title 2 of the Government Code, to read:

Article 4. LEAP Expansion Plan

19245. (a) After consultation with the State Personnel Board, the Department of Rehabilitation, the State Department of
Developmental Services, the State Council on Developmental Disabilities, and organizations representing persons with disabilities, the department shall, by July 1, 2020, develop and implement a plan for expansion of the LEAP program. The plan shall do both of the following:

(1) Identify statewide classifications, both entry level and promotional only, which are not currently included in the program, determine those which would 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, 2020, designate at least five additional classifications that would address those needs as new LEAP-certified classes pursuant to board rules.

(2) Ensure that all statewide classifications, determined pursuant to paragraph (1) to offer the greatest potential employment opportunities, are designated as LEAP-certified classes by June 30, 2022.

(b) Upon the request of an individual with a disability who has been determined eligible for the LEAP program that the department assess whether that individual meets the minimum requirements for any job classification, the department shall promptly conduct the requested assessment. If the individual is found to meet the minimum qualifications and the classification has been designated as a LEAP-certified class, the department shall place the individual’s name on the referral list for that classification pursuant to Section 19242.2. If the individual meets the minimum qualifications for the classification but the classification has not been designated as a LEAP-certified class, the department shall promptly designate the classification as a LEAP-certified class and establish a referral list for that class and include the individual’s name in that referral list.

(c) The department shall post on its internet website current information concerning LEAP. The department shall include, but is not limited to, all of the following information on that internet website:

(1) A list of LEAP-certified classes.

(2) Information on how to request an assessment of minimum qualifications pursuant to subdivision (b).

(3) Information about a candidate’s option to disclose or keep that candidate’s LEAP status confidential during the hiring process.
(4) The procedure for disclosing LEAP status if the candidate wishes to do so.
Approved ______________________, 2019

________________________
Governor