

AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1062

Introduced by Assembly Member Jones-Sawyer

February 22, 2013

An act to amend Sections 7299.4, 7299.5, 18210, 18211, 18212, 18214, 18502, 18525.3, 18527, 18528, 18532.1, 18533, 18540, 18544, 18575, 18577, 18654, 18654.5, 18655, 18661, 18670, 18671.1, 18672, 18674, 18676, 18681, 18682, 18804, 18900, 18900.5, 18900.6, 18903, 18930.5, 18931, 18933, 18934, 18936, 18937, 18938.6, 18950, 18950.1, 18951, 18972, 18975, 18976, 19050.4, 19057.1, 19057.2, 19058, 19059, 19062.5, 19082, 19101, 19140, 19140.5, 19141.1, 19143, 19170, 19200, 19253, 19253.5, 19257.5, 19400, 19401, 19402, 19403, 19405, 19574.2, 19582, 19586, 19600, 19600.1, 19630, 19680, 19682, 19703, 19763, 19764, 19770, 19775, 19775.1, 19775.8, 19775.9, 19776, 19786, 19793, 19798, 19800, 19801, 19802, 19802.5, 19803, 19804, 19805, 19806, 19807, 19808, 19809, 19815, 19815.4, 19815.6, 19816.6, 19816.12, 19818.14, 19822.5, 19822.7, 19889, 19889.2, and 19889.3 of, to add ~~Section~~ *Sections 18547 and* 19811 to, to repeal Sections 18538.1, ~~18652~~, 18807, 19406, 19583.51, 19816, 19818.2, 19818.4, and 19889.4 of, and to repeal and add Sections ~~18574~~, 18935, 18940, 18941, and 19052 of, the Government Code, and to amend Section 13601 of the Penal Code, relating to human resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1062, as amended, Jones-Sawyer. Human resources.

Existing law provides that the Department of Human Resources succeeds to and is vested with all of the powers and duties exercised and performed by the Department of Personnel Administration and

powers, duties, and authorities 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.

This bill would transfer certain functions and duties of the board to the department. The bill would also designate the department to share certain functions and duties with the board. The bill would make other related changes.

Existing law exempts State Personnel Board regulations, as defined, from the Administrative Procedure Act, except as specified.

This bill would also exempt a rule, regulation, standard, or procedure of the department that implements or makes specific a provision of a memorandum of understanding, as specified, and instructions, guidelines, manuals, and forms that implement board or department rules.

Existing law, with regard to the civil service, requires 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 would modify the above-mentioned process by deleting certain requirements and would instead require service to be conducted in the manner provided in specified provisions of the Code of Civil Procedure that relate to service of process.

Existing law authorizes the State Personnel Board to hold hearings and make investigations concerning all matters relating to the enforcement and effect of the State Civil Service Act, as specified. Existing law prohibits the board from holding hearings and making investigations on certain disciplinary matters relating to state employees in State Bargaining Unit 5.

This bill would delete the above-mentioned prohibition.

Existing law requires, among other things, the board to render its decision within a reasonable time after the conclusion of a hearing or investigation, except that the period from the filing of the petition to the decision of the board cannot exceed 6 months or 90 days from the time of the submission, whichever time period is less, and except that the board may extend the 6-month period up to 45 additional days.

This bill would instead require the board to reach a decision within 6 months and would delete the board's authorization to extend the 6-month period by 45 additional days.

Existing law requires the State Personnel Board, by resolution, to define the term “salary step” for the purpose of administering civil service laws and rules that control movement of employees between classifications subject to specified requirements.

This bill would repeal these provisions.

Existing law authorizes the State Personnel Board to require various types of documentary evidence in establishing minimum qualifications for determining the identity, fitness, and qualifications of employees for each class of position in the state civil service, for temporary appointments, and for applicants for examination.

This bill would revise these provisions and would additionally require, whenever the law requires that an applicant for a position as a peace officer be screened to ensure that the applicant is free from emotional and mental impairment, that the department or the designated appointing authority undertake the screening subject to the applicant’s right to appeal to the board.

Existing law authorizes the department to refuse to examine or, after examination, to refuse to declare as eligible, or to withhold or withdraw from certification, prior to appointment, anyone who, among other things, is physically or mentally so disabled as to be rendered unfit to perform the duties of the position to which he or she seeks appointment or who is addicted to the use of controlled substances.

This bill would instead authorize the department or a designated appointing power to refuse to examine, or after examination to refuse to declare as eligible, or to withhold or withdraw from an eligible list, before the appointment, anyone who, among other things, was found to be unsuited or not qualified for employment pursuant to rule.

Existing law authorizes an applicant for state employment to elect to avail himself or herself of a specified procedure to take an examination on a different date when the examination is scheduled to be given during the period from sundown on a Friday until sundown on the following day, and it is the practice of an applicant, based upon his religious convictions, to observe the Sabbath during that period.

This bill would repeal these provisions and would instead authorize any applicant for examination to request reasonable accommodation for a disability or sincerely held religious belief pursuant to the Fair Employment and Housing Act or any other applicable law.

Existing law requires the board to provide, by rule, for grant of a blanket waiver of a requirement that would allow a dismissed employee who meets standards to be determined by the board to apply for any

civil service examination so that he or she would not need a separate waiver for each examination.

This bill would repeal these provisions. The bill would authorize any former state employee who was dismissed from state service, as specified, to petition the department to be permitted to take a civil service examination in order to establish eligibility for appointment to state service, as specified.

Existing law requires the appointing power to submit to the department, in accordance with board rules, a statement of the duties of the position, the necessary and desired qualifications of the person to be appointed, and a request that the names of persons eligible for appointment to the position be certified whenever a vacancy in any position is to be filled and not by transfer, demotion, or reinstatement.

This bill would instead require the appointing power to provide any information the department requests including the classification of the position, the number of vacancies to be filled, the tenure and time base of the position, the location of the position, and any other information as the department may require.

Existing law permits any person, except for a current ward of the Division of Juvenile Facilities, a current inmate of the Department of Corrections, or a current patient of a facility operated by the State Department of State Hospitals, with the consent of the State Personnel Board of the appointing power, to file charges against a state employee in State Bargaining Unit 5 requesting that adverse action be taken for one or more causes for discipline, as specified.

This bill would repeal these provisions.

Existing law requires the board to either grant or deny a petition for rehearing a decision within 60 days after service of notice of filing the petition for rehearing.

This bill would instead require the board to either grant or deny a petition within 90 days.

Existing law prohibits a person from bringing a cause of action of any type, as specified, based on or related to any civil service law in this state, or the administration thereof, unless that action is commenced and served within one year after the cause of action first arose. Existing law also provides that where an appeal is taken from a decision of the board, the cause of action does not arise until the final decision of the board has been issued.

This bill would instead require any petition for a writ challenging a decision of the board to be filed within 6 months of the date of the final decision of the board.

Existing law establishes certain rights and benefits that accrue to civil service employees during and after leave for military service, including, but not limited to, appointment and reinstatement rights. Existing law requires that both the State Personnel Board and the Department of Human Resources be responsible for carrying out certain provisions related to leave for military service.

This bill would delete the provisions that require both the State Personnel Board and the Department of Human Resources to be responsible for carrying out certain provisions related to leave for military service.

Existing law requires the State Personal Board to submit a census report to the Governor, the Legislature, and the Department of Finance that includes, among other things, demographic information on employees in the state civil service, as specified, and information to the Legislature on laws that discriminate or have the effect of discriminating on the basis of race, ethnicity, gender, and disability.

This bill would instead require the department to either submit the report to the Governor, the Legislature, and the Department of Finance or to post the data on its Internet Web site. The bill would also delete the requirement that the report include, among other things, identified underutilizations, steps taken to ensure equal employment opportunity in the state civil service, and information to the Legislature on laws that discriminate or have the effect of discriminating on the basis of race, ethnicity, gender, and disability.

Existing law provides that the department succeeds to and is vested with the duties, purposes, responsibilities, and jurisdiction exercised by the California Victim Compensation and Government Claims Board, the Department of General Services, and the Department of Finance, as specified.

This bill would repeal those provisions.

Existing law authorizes the department to designate an appointing power to allocate positions to the Personal Classification Plan, as specified. Existing law authorizes the department to audit any position allocations and to order corrective action.

This bill would instead authorize the department to order corrective action, as specified, only if it finds that an appointing power has allocated positions inappropriately. The bill would also authorize the

Department of Finance to transfer a sufficient number of personnel from the appointing power to the department, as specified, if an appointing power's allocation authority is revoked.

Under existing law, eligibility for appointment to a position in the career executive category of the civil service is required to be established as a result of competitive examination of persons in civil service who meet the minimum qualifications as the State Personnel Board may determine are requisite to the performance of high administrative and policy influencing functions.

This bill would instead require that eligibility for appointment in the class of the career executive category be limited to persons in the civil service who meet the minimum qualifications established for the class.

Existing law requires every state agency, as specified, to employ a sufficient number of qualified bilingual persons in public contact positions to ensure provision of information and services to the public, in the language of the non-English-speaking person. Existing law requires each agency to conduct a survey, related to its bilingual services, of each of its local offices every two years to determine among other things, the number of qualified bilingual employees in public contact positions, as specified. Existing law requires, beginning in 2009 and in every odd-numbered year thereafter, that each state agency develop an implementation plan that, at a minimum, addresses, among other things, the name, position, and contact information of the employee designated by the agency to be responsible for overseeing implementation of the plan.

This bill would require the language survey to also include, among other things, a detailed description of the agency's procedures for identifying written materials that are required to be translated, a detailed description of the agency's procedures for identifying language needs at local offices and assigning qualified bilingual staff to those offices, and a detailed description of how the agency complies with any federal or other state laws that require the provision of linguistically accessible services to the public. The bill would instead only require each agency that serves a substantial number of non-English-speaking people who comprise 5 percent or more of the people served to develop an implementation plan, as specified, in every odd-numbered year.

This bill would also make technical, nonsubstantive changes to these provisions.

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 7299.4 of the Government Code is
2 amended to read:

3 7299.4. (a) Notwithstanding any other provision in this chapter,
4 each state agency shall conduct a language survey and develop
5 and update an implementation plan that complies with the
6 requirements of this chapter.

7 (b) Each agency shall conduct a language survey of each of its
8 local offices every two years to determine and provide all of the
9 following:

10 (1) The name, position, and contact information of the employee
11 designated by the agency responsible for complying with this
12 chapter.

13 (2) The number of public contact positions in each local office.

14 (3) The number of qualified bilingual employees in public
15 contact positions in each local office, and the languages they speak,
16 other than English.

17 (4) The number and percentage of non-English-speaking people
18 served by each local office, broken down by native language.

19 (5) The number of anticipated vacancies in public contact
20 positions.

21 (6) Whether the use of other available options, including
22 contracted telephone-based interpretation services, in addition to
23 qualified bilingual persons in public contact positions, is serving
24 the language needs of the people served by the agency.

25 (7) A list of all written materials that are required to be translated
26 or otherwise made accessible to non- or limited-English-speaking
27 individuals by Sections 7295.2 and 7295.4.

28 (8) A list of materials identified in paragraph (7) that have been
29 translated and languages into which they have been translated.

30 (9) The number of additional qualified bilingual public contact
31 staff, if any, needed at each local office to comply with this chapter.

32 (10) A detailed description of the agency's procedures for
33 identifying written materials that are required to be translated.

34 (11) Each agency shall calculate the percentage of
35 non-English-speaking people served by each local office by
36 rounding the percentage arrived at to the nearest whole percentage
37 point.

1 (12) A detailed description of the agency's procedures for
2 identifying language needs at local offices and assigning qualified
3 bilingual staff to those offices.

4 (13) A detailed description of how the agency recruits qualified
5 bilingual staff in local offices.

6 (14) A detailed description of any training the agency provides
7 to its staff on the provision of services to non- or
8 limited-English-speaking individuals, frequency of training, and
9 date of most recent training.

10 (15) A detailed description of the agency's procedures for
11 accepting and resolving complaints of an alleged violation due to
12 failure to make available translated documents or provide
13 interpreter service through bilingual staff or contract services.

14 (16) A detailed description of how the agency complies with
15 any federal or other state laws that require the provision of
16 linguistically accessible services to the public.

17 (17) Any other relevant information requested by the Department
18 of Human Resources.

19 (c) The language survey results and any additional information
20 requested shall be reported in the form and at the time required by
21 the Department of Human Resources, and delivered to the
22 department not later than October 1 of every even-numbered-year.
23 *year.*

24 (d) Every odd-numbered year, each agency that served a
25 substantial number of non-English-speaking people who comprise
26 5 percent or more of the people served shall develop an
27 implementation plan that provides a detailed description of how
28 the agency plans to address any deficiencies in meeting the
29 requirements of this chapter, including, but not limited to, the
30 failure to translate written materials or employ sufficient numbers
31 of qualified bilingual employees in public contact positions at local
32 offices, the proposed actions to be taken to address the deficiencies,
33 and the proposed dates by when the deficiencies will be remedied.

34 (e) In developing its implementation plan, each state agency
35 may rely upon data gathered from its most recent language survey.

36 (f) Each state agency shall submit its implementation plan to
37 the Department of Human Resources no later than October 1 of
38 each applicable year. The Department of Human Resources shall
39 review each implementation plan, and, if it determines that the
40 implementation plan fails to address the identified deficiencies,

1 shall order the agency to supplement or make changes to its plan.
2 A state agency that has been determined to be deficient shall report
3 to the Department of Human Resources every six months on its
4 progress in addressing the identified deficiencies.

5 (g) If the Department of Human Resources determines that a
6 state agency has not made reasonable progress toward complying
7 with this chapter, the department may issue orders that it deems
8 appropriate to effectuate the purposes of this chapter.

9 SEC. 2. Section 7299.5 of the Government Code is amended
10 to read:

11 7299.5. The Department of Human Resources may exempt
12 state agencies from the requirements of Section 7299.4, where it
13 determines that any of the following conditions apply:

14 (a) The agency's primary mission does not include responsibility
15 for furnishing information or rendering services to the public.

16 (b) The agency has consistently received such limited public
17 contact with the non-English-speaking public that it has not been
18 required to employ bilingual staff under Section 7292 and the
19 agency employs fewer than the equivalent of 25 full-time
20 employees in public contact positions.

21 In order to receive an exemption, each state agency shall petition
22 the Department of Human Resources for the exemption and receive
23 approval in writing by the date established by the department. An
24 agency may receive an exemption for up to five survey cycles, if
25 it demonstrates that it meets the requirements of subdivision (a)
26 or (b), and provides all required documentation to the Department
27 of Human Resources.

28 SEC. 3. Section 18210 of the Government Code is amended
29 to read:

30 18210. The Legislature finds and declares that the purpose of
31 this chapter is to establish procedural requirements for the adoption,
32 amendment, or repeal of regulations of the State Personnel Board
33 and the Department of Human Resources. Nothing in this chapter
34 repeals or diminishes additional requirements imposed by statute.

35 SEC. 4. Section 18211 of the Government Code is amended
36 to read:

37 18211. Regulations adopted by the State Personnel Board and
38 the Department of Human Resources are exempt from the
39 Administrative Procedure Act (Chapter 3.5 (commencing with

1 Section 11340) of Part 1 of Division 3), except as provided in
2 Sections 18215 and 18216.

3 SEC. 5. Section 18212 of the Government Code is amended
4 to read:

5 18212. For the purposes of this chapter, “regulation” means
6 every rule, regulation, order, or standard of general application
7 adopted or amended by the board or the department to implement,
8 interpret, or make specific the law enforced or administered by it,
9 except that the following are not regulations:

10 (a) A rule that constitutes the only legally tenable interpretation
11 of existing law.

12 (b) A decision that does no more than apply a duly adopted law
13 to a particular set of facts.

14 (c) A rule relating only to the internal management of the board
15 or the department that does not in itself significantly affect the
16 rights, privileges, or duties of state employees or other persons.

17 (d) A routine, technical, or procedural instruction or criterion
18 that does not in itself significantly affect the rights, privileges, or
19 duties of state agencies, employees, or other persons.

20 (e) A rule, regulation, standard, or procedure of the department
21 that implements or makes specific a provision of a memorandum
22 of understanding reached pursuant to Section 3517.5.

23 (f) Instructions, guidelines, manuals, and forms that implement
24 board or department rules.

25 SEC. 6. Section 18214 of the Government Code is amended
26 to read:

27 18214. (a) The procedures set forth in subdivisions (b), (c),
28 and (d) shall apply to the adoption of a regulation by either the
29 board or the department concerning all matters not specified in
30 Section 18213, 18215, or 18216.

31 (b) The board or the department shall prepare and submit to the
32 Office of Administrative Law for publication in the California
33 Regulatory Notice Register, 30 days before taking action, a notice
34 of the proposed action.

35 (c) The board or the department shall distribute a notice of the
36 proposed action, 30 days before taking action, to members of the
37 Governor’s cabinet, department heads, employee associations, and
38 persons requesting this notice, and shall make available to the
39 public upon request, all of the following:

40 (1) The notice of proposed action.

1 (2) A copy of the express terms of the proposed regulation,
2 using underline or italics to indicate additions to, and strikeout to
3 indicate deletions from, the California Code of Regulations,
4 followed by a note containing authority and reference citations.

5 (3) A brief statement of reasons for the proposed regulation.

6 (d) The board or the department shall do all of the following:

7 (1) Provide opportunity for written comment to the board or the
8 department, and oral comment at a duly noticed public meeting or
9 hearing.

10 (2) Submit adopted regulations to the Office of Administrative
11 Law for filing with the Secretary of State and publication in the
12 California Code of Regulations.

13 SEC. 7. Section 18502 of the Government Code is amended
14 to read:

15 18502. (a) There is hereby created in state government the
16 Department of Human Resources. The department succeeds to and
17 is vested with the following:

18 (1) All of the powers and duties exercised and performed by
19 the Department of Personnel Administration.

20 (2) Those powers, duties, and authorities necessary to operate
21 the state civil service system pursuant to Article VII of the
22 California Constitution, this code, the merit principle, and
23 applicable rules duly adopted by the State Personnel Board.

24 (b) The State Personnel Board shall prescribe rules consistent
25 with a merit based civil service system to govern classification,
26 examinations, probationary periods, disciplinary actions, and other
27 matters related to the board's authority under Article VII of the
28 California Constitution. The State Personnel Board may conduct
29 audits and investigations of personnel practices of the department
30 and appointing authorities to ensure compliance with civil service
31 policies, procedures, and statutes.

32 (c) This section shall not limit the authority of the Department
33 of Human Resources and the State Personnel Board to delegate,
34 share, or transfer between them responsibilities for programs within
35 their respective jurisdictions pursuant to an agreement.

36 (d) The rules and regulations of the State Personnel Board and
37 of the Department of Personnel Administration shall remain in
38 effect unless and until contradicted by the terms of this chapter or
39 amended or repealed by the board or the Department of Human
40 Resources.

1 SEC. 8. Section 18525.3 of the Government Code is amended
2 to read:

3 18525.3. “Transfer” means both of the following:

4 (a) The appointment of an employee to another position in the
5 same class but under another appointing power.

6 (b) The appointment of an employee to a different class that has
7 substantially the same level of duties, responsibility, and salary as
8 the employee’s current class under the same or another appointing
9 authority.

10 SEC. 9. Section 18527 of the Government Code is amended
11 to read:

12 18527. “Probationer” means an employee who has probationary
13 status. “Probationary status” means the status of an employee who
14 has been certified and appointed from an employment list, or has
15 been reinstated after resignation, or has been transferred or demoted
16 but who has not completed the probationary period.

17 SEC. 10. Section 18528 of the Government Code is amended
18 to read:

19 18528. “Permanent employee” means an employee who has
20 permanent status. “Permanent status” means the status of an
21 employee who is lawfully retained in his position after the
22 completion of the probationary period.

23 SEC. 11. Section 18532.1 of the Government Code is amended
24 to read:

25 18532.1. “Preferred limited term list” means a list of persons
26 who have served under limited-term appointment and who, in
27 accordance with rule, are granted eligibility for additional
28 limited-term appointments.

29 SEC. 12. Section 18533 of the Government Code is amended
30 to read:

31 18533. (a) “Subdivisional promotional list” means a list of
32 persons eligible for certification for a specific class resulting from
33 a promotional examination for a particular subdivision of a state
34 agency.

35 (b) “Departmental promotional list” means a list of persons
36 eligible for certification for a specific class resulting from a
37 promotional examination for a particular state agency.

38 (c) “Multidepartmental promotional list” means a list of persons
39 eligible for certification for a specific class resulting from a
40 promotional examination for a group of state departments.

1 (d) “Servicewide promotional list” means a list of persons
2 eligible for certification for a specific class resulting from a
3 promotional examination for the entire state service.

4 SEC. 13. Section 18538.1 of the Government Code is repealed.

5 SEC. 14. Section 18540 of the Government Code is amended
6 to read:

7 18540. “Armed forces” means the United States Air Force,
8 Army, Navy, Marine Corps, and Coast Guard.

9 SEC. 15. Section 18544 of the Government Code is amended
10 to read:

11 18544. “Duration employment” means an employment during
12 time of war or during an emergency in connection with the national
13 defense, which employment is subject to termination and other
14 conditions as prescribed by Section 19200 and by rules.

15 SEC. 16. Section 18547 of the Government Code is repealed.

16 SEC. 17. Section 18547 is added to the Government Code, to
17 read:

18 18547. “Career executive assignment” means a classification
19 characterized by high-level administrative and policy-influencing
20 duties. The career executive assignment may be used for the top
21 managerial positions of state civil service.

22 SEC. 18. Section 18575 of the Government Code is amended
23 to read:

24 18575. (a) (1) The appointing power shall provide service of
25 the following actions by personal service or by certified mail with
26 return receipt requested or express service carrier as provided in
27 this subdivision:

28 (A) Notice of disciplinary action.

29 (B) Notice of rejection during probationary period.

30 (C) Notice of medical action.

31 (D) Notice of nonpunitive action.

32 (E) Notice of career executive assignment termination.

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

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

37 (H) Notice of termination or automatic resignation of a
38 permanent intermittent employee.

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

1 (2) (A) Personal service shall be made in the manner, and is
2 deemed complete, as provided for in Section 415.10 of the Code
3 of Civil Procedure.

4 (B) Service by certified mail with return receipt requested shall
5 be made in the manner provided for in Section 1020 of the Code
6 of Civil Procedure and is deemed complete as provided for in
7 subdivision (a) of Section 1013 of the Code of Civil Procedure.

8 (C) Service by express service carrier shall be in the manner,
9 and is deemed complete, as provided for in subdivision (c) of
10 Section 1013 of the Code of Civil Procedure.

11 (D) The period to respond to any notice of action provided in
12 paragraph (1) shall be extended as provided in Section 1013 of the
13 Code of Civil Procedure.

14 (b) Service of subpoenas and subpoenas duces tecum shall be
15 made by personal service or by registered mail with return receipt
16 requested as provided in subdivision (a).

17 (c) Service of all other documents shall be made as prescribed
18 by rule.

19 (d) Proof of service shall be by affidavit as provided for in
20 Sections 417.10 and 417.40 of, and subdivision (a) of Section 1013
21 of, the Code of Civil Procedure.

22 SEC. 19. Section 18577 of the Government Code is amended
23 to read:

24 18577. Whenever this part refers to “rule,” “rules,” or makes
25 similar reference, such reference authorizes the board or the
26 department to make rules concerning the subject matter concerning
27 which such reference is made.

28 ~~SEC. 20. Section 18652 of the Government Code is repealed.~~

29 ~~SEC. 21.~~

30 SEC. 20. Section 18654 of the Government Code is amended
31 to read:

32 18654. The intention of the Legislature is hereby declared to
33 be that the executive officer shall perform and discharge under the
34 direction and control of the board the powers, duties, purposes,
35 functions, and jurisdiction vested in the board and delegated to
36 him or her by it.

37 Any power, duty, purpose, function, or jurisdiction that the board
38 may lawfully delegate shall be conclusively presumed to have
39 been delegated to the executive officer unless it is shown that the
40 board by affirmative vote recorded in its minutes specifically has

1 reserved the same for its own action. The executive officer may
2 redelegate to his or her subordinates or to an appointing power he
3 or she designates, unless by board rule or express provision of law
4 he or she is specifically required to act personally.

5 ~~SEC. 22.~~

6 *SEC. 21.* Section 18654.5 of the Government Code is amended
7 to read:

8 18654.5. The executive officer shall administer the civil service
9 statutes and rules, subject to the right of appeal to the board.

10 ~~SEC. 23.~~

11 *SEC. 22.* Section 18655 of the Government Code is amended
12 to read:

13 18655. When any person selected to assist in examinations or
14 to serve as an authorized representative or referee of the board or
15 the department is employed by the State in some other capacity,
16 it is a part of his or her official duties to serve without additional
17 compensation other than his or her actual and necessary traveling
18 expenses.

19 ~~SEC. 24.~~

20 *SEC. 23.* Section 18661 of the Government Code is amended
21 to read:

22 18661. (a) The board may conduct an audit of any appointing
23 authority's personnel practices to ensure compliance with the civil
24 service laws and board regulations. The board may audit selection
25 and examination procedures, appointments, promotions, the
26 management of probationary periods, personal services contracts,
27 discipline and adverse actions, or any other area related to the
28 operation of merit principle in state civil service.

29 (b) When conducting an audit, the board may inspect documents,
30 policies, practices, and procedures of the appointing authority
31 relating to its personnel practices and interview appointing
32 authority staff and witnesses regarding the subject of the audit.
33 Failure by an appointing authority to cooperate with an audit may
34 result in corrective action.

35 (c) Upon completion of the audit, the board may provide a report
36 to the appointing authority and the department, identifying any
37 deficiencies in the appointing authority's personnel practices,
38 policies, and procedures.

39 (d) If the board finds an appointing authority deficient in
40 personnel practices, policies, and procedures, the appointing

1 authority shall be subject to corrective action. The board may order
2 remedies including, but not limited to, any or all of the ~~following~~
3 ~~following~~:

4 (1) Revocation or modification of the terms of the delegation
5 agreement between the appointing authority and the department.

6 (2) That the appointing authority compensate the department
7 for the actual and necessary cost of any and all of the personnel
8 functions the department performs and training and supervision
9 the department provides on behalf of the appointing authority,
10 either permanently or for a specified term.

11 (3) Void examinations administered by the appointing authority,
12 abolish eligibility lists, and void appointments made therefrom.

13 (4) Seek approval from the Department of Finance for
14 redirection to the department of a sufficient number of the
15 appointing authority’s positions to perform all personnel related
16 functions formerly performed by the appointing authority.

17 ~~SEC. 25.~~

18 *SEC. 24.* Section 18670 of the Government Code is amended
19 to read:

20 18670. The board may hold hearings and make investigations
21 concerning all matters relating to the enforcement and effect of
22 this part and rules prescribed under this part. It may inspect any
23 state institution, office, or other place of employment affected by
24 this part to ascertain whether this part and the board rules are
25 obeyed.

26 The board shall make investigations and hold hearings at the
27 direction of the Governor or the Legislature or upon the petition
28 of an employee or a citizen concerning the enforcement and effect
29 of this part and to enforce the observance of Article VII of the
30 Constitution and of this part and the rules made under this part.

31 ~~SEC. 26.~~

32 *SEC. 25.* Section 18671.1 of the Government Code is amended
33 to read:

34 18671.1. (a) If a hearing or investigation is conducted by the
35 board or its authorized representative in regard to an appeal by an
36 employee, the hearing or investigation shall be commenced within
37 a reasonable time after the filing of the appeal. For appeals from
38 actions resulting in the termination of an employee, if an
39 evidentiary hearing has not commenced within six months of the
40 filing of the appeal, the employee may make a written request for

1 a priority hearing by the board. Upon receipt of the written request,
2 the board shall schedule an evidentiary hearing within 60 days of
3 the request at a hearing location designated by the board.

4 (b) The board shall render its decision within a reasonable time
5 after the conclusion of the hearing or investigation, except that the
6 period from the filing of the appeal to the decision of the board
7 shall not exceed ~~six months~~ *months*.

8 (c) The provisions described in subdivision (b) relating to the
9 six-month period for a decision may be waived by the employee
10 but if not so waived, a failure to render a timely decision is an
11 exhaustion of all available administrative remedies.

12 (d) The board may order all of, or a portion of, any hearing to
13 be conducted using electronic media pursuant to board rules.

14 ~~SEC. 27.~~

15 *SEC. 26.* Section 18672 of the Government Code is amended
16 to read:

17 18672. (a) Subpoenas and subpoenas duces tecum may be
18 issued for attendance at a hearing and for production of documents
19 at any reasonable time and place. However, a subpoena shall not
20 be issued to compel attendance of any witness who does not reside
21 within 100 miles of the place where the hearing or investigation
22 is held unless it is shown to the satisfaction of a member of the
23 board, the executive officer, or the person authorized to conduct
24 the investigation or hearing, by affidavit stating the facts, that the
25 witness is a material witness. That statewide subpoena shall be
26 served at least five days prior to the date of hearing.

27 (b) Subpoenas and subpoenas duces tecum shall be issued by
28 the board or its authorized representative at the request of a party.

29 (c) The process extends to all parts of the state and shall be
30 served in accordance with Sections 1987 and 1988 of the Code of
31 Civil Procedure and the service provisions of subdivisions (a) and
32 (b) of Section 68097.1 of the Government Code. A subpoena or
33 subpoena duces tecum may also be delivered by certified mail
34 return receipt requested or by messenger. Service by messenger
35 shall be effected when the witness acknowledges receipt of the
36 subpoena to the sender, by telephone, by mail, or in person, and
37 identifies himself or herself either by reference to date of birth and
38 driver's license number or Department of Motor Vehicles
39 identification number, or the sender may verify receipt of the
40 subpoena by obtaining other identifying information from the

1 recipient. The sender shall make a written notation of the
 2 acknowledgment. A subpoena issued and acknowledged pursuant
 3 to this section has the same force and effect as a subpoena
 4 personally served. Failure to comply with a subpoena issued and
 5 acknowledged pursuant to this section may be punished as a
 6 contempt and the subpoena may so state.

7 (d) No witness is obliged to attend unless the witness is a
 8 resident of the state at the time of service.

9 (e) The custodian of documents that are the subject of a
 10 subpoena duces tecum may satisfy the subpoena by delivery of
 11 the documents or a copy of the documents, or by making the
 12 documents available for inspection or copying, together with an
 13 affidavit in compliance with Section 1561 of the Evidence Code.

14 ~~SEC. 28.~~

15 *SEC. 27.* Section 18674 of the Government Code is amended
 16 to read:

17 18674. Witnesses at a hearing or investigation are entitled to
 18 the same fees as are allowed witnesses in civil cases in courts of
 19 record.

20 An officer serving a subpoena to secure the attendance of those
 21 witnesses shall receive the same mileage as for the service by him
 22 of a writ or paper for the state. The fees and mileage, except in
 23 dismissal or other punitive proceedings where the service is
 24 requested by the accused, need not be prepaid.

25 If a witness is subpoenaed by a state agency or its representative,
 26 the Controller shall draw his warrant for payment of fees and
 27 mileage when the amount is duly proved by affidavit or otherwise
 28 to the satisfaction of the Controller. The Controller may charge
 29 such warrant against any proper fund of that state agency. If a
 30 witness is subpoenaed by the accused or any person other than a
 31 state agency, his fees and mileage shall be paid by that person and
 32 are not proper charges against any state fund.

33 ~~SEC. 29.~~

34 *SEC. 28.* Section 18676 of the Government Code is amended
 35 to read:

36 18676. When ordered to do so, a witness shall not be excused
 37 from testifying or from producing any documentary evidence in
 38 that investigation or hearing upon the ground that the testimony
 39 or documentary evidence required of the witness may tend to
 40 incriminate or subject the witness to penalty or forfeiture, provided

1 the witness has been granted use and derivative use, or transactional
2 immunity by the appropriate law enforcement authority.

3 ~~SEC. 30.~~

4 *SEC. 29.* Section 18681 of the Government Code is amended
5 to read:

6 18681. Whenever any matter is pending before the board
7 involving a dispute between one or more employees and an
8 appointing power and the parties to such dispute agree upon a
9 settlement or adjustment thereof, the terms of such settlement or
10 adjustment may be submitted to the board, and if approved by the
11 board, the disposition of the matter in accordance with the terms
12 of such adjustment or settlement shall become final and binding
13 upon the parties.

14 ~~SEC. 31.~~

15 *SEC. 30.* Section 18682 of the Government Code is amended
16 to read:

17 18682. Whenever any employee, department, or other person,
18 actively interested in a matter before the board and in connection
19 with which it is holding a hearing, requests that the board make
20 findings, then the board shall make findings if the request is made
21 at any time prior to the time the board takes the matter under
22 submission.

23 ~~SEC. 32.~~

24 *SEC. 31.* Section 18804 of the Government Code is amended
25 to read:

26 18804. Upon the reallocation of a position, other than by action
27 of the board under Section 18802, the incumbent of the position
28 shall not thereby gain status in the new class. Change in status of
29 the incumbent may be accomplished only in accordance with the
30 appropriate sections of this part and rules relating to transfer,
31 demotion, or promotion.

32 ~~SEC. 33.~~

33 *SEC. 32.* Section 18807 of the Government Code is repealed.

34 ~~SEC. 34.~~

35 *SEC. 33.* Section 18900 of the Government Code is amended
36 to read:

37 18900. (a) Eligible lists shall be established as a result of free
38 competitive examinations open to persons who lawfully may be
39 appointed to any position within the class for which these
40 examinations are held and who meet the minimum qualifications

1 requisite to the performance of the duties of that position as
2 prescribed by the specifications for the class or by rule.

3 (b) The department may limit the size of candidate groups in
4 entry-level and nonpromotional examinations when doing so would
5 be in the best interest of the state and effective competition can
6 occur among a smaller number of applicants.

7 ~~SEC. 35.~~

8 *SEC. 34.* Section 18900.5 of the Government Code is amended
9 to read:

10 18900.5. For purposes of this part, “designated appointing
11 power” means an appointing power designated by the department
12 under Section 18930.5.

13 ~~SEC. 36.~~

14 *SEC. 35.* Section 18900.6 of the Government Code is amended
15 to read:

16 18900.6. (a) The department may authorize the use of
17 skills-based certification for information technology classifications
18 if all of the following conditions are satisfied:

- 19 (1) There is a job analysis that meets legal ~~standards.~~ *standards.*
- 20 (2) The class is used on a servicewide basis.
- 21 (3) The class is broad and includes a number of distinct
22 assignments.
- 23 (4) It is in the best interest of the state to use skills-based
24 certification.

25 (b) For purposes of this section, “skills-based certification”
26 means the creation of a unique certification list for each vacancy
27 within a class. Skills-based certification is created by weighting
28 the scores attained by competitors of all measured knowledge,
29 skills, and abilities to reflect their relative importance to the job,
30 as identified by a job analysis for each vacancy. Skills-based
31 certification shall replace the single eligible list for a classification
32 with an unique list of eligible individuals for each vacancy.
33 Skills-based certification shall determine the order of individuals
34 on a certification list; it shall not affect the rules for using
35 certification lists.

36 (c) The department shall also promulgate regulations specifying
37 how skills-based certification shall be implemented. Among other
38 things, these regulations shall include provisions to ensure fairness
39 to all candidates and prevent improper manipulation.

1 ~~SEC. 37.~~

2 *SEC. 36.* Section 18903 of the Government Code is amended
3 to read:

4 18903. (a) For each class there shall be maintained a general
5 reemployment list consisting of the names of all persons who have
6 occupied positions with probationary or permanent status in the
7 class and who have been legally laid off or demoted in lieu of
8 layoff.

9 (b) Within one year from the date of his or her resignation in
10 good standing, or his or her voluntary demotion, the name of an
11 employee who had probationary or permanent status may be placed
12 on the general reemployment list with the consent of the appointing
13 power and the department. The general reemployment list may
14 also contain the names of persons placed thereon by the department
15 in accordance with other provisions of this part.

16 ~~SEC. 38.~~

17 *SEC. 37.* Section 18930.5 of the Government Code is amended
18 to read:

19 18930.5. The department may designate an appointing power
20 to design, announce, or administer examinations for the
21 establishment of employment lists in accordance with Section
22 18654 and board rule. The department may audit examinations
23 and order corrective action, including withdrawing or limiting the
24 authority previously exercised by the designated appointing
25 authority, or nullify any examination or parts thereof which have
26 been conducted improperly.

27 A designated appointing power may contract with the department
28 or another designated appointing power for the purpose of
29 designing, publicizing, or administering an examination.

30 ~~SEC. 39.~~

31 *SEC. 38.* Section 18931 of the Government Code is amended
32 to read:

33 18931. (a) The board shall establish minimum qualifications
34 for determining the fitness and qualifications of employees for
35 each class of position. The department may require applicants for
36 examination or appointment to provide documentation as it deems
37 necessary to establish the applicants' qualifications.

38 (b) Whenever the law requires that an applicant for a position
39 as a peace officer be screened to ensure that the applicant is free
40 from emotional and mental impairment, the department or the

1 designated appointing authority shall undertake such screening
2 subject to the applicant’s right to appeal to the board.

3 ~~SEC. 40.~~

4 *SEC. 39.* Section 18933 of the Government Code is amended
5 to read:

6 18933. (a) Within a reasonable time before the scheduled date,
7 the department or a designated appointing power shall announce
8 or advertise examinations for the establishment of eligible lists.

9 The announcement shall include the following:

- 10 (1) The date and place of the examination.
- 11 (2) The nature of the minimum qualifications.
- 12 (3) The general scope of the examination.
- 13 (4) The relative weight of its several parts if more than one type
14 of test is to be utilized.
- 15 (5) Any other information the department deems proper.

16 (b) The department shall notify the Department of Veterans
17 Affairs when any promotional examination for the establishment
18 of an eligible list is announced or advertised to eligible candidates.
19 The notification shall state the job position and include all of the
20 information listed in paragraphs (1) to (5), inclusive, of subdivision
21 (a).

22 ~~SEC. 41.~~

23 *SEC. 40.* Section 18934 of the Government Code is amended
24 to read:

25 18934. Every applicant for examination shall file an application
26 with the department or a designated appointing power as directed
27 in the examination announcement. Applications shall be accepted
28 free of any charge to the applicant. Such applications when filed
29 and all other examination materials, including examination
30 questions and any written material, are the property of the
31 department and are confidential records not open to inspection
32 except as provided by law.

33 The application shall include a place for listing volunteer
34 experience and such experience shall be considered if it is relevant
35 to the position being applied for and shall state that relevant
36 volunteer experience will be given consideration as qualifying
37 experience for state employment.

38 ~~SEC. 42.~~

39 *SEC. 41.* Section 18935 of the Government Code is repealed.

1 ~~SEC. 43.~~

2 *SEC. 42.* Section 18935 is added to the Government Code, to
3 read:

4 18935. (a) The department or a designated appointing power
5 may refuse to examine, or after examination may refuse to declare
6 as eligible, or may withhold or withdraw from an eligible list,
7 before the appointment, anyone who meets any of the following
8 criteria:

9 (1) Lacks any of the requirements for the examination or position
10 for which he or she applied.

11 (2) Has been dismissed from any position for any cause that
12 would be a cause for dismissal from state service.

13 (3) Has resigned from any position not in good standing in order
14 to avoid dismissal.

15 (4) Has misrepresented himself or herself in the application or
16 examination process, including permitting another person to
17 complete or attempt to complete a portion of the examination on
18 his or her behalf.

19 (5) Has been found to be unsuited or not qualified for
20 employment pursuant to rule.

21 (b) The remedies provided in this section are not exclusive and
22 shall not prevent the board, department, or appointing power from
23 taking additional actions pursuant to Chapter 10 (commencing
24 with Section 19680).

25 ~~SEC. 44.~~

26 *SEC. 43.* Section 18936 of the Government Code is amended
27 to read:

28 18936. The final earned rating of each person competing in
29 any examination shall be determined by the weighted average of
30 the earned ratings on all phases of the examination, according to
31 the weights for each phase established by the department or a
32 designated appointing power in advance of the giving of the
33 examination and published as a part of the announcement of the
34 examination.

35 The department or a designated appointing power may set
36 minimum qualifying ratings for each phase of an examination and
37 may provide that competitors failing to achieve such ratings in any
38 phase shall be disqualified from any further participation in the
39 examination.

1 ~~SEC. 45.~~

2 *SEC. 44.* Section 18937 of the Government Code is amended
3 to read:

4 18937. The passing mark for an examination may be other than
5 the true percentage or average published as a part of the
6 announcement of the examination, if deemed by the department
7 or a designated appointing power to be justified in order to provide
8 an adequate eligible list or to adjust for the apparent difficulty of
9 an examination. In establishing any eligible list or promotional list
10 following an examination, the names of the persons who have
11 attained the passing mark in such examination shall be placed on
12 the list in the order of final earned ratings, except as such order
13 may be modified by the application of veterans' preferences. When
14 the order of names has been determined after applying the
15 appropriate veterans' preference credits, the department may
16 thereafter limit to suit the needs of the service the number of names
17 to be placed on the employment list.

18 ~~SEC. 46.~~

19 *SEC. 45.* Section 18938.6 of the Government Code is amended
20 to read:

21 18938.6. The department or designated appointing power shall
22 provide for the inspection of examination papers for all written
23 test competitors.

24 ~~SEC. 47.~~

25 *SEC. 46.* Section 18940 of the Government Code is repealed.

26 ~~SEC. 48.~~

27 *SEC. 47.* Section 18940 is added to the Government Code, to
28 read:

29 18940. Any applicant for examination may request reasonable
30 accommodation for a disability or sincerely held religious belief
31 pursuant to the Fair Employment and Housing Act or any other
32 applicable law. The department may prescribe rules governing
33 those requests.

34 ~~SEC. 49.~~

35 *SEC. 48.* Section 18941 of the Government Code is repealed.

36 ~~SEC. 50.~~

37 *SEC. 49.* Section 18941 is added to the Government Code, to
38 read:

39 18941. Any former state employee who was dismissed from
40 state service pursuant to Chapter 7 (commencing with Section

1 19500) of Division 5 of this part may petition the department to
2 be permitted to take a civil service examination in order to establish
3 eligibility for appointment to state service. The department may
4 grant such a petition for a particular examination or may grant the
5 petition for any or all future examinations. If the department denies
6 the petition, the former state employee may appeal that decision
7 to the board.

8 ~~SEC. 51.~~

9 *SEC. 50.* Section 18950 of the Government Code is amended
10 to read:

11 18950. Vacancies in positions shall be filled insofar as
12 consistent with the best interests of the state from among employees
13 holding positions in appropriate classes, and appropriate
14 promotional lists shall be established to facilitate this purpose,
15 except as provided in Section 18930. Examinations shall be held
16 on an open, nonpromotional basis when, in the judgment of the
17 department or designated appointing power, open competition will
18 produce eligible lists with more highly skilled qualified candidates
19 and is consistent with the best interests of the state.

20 The department may prescribe conditions under which state
21 employees, persons on leave of absence, and persons whose names
22 are on appropriate reemployment lists, may be permitted to
23 compete in promotional examination and to attain eligibility for
24 appointment.

25 The department may further prescribe conditions under which
26 eligibility may be transferred from one promotional list to another
27 promotional list when such lists are for the same class and have
28 been established as a result of the same or a similar examination.

29 ~~SEC. 52.~~

30 *SEC. 51.* Section 18950.1 of the Government Code is amended
31 to read:

32 18950.1. Notwithstanding any other law, full-time employees
33 of the state who are exempt from state civil service pursuant to the
34 provisions of Section 4 of Article VII of the California
35 Constitution, shall be eligible to receive three career credits, except
36 when competing for managerial positions, as defined in Section
37 3513, under conditions prescribed by the department.

38 Such credits shall be granted only for open nonpromotional
39 examinations. In order to be eligible to receive credits, such

1 employees must meet all qualification requirements specified and
 2 must have 12 consecutive months of service in an exempt position.

3 ~~SEC. 53.~~

4 *SEC. 52.* Section 18951 of the Government Code is amended
 5 to read:

6 18951. The board, department, and each state agency and
 7 employee shall encourage economy and efficiency in and devotion
 8 to state service by encouraging promotional advancement of
 9 employees showing willingness and ability to perform efficiently
 10 services assigned them, and every person in state service shall be
 11 permitted to advance according to merit and ability.

12 In an examination held on an open, nonpromotional basis under
 13 the provisions of Section 18950, a competitor, who has permanent
 14 civil service status, or who has a mandatory right of reinstatement
 15 to a position with permanent civil service status, and who attains
 16 the passing mark established for an examination which is not for
 17 a managerial position as defined in Section 3513, shall have three
 18 credits added to his or her earned score. Such credits shall be
 19 known as career credits.

20 ~~SEC. 54.~~

21 *SEC. 53.* Section 18972 of the Government Code is amended
 22 to read:

23 18972. For specific state services or employments as
 24 determined by the department, it may in examination allow general
 25 or individual preference in ratings to veterans who have suffered
 26 permanent disability in *the* line of duty, if such disability will not
 27 prevent the proper performance of the duties required under such
 28 service or employment, and if such disability is of record in the
 29 files of the United States Veterans' Administration.

30 ~~SEC. 55.~~

31 *SEC. 54.* Section 18975 of the Government Code is amended
 32 to read:

33 18975. In any examinations to establish employment lists in
 34 which credits are allowed for experience, periods of service in the
 35 recognized military service shall be counted by the department
 36 and designated appointing authority as experience upon a showing
 37 by the veteran that such service involved duties and responsibilities
 38 of the kind for which credit for experience is being allowed.

1 ~~SEC. 56.~~

2 *SEC. 55.* Section 18976 of the Government Code is amended
3 to read:

4 18976. Request for and proof of eligibility for veterans'
5 preference credits shall be submitted by the veteran to the
6 department or designated appointing power conducting the
7 employment examination. The procedures and time of filing the
8 request shall be subject to rules promulgated by the department,
9 in consultation with the Department of Veterans Affairs.

10 ~~SEC. 57.~~

11 *SEC. 56.* Section 19050.4 of the Government Code is amended
12 to read:

13 19050.4. A transfer may be accomplished without examination
14 pursuant to rule. The department or appointing authority may
15 require an employee to demonstrate in an examination that he or
16 she possesses any additional or different requirements that are
17 included in the minimum qualifications of the class to which the
18 employee is transferring.

19 ~~SEC. 58.~~

20 *SEC. 57.* Section 19052 of the Government Code is repealed.

21 ~~SEC. 59.~~

22 *SEC. 58.* Section 19052 is added to the Government Code, to
23 read:

24 19052. Whenever a vacancy in any position is to be filled and
25 not by transfer, demotion, or reinstatement, the appointing power
26 shall provide any information the department requests, including
27 the classification of the position, the number of vacancies to be
28 filled, the tenure and time base of the position, the location of the
29 position, and any other information as the department may require.

30 ~~SEC. 60.~~

31 *SEC. 59.* Section 19057.1 of the Government Code is amended
32 to read:

33 19057.1. Notwithstanding Section 19057, for positions in
34 classes designated as professional, scientific, or administrative, or
35 for any open employment list, there shall be certified to the
36 appointing power the names and addresses of all those eligibles
37 whose scores, at time of certification, represent the three highest
38 ranks on the employment list for the class, and who have indicated
39 their willingness to accept appointment under the conditions of
40 employment specified.

1 For purposes of ranking, scores of eligibles on employment lists
2 for these classes shall be rounded to the nearest whole percent. A
3 rank shall consist of one or more eligibles with the same whole
4 percentage score.

5 If the names on the list from which certification is being made
6 represent fewer than three ranks, then additional eligibles shall be
7 certified from the various lists next lower in order of preference
8 until names from three ranks appear. If there are fewer than three
9 names available for certification, and the appointing authority does
10 not choose to appoint from among these, the appointing authority
11 may demand certification of three names. In that case, examinations
12 shall be conducted until at least three names may be certified by
13 the procedure described in this section, and the appointing authority
14 shall fill the position by appointment of one of the persons certified.

15 Fractional examination scores shall be provided to, and used by,
16 the Department of the California Highway Patrol for its peace
17 officer classes.

18 The department may provide for certifying less than three ranks
19 where the size of the certified group is disproportionate to the
20 number of vacancies.

21 ~~SEC. 61.~~

22 *SEC. 60.* Section 19057.2 of the Government Code is amended
23 to read:

24 19057.2. Notwithstanding the provisions of Section 19057, for
25 positions in classes designated as management, there shall be
26 certified to the appointing power the names and addresses of all
27 those applicants whose scores, at the time of certification, represent
28 the three highest ranks on the employment list for the class, and
29 who have indicated their willingness to accept appointment under
30 the conditions of employment specified.

31 For purposes of ranking, scores of eligibles on employment lists
32 for such classes shall be divided into six ranks. The first rank shall
33 consist of eligibles who receive a score of 95 percent or higher.
34 The second rank shall consist of eligibles who receive a score of
35 90 to 94 percent, inclusive. The third rank shall consist of eligibles
36 who receive a score of 85 to 89 percent, inclusive. The fourth rank
37 shall consist of eligibles who receive a score of 80 to 84 percent,
38 inclusive. The fifth rank shall consist of eligibles who receive a
39 score of 75 to 79 percent, inclusive. The sixth rank shall consist
40 of eligibles who receive a score of 70 to 74 percent, inclusive. All

1 examination scores for positions in these classes shall be rounded
2 to the nearest whole percent.

3 If the names on the list from which certification is being made
4 represent fewer than three ranks, then additional eligibles shall be
5 certified from the various lists next lower in order of preference
6 until names from three ranks appear. If there are fewer than three
7 names available for certification, and the appointing authority does
8 not choose to appoint from among these, the appointing authority
9 may demand certification of three names. In such case,
10 examinations shall be conducted until at least three names may be
11 certified by the procedure described in this section, and the
12 appointing authority shall fill the position by appointment of one
13 of the persons certified.

14 The department may certify less than three ranks where the size
15 of the certified group is disproportionate to the number of
16 vacancies.

17 ~~SEC. 62.~~

18 *SEC. 61.* Section 19058 of the Government Code is amended
19 to read:

20 19058. When there is no employment list from which a position
21 may be filled, the appointing power, with the consent of the
22 department, may fill the position by temporary appointment. The
23 temporary appointment to a permanent position shall continue only
24 until eligibles are available from an appropriate employment list
25 and shall not exceed the period prescribed by Section 5 of Article
26 VII of the Constitution. Within the limits of the period prescribed
27 therein, any temporary appointment to a limited-term position
28 may, in the discretion of the appointing power and with the
29 approval of the department, be continued for the life of such
30 position. When temporary appointments are made to permanent
31 positions, an appropriate employment list shall be established for
32 each class to which a temporary appointment is made before the
33 expiration of the appointment.

34 ~~SEC. 63.~~

35 *SEC. 62.* Section 19059 of the Government Code is amended
36 to read:

37 19059. A person who does not possess the minimum
38 qualifications for the class to which the position belongs shall not
39 be appointed under a temporary appointment. A temporary
40 appointee shall not acquire any probationary or permanent status

1 or rights, and time spent under temporary appointment shall not
2 contribute to the probationary period if the appointee is
3 subsequently successful in an examination and is certified and
4 appointed to the position.

5 ~~SEC. 64.~~

6 *SEC. 63.* Section 19062.5 of the Government Code is amended
7 to read:

8 19062.5. The department may establish eligibility requirements
9 governing movement of employees between full-time, part-time,
10 and intermittent positions.

11 ~~SEC. 65.~~

12 *SEC. 64.* Section 19082 of the Government Code is amended
13 to read:

14 19082. The department may provide for the establishment,
15 maintenance, and use of preferred limited-term lists.

16 ~~SEC. 66.~~

17 *SEC. 65.* Section 19101 of the Government Code is amended
18 to read:

19 19101. The department or a designated appointing authority
20 may establish employment lists from which intermittent
21 appointments may be made. Eligibles shall be certified in
22 accordance with their position on the appropriate employment list
23 and their willingness to accept appointment to such position as
24 “intermittent employees.”

25 ~~SEC. 67.~~

26 *SEC. 66.* Section 19140 of the Government Code is amended
27 to read:

28 19140. (a) In addition to reinstatement required under any
29 other section, an appointing power may, in his or her discretion,
30 reinstate any person having probationary or permanent status who
31 was separated from his or her position (1) by resignation, (2) by
32 service retirement, (3) by termination from limited-term, temporary,
33 career executive assignment, or exempt appointment, (4) under
34 Section 19996.2, or (5) without a break in continuity of state
35 service to accept another civil service or exempt appointment. In
36 addition, an employee who was separated from his or her position
37 under Section 19585 shall have permissive reinstatement eligibility
38 to that position when he or she again meets the requirements for
39 continuing employment in that position, and shall have permissive

1 reinstatement eligibility for any other position as provided by this
2 section.

3 (b) Reinstatement shall be undertaken subject to rule.

4 (c) Reinstatement shall be undertaken within three years if the
5 employee, at the time of separation, was a member of the California
6 Highway Patrol.

7 (d) For reinstatement after separation, for members of the
8 California Highway Patrol, the time spent in any of the following
9 positions shall not be considered in computing the three-year
10 period:

11 (1) In a position which is exempt from civil service.

12 (2) As a temporary employee in another governmental agency
13 engaged in a technical cooperation program under an agreement
14 approved by the state.

15 (3) In a recognized military service.

16 (e) A member of the California Highway Patrol separated from
17 state service may be reinstated to an otherwise appropriate
18 nonmember class even if the separation exceeds three years.

19 (f) Reinstatement shall be made to any of the following vacant
20 positions:

21 (1) The class vacated or from which separated.

22 (2) A lower class in the same series.

23 (3) Another class to which the employee could transfer or
24 demote pursuant to rule.

25 An employee, including a member of the California Highway
26 Patrol, separated from his or her former position in state service
27 by layoff, or by resignation or demotion in lieu of layoff, may be
28 reinstated at the discretion of the appointing power. However, the
29 reinstatement is subject to the requirements of this section and
30 shall not be to a position that is specifically subject to the
31 employee's reemployment list eligibility.

32 ~~SEC. 68.~~

33 *SEC. 67.* Section 19140.5 of the Government Code is amended
34 to read:

35 19140.5. This section applies only to a permanent employee,
36 or an employee who previously had permanent status and who,
37 since receiving permanent status, has had no break in the continuity
38 of state service due to a permanent separation.

39 An employee who is (a) terminated from a temporary or
40 limited-term appointment by either the employee or the appointing

1 power; or (b) rejected during probation; or (c) demoted from a
2 managerial position pursuant to Section 19590; shall be reinstated
3 to his or her former position provided all of the following
4 conditions occur:

5 (1) The employee accepted the appointment without a break in
6 the continuity of state service.

7 (2) The reinstatement is requested in the manner provided by
8 rule within 10 working days after the effective date of the
9 termination.

10 ~~SEC. 69.~~

11 *SEC. 68.* Section 19141.1 of the Government Code is amended
12 to read:

13 19141.1. (a) This section applies only to a permanent
14 employee, or an employee who previously had permanent status,
15 and who has a reinstatement right pursuant to Section 19141.

16 (b) Within four years of the termination of an appointment in
17 an exempt position, either by the employee or the appointing
18 power, an employee who has completed a minimum of five years
19 of state service experience and at least one year but less than three
20 years of exempt service shall be given an opportunity upon request
21 to obtain civil service appointment eligibility, through a deferred
22 examination, for any position offered by any appointing power in
23 any class for which a current eligible list exists and which has a
24 salary range up to two steps higher than the employee's former
25 position. If the employee has three or more years of exempt service,
26 the opportunity shall be provided for any class at least two salary
27 steps below the employee's exempt salary level.

28 (c) At the termination of an exempt appointment, either by the
29 employee or the appointing power, on or after January 1, 1987, an
30 employee who has at least 10 years of state service including five
31 years of civil service experience and at least three consecutive
32 years of exempt service under a single appointing power and who
33 requests reinstatement in writing within 10 days of the termination,
34 shall be reinstated upon request to (1) his or her former position
35 or (2) any vacant position for which the employee has civil service
36 eligibility under the appointing power where the three years of
37 service were completed and which is at least two salary steps below
38 the employee's exempt salary level. In the absence of current list
39 eligibility, an employee shall be entitled to a deferred examination
40 for placement on a current eligible list for classes meeting the

1 mandatory reinstatement criteria. If the employee obtains civil
2 service appointment eligibility at any time within two years of the
3 termination of the exempt appointment, and a vacant position in
4 the appropriate class is not available, the employee's name shall
5 be placed on the appointing power's departmental or subdivisional
6 reemployment for any classes and locations which would satisfy
7 the employee's reinstatement request. Departmental or
8 subdivisional reemployment list eligibility granted under this
9 section shall not result in placement on any general reemployment
10 list.

11 If an employee cannot be placed in a vacant position pursuant
12 to this section, the employee shall be reinstated to his or her former
13 position.

14 ~~SEC. 70.~~

15 *SEC. 69.* Section 19143 of the Government Code is amended
16 to read:

17 19143. At the termination of any temporary separation, except
18 termination of a permanent or probationary employee by layoff
19 and termination by displacement, as defined in regulation, the
20 employee shall be reinstated to his or her former position, as
21 defined in Section 18522, unless some other reinstatement right
22 is specified for the particular temporary separation in the Civil
23 Service Act or regulation.

24 ~~SEC. 71.~~

25 *SEC. 70.* Section 19170 of the Government Code is amended
26 to read:

27 19170. (a) The board shall establish for each class the length
28 of the probationary period. The probationary period that shall be
29 served upon appointment shall be six months unless the board
30 establishes a longer period of not more than one year.

31 (b) By rule, the board ~~may~~ *may*:

32 (1) Increase the length of individual probationary periods by
33 adding periods of time to any periods of time an employee, while
34 serving as a probationer, is absent from his or her position.

35 (2) Require an additional probationary period not to exceed the
36 length of the probationary period of the class in which the
37 probationer was appointed when the probationary employee returns
38 after an extended period of absence and the remainder of the
39 probationary period is insufficient to evaluate his or her current
40 performance.

1 (c) Upon written agreement between an appointing power and
 2 an employee who alleges that he or she has a disability, as defined
 3 in Section 12926, subject to approval of the agreement by the
 4 board, the employee’s probationary period may be extended for a
 5 period, not to exceed six months, to allow the appointing power
 6 to provide a reasonable accommodation to the employee and the
 7 employee to demonstrate, before the probationary period ends, the
 8 ability to perform satisfactorily the essential functions of the
 9 position with reasonable accommodation. Nothing in this
 10 subdivision may relieve an appointing power from complying with
 11 applicable law requiring reasonable accommodation or prohibiting
 12 discrimination based on disability, and no employee, as a condition
 13 of an agreement to extend the probationary period, may be required
 14 to waive or release any rights he or she may have under applicable
 15 law requiring reasonable accommodation or prohibiting
 16 discrimination based on disability.

17 ~~SEC. 72.~~

18 *SEC. 71.* Section 19200 of the Government Code is amended
 19 to read:

20 19200. Whenever the United States is engaged in war or
 21 whenever the department finds that an emergency exists in
 22 connection with the national defense, the department may authorize
 23 duration examinations and employments in those classes in which
 24 the best interests of the state would be served during such war or
 25 emergency. Within not less than three months, or more than one
 26 year, after the department finds that there is no longer an
 27 emergency, all duration employments shall be terminated in such
 28 order as the department deems appropriate.

29 ~~SEC. 73.~~

30 *SEC. 72.* Section 19253 of the Government Code is amended
 31 to read:

32 19253. Subject to approval by the department, an appointing
 33 power with the concurrence or at the request of an employee may
 34 request the voluntary demotion of such employee to a vacant
 35 position.

36 If the class to which the demotion is proposed requires
 37 qualifications, knowledges, or abilities not measured by the
 38 examination for the class from which demotion is proposed, the
 39 department may examine the employee for the possession of those
 40 additional qualifications, knowledges, and abilities.

1 ~~SEC. 74.~~

2 *SEC. 73.* Section 19253.5 of the Government Code is amended
3 to read:

4 19253.5. (a) An appointing power may require an employee
5 to submit to a medical examination by a physician or physicians
6 designated by the appointing power to evaluate the capacity of the
7 employee to perform the work of his or her position.

8 (b) Fees for the examination and for the services of medical
9 specialists or technicians, if necessary, shall be paid by the state
10 agency. The employee may submit medical or other evidence to
11 the examining physician or to the appointing power. The examining
12 physician shall make a written report of the examination to the
13 appointing power. The appointing power shall provide a copy to
14 the physician designated by the employee.

15 (c) When the appointing power, after considering the
16 conclusions of the medical examination and other pertinent
17 information, concludes that the employee is unable to perform the
18 work of his or her present position, but is able to perform the work
19 of another position including one of less than full time, the
20 appointing power may demote or transfer the employee to such a
21 position.

22 Except as authorized by the Department of Human Resources
23 under Section 19837, the employee demoted or transferred pursuant
24 to this section shall receive the maximum of the salary range of
25 the class to which he or she is demoted or transferred, provided
26 that the salary is not greater than the salary he or she received at
27 the time of his or her demotion or transfer.

28 (d) When the appointing power after considering the conclusions
29 of the medical examination provided for by this section or medical
30 reports from the employee's physician, and other pertinent
31 information, concludes that the employee is unable to perform the
32 work of his or her present position, or any other position in the
33 agency, and the employee is not eligible or waives the right to
34 retire for disability and elects to withdraw his or her retirement
35 contributions or to permit his or her contributions to remain in the
36 retirement fund with rights to service retirement, the appointing
37 power may terminate the appointment of the employee.

38 (e) The appointing power may demote, transfer, or terminate
39 an employee under this section without requiring the employee to
40 submit to a medical examination when the appointing power relies

1 upon a written statement submitted to the appointing power by the
2 employee as to the employee’s condition or upon medical reports
3 submitted to the appointing power by the employee.

4 (f) The employee shall be given written notice of any demotion,
5 transfer, or termination under this section at least 15 days prior to
6 the effective date thereof. No later than 15 days after service of
7 the notice, the employee may appeal the action of the appointing
8 power to the board. The board, in accordance with its rules, shall
9 hold a hearing. The board may sustain, disapprove, or modify the
10 demotion, transfer, or termination.

11 (g) Whenever the board revokes or modifies a demotion,
12 transfer, or termination, the board shall direct the payment of salary
13 to the employee calculated on the same basis and using the same
14 standards as provided in Section 19584.

15 (h) Upon the request of an appointing authority or the petition
16 of the employee who was terminated, demoted, or transferred in
17 accordance with this section, the employee shall be reinstated to
18 an appropriate vacant position in the same class, in a comparable
19 class or in a lower related class if it is determined by the board
20 that the employee is no longer incapacitated for duty. Such a
21 reinstatement to a position in a different agency may be made only
22 with the concurrence of that agency. In approving or ordering the
23 reinstatements, the board may require the satisfactory completion
24 of a new probationary period. When the board finds the employee
25 who was terminated, demoted, or transferred is no longer
26 incapacitated for duty but there is no vacant position to which the
27 employee appropriately can be appointed, the name of the
28 employee shall be placed upon those reemployment lists that are
29 determined to be appropriate by the board.

30 (i) (1) If the appointing power, after considering the conclusions
31 of the medical examination provided for by this section or medical
32 reports from the employee’s physician and other pertinent
33 information, concludes that the employee is unable to perform the
34 work of his or her present position or any other position in the
35 agency and the employee is eligible and does not waive the right
36 to retire for disability, the appointing power shall file an application
37 for disability retirement on the employee’s behalf. The appointing
38 power shall give the employee 15 days written notice of its
39 intention to file such an application and a reasonable opportunity
40 to respond to the appointing power prior to the appointing power’s

1 filing of the application. However, the appointing power's decision
2 to file the application is final and is not appealable to the State
3 Personnel Board.

4 (2) Notwithstanding Section 21153, upon filing the application
5 for disability retirement, the appointing power may remove the
6 employee from the job and place the employee on involuntary
7 leave status. The employee may use any accrued leave eligible
8 during the period of the involuntary leave. If the employee's leave
9 credits and programs are exhausted or if they do not provide
10 benefits at least equal to the estimated retirement allowance, the
11 appointing power shall pay the employee an additional temporary
12 disability allowance so that the employee receives payment equal
13 to the retirement allowance. The appointing power shall continue
14 to make all employer contributions to the employee's health plans
15 during the period of the involuntary leave.

16 (3) If the application for disability retirement is subsequently
17 granted, the retirement system shall reimburse the appointing power
18 for the temporary disability allowance which shall be deducted
19 from any back disability retirement benefits otherwise payable to
20 the employee. If the application is denied, the appointing power
21 shall reinstate the employee to his or her position with back salary
22 and benefits pursuant to subdivision (g), less any temporary
23 disability allowance paid by the appointing power. The appointing
24 power shall also restore any leave credits the employee used during
25 the period of the involuntary leave.

26 ~~SEC. 75.~~

27 *SEC. 74.* Section 19257.5 of the Government Code is amended
28 to read:

29 19257.5. Where the appointment of an employee has been
30 made and accepted in good faith, but where the appointment would
31 not have been made but for some mistake of law or fact that if
32 known to the parties would have rendered the appointment
33 unlawful when made, the department may declare the appointment
34 void from the beginning if the action is taken within one year after
35 the appointment.

36 ~~SEC. 76.~~

37 *SEC. 75.* Section 19400 of the Government Code is amended
38 to read:

39 19400. It is the intent of this article to establish and maintain
40 an effective upward mobility program for state employees in

1 low-paying occupations. An upward mobility program is one in
2 which career opportunities are developed and published and
3 assistance is provided which will allow employees in low-paying
4 occupations to develop and advance to their highest potential.

5 ~~SEC. 77.~~

6 *SEC. 76.* Section 19401 of the Government Code is amended
7 to read:

8 19401. All appointing authorities of state government shall
9 establish an effective program of upward mobility for employees
10 in low-paying occupational groups. In developing their upward
11 mobility programs, appointing authorities shall endeavor to
12 provide, to the greatest extent possible, the following opportunities
13 for employees who meet criteria established by the appointing
14 authority, demonstrate the aptitude or potential for advancement,
15 and wish to participate in:

16 (a) Career counseling using individual professional,
17 administrative, and technical employees who can serve as career
18 models, and a course in group career counseling. Each employee
19 who wishes to participate in an upward mobility program should
20 be required to develop a career development plan.

21 (b) Appropriate academic counseling.

22 (c) Training opportunities such as college programs related to
23 special training programs. This training may include release time
24 at reduced cost or no cost to the employee and may be offered in
25 geographically remote areas through cooperative arrangements
26 with other departments and colleges.

27 (d) Training and development assignments.

28 (e) On-the-job training.

29 (f) Job restructuring, including the development of career ladders
30 and lattices, and modifications of requirements where employment
31 barriers exist.

32 ~~SEC. 78.~~

33 *SEC. 77.* Section 19402 of the Government Code is amended
34 to read:

35 19402. All upward mobility programs shall include annual
36 goals that include the number of employees expected to progress
37 from positions in low-paying occupational groups to entry-level
38 technical, professional, and administrative positions, and the
39 timeframe within which this progress shall occur. The Department

1 of Human Resources shall be responsible for approving each
2 department's annual upward mobility goals and timetables.

3 Any appointing authority that determines that it will be unable
4 to achieve the goals may ask the department for a reduction in the
5 goals. If the department determines that the appointing authority
6 has not made a good faith effort to achieve the goals, the
7 department shall hold public hearings to determine the reasons for
8 the deficiencies and to establish a program to overcome these
9 deficiencies.

10 ~~SEC. 79.~~

11 *SEC. 78.* Section 19403 of the Government Code is amended
12 to read:

13 19403. The department shall, in cooperation with appointing
14 authorities, establish bridging classifications and career ladders to
15 provide upward mobility from jobs in low-paying occupations to
16 technical, professional, and administrative jobs on an ongoing
17 basis.

18 ~~SEC. 80.~~

19 *SEC. 79.* Section 19405 of the Government Code is amended
20 to read:

21 19405. The department shall annually submit a report to the
22 Legislature on the performance of each appointing authority and
23 agency in state government in meeting its obligations under this
24 article.

25 ~~SEC. 81.~~

26 *SEC. 80.* Section 19406 of the Government Code is repealed.

27 ~~SEC. 82.~~

28 *SEC. 81.* Section 19574.2 of the Government Code is amended
29 to read:

30 19574.2. (a) Any party claiming that his or her request for
31 discovery pursuant to Section 19574.1 has not been complied with
32 may serve and file a petition to compel discovery with the Hearing
33 Office of the State Personnel Board, naming as respondent the
34 party refusing or failing to comply with Section 19574.1. The
35 petition shall state facts showing that the respondent party failed
36 or refused to comply with Section 19574.1, a description of the
37 matters sought to be discovered, the reason or reasons why the
38 matter is discoverable under Section 19574.1, and the ground or
39 grounds of the respondent's refusal so far as known to the
40 petitioner.

1 (b) The petition shall be served upon the respondent party and
2 filed within 14 days after the respondent party first evidenced his
3 or her failure or refusal to comply with Section 19574.1 or within
4 30 days after the request was made and the party has failed to reply
5 to the request, whichever period is longer. However, no petition
6 may be filed within 90 days of the date set for commencement of
7 the administrative hearing, except upon a petition and a
8 determination by the administrative law judge of good cause. In
9 determining good cause, the administrative law judge shall consider
10 the necessity and reasons for the discovery, the diligence or lack
11 of diligence of the moving party, whether the granting of the
12 petition will delay the commencement of the administrative hearing
13 on the date set, and the possible prejudice of the action to any
14 party. The respondent shall have a right to file a written answer to
15 the petition. Any answer shall be filed with the Hearing Office of
16 the State Personnel Board and the petitioner within 15 days of
17 service of the petition.

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

28 A party aggrieved by the decision of the administrative law judge
29 may, within 30 days of service of the decision, file a petition to
30 compel discovery in the superior court for the county in which the
31 administrative hearing will be held or in the county in which the
32 headquarters of the appointing power is located. The petition shall
33 be served on the respondent party.

34 (c) If from a reading of the petition the court is satisfied that the
35 petition sets forth good cause for relief, the court shall issue an
36 order to show cause directed to the respondent party; otherwise
37 the court shall enter an order denying the petition. The order to
38 show cause shall be served upon the respondent and his or her
39 attorney of record in the administrative proceeding by personal
40 delivery or certified mail and shall be returnable no earlier than

1 10 days from its issuance nor later than 30 days after the filing of
2 the petition. The respondent party shall have the right to serve and
3 file a written answer or other response to the petition and order to
4 show cause.

5 (d) The court may, in its discretion, order the administrative
6 proceeding stayed during the pendency of the proceeding, and, if
7 necessary, for a reasonable time thereafter to afford the parties
8 time to comply with the court order.

9 (e) Where the matter sought to be discovered is under the
10 custody or control of the respondent party and the respondent party
11 asserts that the matter is not a discoverable matter under Section
12 19574.1, or is privileged against disclosure under Section 19574.1,
13 the court may order lodged with it matters which are provided in
14 subdivision (b) of Section 915 of the Evidence Code and shall
15 examine the matters in accordance with the provisions thereof.

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

19 (g) Unless otherwise stipulated by the parties, the court shall
20 no later than 45 days after the filing of the petition file its order
21 denying or granting the petition; provided, however, that the court
22 may on its own motion for good cause extend the time an additional
23 45 days. The order of the court shall be in writing setting forth the
24 matters or parts the petitioner is entitled to discover under Section
25 19574.1. A copy of the order shall forthwith be served by mail by
26 the clerk upon the parties. Where the order grants the petition in
27 whole or in part, the order shall not become effective until 10 days
28 after the date the order is served by the clerk. Where the order
29 denies relief to the petitioning party, the order shall be effective
30 on the date it is served by the clerk.

31 (h) The order of the superior court shall be final and, except for
32 this subdivision, shall not be subject to review by appeal. A party
33 aggrieved by the order, or any part thereof, may within 30 days
34 after the service of the superior court's order serve and file in the
35 district court of appeal for the district in which the superior court
36 is located, a petition for a writ of mandamus to compel the superior
37 court to set aside, or otherwise modify, its order. Where a review
38 is sought from an order granting discovery, the order of the trial
39 court and the administrative proceeding shall be stayed upon the
40 filing of the petition for writ of mandamus; provided, however,

1 that the court of appeal may dissolve or modify the stay thereafter,
2 if it is in the public interest to do so. Where the review is sought
3 from a denial of discovery, neither the trial court's order nor the
4 administrative proceeding shall be stayed by the court of appeal
5 except upon a clear showing of probable error.

6 (i) Where the superior court finds that a party or his or her
7 attorney, without substantial justification, failed or refused to
8 comply with Section 19574.1, or, without substantial justification,
9 filed a petition to compel discovery pursuant to this section, or,
10 without substantial justification, failed to comply with any order
11 of court made pursuant to this section, the court may award court
12 costs and reasonable attorney fees to the opposing party. Nothing
13 in this subdivision shall limit the power of the superior court to
14 compel obedience to its orders by contempt proceedings.

15 ~~SEC. 83.~~

16 *SEC. 82.* Section 19582 of the Government Code is amended
17 to read:

18 19582. (a) Hearings may be held by the board, or by any
19 authorized representative, but the board shall render the decision
20 that in its judgment is just and proper.

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

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

34 (b) If a contested case is heard by an authorized representative,
35 he or she shall prepare a proposed decision in a form that may be
36 adopted as the decision in the case. A copy of the proposed decision
37 shall be furnished by the board to each party within 10 days after
38 the board has adopted, modified, rejected, or remanded the
39 proposed decision. The board itself may adopt the proposed
40 decision in its entirety, may remand the proposed decision, or may

1 reduce the adverse action set forth therein and adopt the balance
2 of the proposed decision.

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

19 (d) In arriving at a decision or a proposed decision, the board
20 or its authorized representative may consider any prior suspension
21 or suspensions of the appellant by authority of any appointing
22 power, or any prior proceedings under this article.

23 (e) In arriving at a decision or a proposed decision, the board,
24 in exercising its discretion consistent with its authority under
25 Section 3 of Article VII of the California Constitution, shall give
26 consideration and respect to any applicable disciplinary criteria
27 established pursuant to Section 19573, and the extent to which the
28 employee's conduct resulted in, or if repeated is likely to result
29 in, harm to the public service, the circumstances surrounding the
30 offense or misconduct, and the likelihood of recurrence.

31 (f) The decision shall be in writing and contain findings of fact
32 and the adverse action, if any. The findings may be stated in the
33 language of the pleadings or by reference thereto. Copies of the
34 decision shall be served on the parties personally or by mail.

35 ~~SEC. 84.~~

36 *SEC. 83.* Section 19583.51 of the Government Code is repealed.

37 ~~SEC. 85.~~

38 *SEC. 84.* Section 19586 of the Government Code is amended
39 to read:

1 19586. Within 30 days after the day a copy of the decision
 2 rendered by the board in a proceeding under this article is served
 3 by the board upon the parties to the decision, either party may
 4 petition the board for rehearing of the decision. The petition for
 5 rehearing shall be in writing and shall contain all of the grounds
 6 upon which a rehearing should be granted.

7 Within 30 days after the filing of a petition for rehearing with
 8 the board, the board shall cause notice thereof to be served upon
 9 the other parties to the proceeding by mailing to each a copy of
 10 the petition for rehearing. The other parties to the proceeding shall
 11 have 20 calendar days from the date of service of a copy of the
 12 petition for rehearing to file with the board and serve upon the
 13 petitioner a response to the petition for rehearing.

14 Within 90 days after service of notice of filing of a petition for
 15 rehearing, the board shall either grant or deny the petition in whole
 16 or in part. Failure to act upon a petition for rehearing within this
 17 90-day period is a denial of the petition.

18 ~~SEC. 86.~~

19 *SEC. 85.* Section 19600 of the Government Code is amended
 20 to read:

21 19600. The department may, directly or through agreement or
 22 contract with one or more appointing authorities and other public
 23 and private organizations, conduct and evaluate demonstration
 24 projects.

25 Nothing in this section shall infringe upon or conflict with the
 26 merit principle as embodied in Article VII of the California
 27 Constitution, nor shall any project undertaken pursuant to this act
 28 conflict with, or infringe upon the merit principles of the civil
 29 service system.

30 Subject to the provisions of this section, the conducting of
 31 demonstration projects shall not be limited by any lack of specific
 32 authority under this code to take the action contemplated, or by
 33 any provision of this code or any rule or regulation prescribed
 34 under this code which is inconsistent with the action, including
 35 any law or regulation relating to any of the following:

36 (a) The methods of establishing qualification requirements for,
 37 recruitment for, and appointment to positions.

38 (b) The methods of classifying positions and compensating
 39 employees.

1 (c) The methods of assigning, reassigning, or promoting
2 employees.

3 (d) The methods of disciplining employees.

4 (e) The methods of providing incentives to employees, including
5 the provision of group or individual incentive bonuses or pay.

6 (f) The hours of work per day or per week.

7 (g) The methods of involving employees, labor organizations,
8 and employee organizations in personnel decisions.

9 (h) The methods of reducing overall agency staff and grade
10 levels.

11 ~~SEC. 87.~~

12 *SEC. 86.* Section 19600.1 of the Government Code is amended
13 to read:

14 19600.1. “Demonstration project” means a project conducted
15 by the department, or under its supervision, to determine whether
16 a specified change in personnel management policies or procedures
17 would result in improved state personnel management.

18 ~~SEC. 88.~~

19 *SEC. 87.* Section 19630 of the Government Code is amended
20 to read:

21 19630. An action or proceeding shall not be brought by any
22 person having or claiming to have a cause of action or complaint
23 or ground for issuance of any complaint or legal remedy for wrongs
24 or grievances based on or related to any civil service law in this
25 state, unless that action or proceeding is commenced and served
26 within one year after the cause of action or complaint or ground
27 for issuance of any writ or legal remedy first arose. The person
28 shall not be compensated for the time subsequent to the date when
29 the cause or ground arose unless that action or proceeding is filed
30 and served within 90 days after the cause or ground first arose.
31 Any petition for a writ challenging a decision of the board shall
32 be filed within six months of the date of the final decision of the
33 board.

34 This section shall not be applicable to any action or proceeding
35 for the collection of salary or wage, the amount of which is not
36 disputed by the state agency owing that salary or wage.

37 ~~SEC. 89.~~

38 *SEC. 88.* Section 19680 of the Government Code is amended
39 to read:

40 19680. It is unlawful for any person:

1 (a) Willfully by himself *or herself*, or in cooperation with
2 another person to defeat, deceive, or obstruct any person with
3 respect to his *or her* right of examination, application, or
4 employment under this part or rule.

5 (b) Willfully and falsely to mark, grade, estimate, or report upon
6 the examination or proper standing of any person examined or
7 certified under this part or rule, or to aid in so doing, or make any
8 false representation concerning the same or the person examined.

9 (c) Willfully to furnish to any person any special or secret
10 information for the purpose of either improving or injuring the
11 prospects or chances of any person examined, certified, or to be
12 examined or certified under this part or rule.

13 ~~SEC. 90.~~

14 *SEC. 89.* Section 19682 of the Government Code is amended
15 to read:

16 19682. Every person who violates any provision of this chapter
17 is guilty of a misdemeanor. In accordance with Section 19683,
18 action may be taken by the appointing power, the department, or
19 the executive officer of the board may file charges, against a state
20 employee who violates any provisions of this chapter.

21 ~~SEC. 91.~~

22 *SEC. 90.* Section 19703 of the Government Code is amended
23 to read:

24 19703. A recommendation, question, or inquiry under this part
25 shall not relate to the political or religious opinions or affiliations
26 of any person, and an appointment to, change in, or removal from
27 any position under this part or by rule shall not be in any manner
28 affected or influenced by such opinions or affiliations.

29 ~~SEC. 92.~~

30 *SEC. 91.* Section 19763 of the Government Code is amended
31 to read:

32 19763. If the department notifies an officer or employee that
33 any position has been filled in violation of this part or rule,
34 demands for the salary or compensation or other emolument of
35 the position shall not be approved or paid by such officer or
36 employee except upon the order of a court of competent
37 jurisdiction.

38 ~~SEC. 93.~~

39 *SEC. 92.* Section 19764 of the Government Code is amended
40 to read:

1 19764. Every person who makes a payment of salary,
2 compensation, or other emolument to any person holding a position
3 in the state civil service in violation of this part or rule and any
4 officer or employee who signs, countersigns, or authorizes the
5 signing or countersigning of any warrant for such a payment and
6 the sureties on their official bonds is liable to the State of California
7 therefor. An action to recover such a payment may be maintained
8 in any court of competent jurisdiction of this state, in the name of
9 the people of the state by the Attorney General or by a resident
10 citizen, who is assessed for and is liable to pay, or, within one year
11 before the commencement of such action, has paid a tax in this
12 state.

13 ~~SEC. 94.~~

14 *SEC. 93.* Section 19770 of the Government Code is amended
15 to read:

16 19770. (a) With the exception of Chapter 7.5 (commencing
17 with Section 400) of Part 1 of Division 2 of the Military and
18 Veterans Code, this part, rather than provisions of the Military and
19 Veterans Code, governs leave for military service, rights and
20 benefits accrued during that service, and reinstatement after that
21 service, for executive branch employees.

22 (b) For the purposes of this chapter:

23 (1) "Employee" means that term as defined by subdivision (d)
24 of Section 19815.

25 (2) "Civil service employee" means an employee legally holding
26 a position in the state civil service.

27 (3) "Exempt employee" means an employee who is exempt
28 from the state civil service by Section 4 of Article VII of the
29 California Constitution.

30 ~~SEC. 95.~~

31 *SEC. 94.* Section 19775 of the Government Code is amended
32 to read:

33 19775. An employee who is granted a long-term military leave
34 of absence and who for a period of not less than one year
35 immediately prior to the effective date active duty begins has had
36 continuous state service as defined by rule which is not broken by
37 a permanent separation shall be entitled to receive his or her salary
38 or compensation for the first 30 calendar days of active duty served
39 during the absence.

1 ~~SEC. 96.~~

2 *SEC. 95.* Section 19775.1 of the Government Code is amended
3 to read:

4 19775.1. An employee who is granted a short-term military
5 leave of absence for active military duty, but not for inactive duty,
6 including, but not limited to, scheduled reserve drill periods, and
7 who for a period of not less than one year immediately prior to the
8 effective date of active duty has had continuous state service as
9 defined by rule that is not broken by a permanent separation, or
10 who has had continuous state service immediately prior to the
11 effective date of active duty not broken by a permanent separation
12 and sufficient recognized military service that need not be
13 contiguous to equal one year shall be entitled to receive his or her
14 salary or compensation for the first 30 calendar days of active duty
15 served during the absence.

16 An employee who is granted emergency military leave under
17 Section 19773, shall receive his or her salary or compensation as
18 a state employee while going to, engaging in, and returning from
19 the duty. The employee shall not receive his or her salary or
20 compensation for more than 30 days each time he or she is granted
21 the emergency military leave.

22 ~~SEC. 97.~~

23 *SEC. 96.* Section 19775.8 of the Government Code is amended
24 to read:

25 19775.8. Except as provided in Section 19781, when any person
26 successfully completes part of an open or promotional examination
27 but is unable to complete all portions thereof because of entry into
28 recognized military service, the department or designated
29 appointing authority shall arrange for him or her to take such
30 uncompleted portion of the examination, providing application is
31 made not later than six months after his or her release from military
32 service. Such right to complete an examination shall not continue
33 for longer than five years after the date of the examination.

34 If the applicant passes the examination, his or her name shall be
35 placed on the eligible list that resulted from the original
36 examination as the list stands at the time his or her name is placed
37 thereon, provided if his or her rating is sufficiently high for his or
38 her name to have been included on a certification to a permanent
39 position while he or she was in the military service had his or her
40 name been on the list when originally established, his or her

1 eligibility shall be established, notwithstanding the removal of
2 names from the original list, pursuant to Section 18901. He or she
3 shall retain his or her place on such list for three years from the
4 termination of his or her service with the Armed Forces. A name
5 thus retained on a list beyond the time other names are removed
6 from the list, pursuant to Section 18901, shall be removed if the
7 person refuses to accept appointment to a permanent position after
8 certification thereto subsequent to his or her discharge from the
9 Armed Forces.

10 ~~SEC. 98.~~

11 *SEC. 97.* Section 19775.9 of the Government Code is amended
12 to read:

13 19775.9. An individual on military leave from either a state
14 civil service position held under duration appointment, a position
15 held under an exempt appointment but included in the state civil
16 service prior to his or her release from military service, or a
17 position in any federal or other public agency, the functions of
18 which were transferred to the state prior to his or her release from
19 military service, who would be eligible for reinstatement or
20 restoration to his or her position pursuant to Sections 19780 and
21 19782, shall be permitted to take any regular examination held
22 while he or she was in the military service, or on military leave,
23 for the class in which he or she had such appointment and for
24 which he or she had the minimum qualifications required of
25 applicants when the examination originally was given, within five
26 years of the date of the original examination. The department or
27 designated appointing authority shall arrange for him or her to take
28 the identical examination if application is made not later than six
29 months after his or her release from military service or six months
30 after the effective date thereof, whichever is later. If the applicant
31 passes the examination, his or her name shall be placed on the
32 eligible list that resulted from the original examination as the list
33 stands at the time his or her name is placed thereon. If his or her
34 rating is sufficiently high for his or her name to have been included
35 on a certification to a permanent position while he or she was in
36 the military service had his or her name been on the list when
37 originally established, his or her eligibility shall be established,
38 notwithstanding the removal of names from the original list
39 pursuant to Section 18901. He or she shall retain his or her place
40 on such list for three years from the termination of his or her

1 service with the Armed Forces or one year from the date such
2 eligibility is established, whichever is later, if his or her rating is
3 sufficiently high for his or her name to have been included on a
4 certification to a permanent position while he or she was in
5 recognized military service had his or her name been on the list
6 when originally established. A name thus retained on a list, beyond
7 the time other names are removed from the list pursuant to the
8 provisions of Section 18901, shall be removed if the person refuses
9 to accept appointment to a permanent position after certification
10 thereto subsequent to his or her discharge from the Armed Forces.

11 ~~SEC. 99.~~

12 *SEC. 98.* Section 19776 of the Government Code is amended
13 to read:

14 19776. If a promotional examination was held while an
15 employee was on military leave that he or she would otherwise
16 have been entitled to take, the employee shall be eligible to take
17 the identical promotional examination within five years of the date
18 of the original examination. The department or designated
19 appointing authority shall arrange for him or her to take the
20 examination within a reasonable time, provided application is made
21 not later than six months after his or her reinstatement from military
22 leave. If the employee qualifies in the examination, his or her name
23 shall be placed on the open and promotional list that resulted from
24 the original examination, as the list stands at the time his or her
25 name is placed thereon. If his or her rating is sufficiently high for
26 his or her name to have been included on a certification to a
27 permanent position while he or she was in the military service had
28 his or her name been on the list when originally established, his
29 or her eligibility shall be established, notwithstanding the removal
30 of names from the original list pursuant to Section 18901. He or
31 she shall retain his or her place on the list for three years from the
32 termination of his or her service with the Armed Forces or one
33 year from the date the eligibility is established, whichever is later.
34 A name thus retained on a list, beyond the time other names are
35 removed from the list pursuant to Section 18901, shall be removed
36 if the person refuses to accept appointment to a permanent position
37 after certification thereto subsequent to his or her discharge from
38 the Armed Forces, or if he or she resigns from state service.

1 ~~SEC. 100.~~

2 *SEC. 99.* Section 19786 of the Government Code is amended
3 to read:

4 19786. (a) When a civil service employee has been reinstated
5 after military service in accordance with Section 19780, and any
6 question arises relative to his or her ability or inability for any
7 reason arising out of the military service to perform the duties of
8 the position to which he or she has been reinstated, the board shall,
9 upon the request of the appointing power or of the employee, hear
10 the matter and may on its own motion or at the request of either
11 party take any and all necessary testimony of every nature
12 necessary to a decision on the question.

13 (b) If the board finds that the employee is not able for any reason
14 arising out of the military service to carry out the usual duties of
15 the position he or she then holds, it shall order the employee placed
16 in a position in which the board finds he or she is capable of
17 performing the duties in the same class or a comparable class in
18 the same or any other state department, bureau, board, commission,
19 or office under this part and the rules covering transfer of an
20 employee from a position under the jurisdiction of one appointing
21 power to a position under the jurisdiction of another appointing
22 power, without the consent of the appointing powers, where a
23 vacancy may be made available to him or her under this part and
24 the rules, but in no event shall the transfer constitute a promotion
25 within the meaning of this part and the ~~rules.~~ *rules.*

26 (c) If a layoff is made necessary to place a civil service employee
27 in a position in the same class or a comparable class in accordance
28 with this section, the layoff shall be made under Section 19997.3,
29 provided that no civil service employee who was employed prior
30 to September 16, 1940, shall be laid off as a result of the placing
31 of an employee in the same class or a comparable class under this
32 section.

33 (d) The board may order the civil service employee reinstated
34 to the department, bureau, board, commission, or office from which
35 he or she was transferred either upon request of the employee or
36 the appointing power from which transferred. The reinstatement
37 may be made after a hearing as provided in this section if the board
38 finds that the employee is at the time of the hearing able to perform
39 the duties of the position.

1 ~~SEC. 101.~~

2 *SEC. 100.* Section 19793 of the Government Code is amended
3 to read:

4 19793. By November 15 of each year, the department shall
5 either submit to the Governor, the Legislature, and the Department
6 of Finance a census report that shall include demographic
7 information on employees in the state civil service collected
8 pursuant to Section 19792 or post the data on its public Internet
9 Web-site. *site.* The Legislature shall evaluate the equal employment
10 opportunity efforts of state agencies during its evaluation of the
11 Budget Bill.

12 ~~SEC. 102.~~

13 *SEC. 101.* Section 19798 of the Government Code is amended
14 to read:

15 19798. In establishing order and subdivisions of layoff and
16 reemployment, the department, when it finds past discriminatory
17 hiring practices, may authorize modification of the order of layoff
18 only if failure to do so would result in ineligibility for a federal
19 program with a loss of federal funds or if required by federal law
20 or the United States Constitution.

21 ~~SEC. 103.~~

22 *SEC. 102.* Section 19800 of the Government Code is amended
23 to read:

24 19800. The Department of Human Resources is hereby vested
25 with the jurisdiction and responsibility of establishing and
26 maintaining personnel standards on a merit basis and administering
27 merit systems for local government agencies where such merit
28 systems of employment are required by statute or regulation as a
29 condition of a state-funded program or a federal grant-in-aid
30 program established under federal laws, including, but not limited
31 to: Social Security Act, as amended; the Public Health Service
32 Act; and the Federal Civil Defense Act, as amended.

33 ~~SEC. 104.~~

34 *SEC. 103.* Section 19801 of the Government Code is amended
35 to read:

36 19801. For the purposes of administration of state or federally
37 supported programs under Section 19800, the department shall,
38 by regulation, establish and maintain personnel standards on a
39 merit basis for local agencies (including standards of qualifications,
40 competency, education, experience, tenure, and compensation)

1 necessary for proper and efficient administration, and to assure
2 state conformity with applicable federal requirements.

3 ~~SEC. 105.~~

4 *SEC. 104.* Section 19802 of the Government Code is amended
5 to read:

6 19802. Nothing in this chapter shall prevent any local agency
7 from establishing its own merit system and determining thereunder
8 the personnel standards to be applicable to its employees, but as
9 to employees engaged in administering state and federally
10 supported programs under Section 19800, such local systems and
11 standards shall be subject to approval and review by the department
12 to the extent necessary to qualify for federal funds.

13 ~~SEC. 106.~~

14 *SEC. 105.* Section 19802.5 of the Government Code is amended
15 to read:

16 19802.5. Notwithstanding Sections 19801 and 19803, and after
17 the department approves the memorandum of understanding
18 standards, the department may waive administration of all or part
19 of a local agency merit system where administration of merit
20 system standards, including, but not limited to, certification,
21 appointment and other transactions, layoff and reinstatement,
22 position classifications, compensation standards, and disciplinary
23 action are established pursuant to a legally binding memorandum
24 of understanding negotiated between the local agency governing
25 board and an employee organization recognized pursuant to
26 applicable law representing employees engaged in federally
27 supported programs under Section 19800. Upon request of the
28 local agency governing board and the recognized employee
29 organization, such waivers shall be granted on any or all standards
30 following determination by the department that the provisions of
31 the memorandum of understanding maintain merit system standards
32 to the extent necessary to qualify for federal funds. All merit system
33 standards waivers shall be subject to periodic audit, approval, or
34 revocation by the department. Upon revocation of a waiver, the
35 department may require any additional information as a condition
36 of waiver reinstatement.

37 ~~SEC. 107.~~

38 *SEC. 106.* Section 19803 of the Government Code is amended
39 to read:

1 19803. The merit system for employees engaged in
2 administering programs under Section 19800 in a local agency not
3 administering its own merit system approved under this chapter
4 shall be administered by the department. The department may
5 delegate any of its duties under this article to a state department
6 or agency. This may include, but is not limited to, recruitment,
7 examination, certification, appointment and other transactions,
8 position classification, compensation standards, and disciplinary
9 actions. As part of such administration, the department shall hear
10 and decide appeals of any applicant for employment or officer or
11 employee from the decision of a local agency affecting the
12 employment rights of such persons. Any decision rendered in such
13 an appeal shall be binding upon the local agency.

14 The department may bill the state departments having
15 responsibility for the overall administration of grant-in-aid
16 programs for the costs incurred in conducting hearings involving
17 employees of local agencies not administering their own merit
18 systems pursuant to this chapter.

19 ~~SEC. 108.~~

20 *SEC. 107.* Section 19804 of the Government Code is amended
21 to read:

22 19804. In the exercise of functions under this chapter, the
23 department shall exercise no authority with respect to the selection,
24 tenure of office, and compensation of any individual employed in
25 accordance with established standards.

26 ~~SEC. 109.~~

27 *SEC. 108.* Section 19805 of the Government Code is amended
28 to read:

29 19805. The department shall establish and administer
30 procedures, including provisions for investigations and hearings,
31 to determine whether a particular merit system is in conformity
32 with the standards established or approved by the department
33 pursuant to Section 19801. In conducting any hearing provided by
34 such procedures, or in conducting an appeal hearing under Section
35 19803, the department shall have the same authority as it does in
36 conducting hearings pursuant to Section 19815.

37 ~~SEC. 110.~~

38 *SEC. 109.* Section 19806 of the Government Code is amended
39 to read:

1 19806. When the department, after hearing, determines that a
2 local merit system is not in conformity with the established
3 standards, it shall notify such local agency and appropriate state
4 officer in writing of its decision. If the governing body of the local
5 agency does not bring the system into conformity within 60 days
6 of notification of the department's decision, or within such longer
7 period as the department determines, the department shall certify
8 to the state officer having responsibility for the overall
9 administration of the program, pursuant to which the grant-in-aid
10 requiring such merit system was made, that the particular merit
11 system is not in conformity with established standards.

12 ~~SEC. 111.~~

13 *SEC. 110.* Section 19807 of the Government Code is amended
14 to read:

15 19807. Notwithstanding any other law, upon receiving
16 certification of the department, pursuant to Section 19806, the
17 appropriate state officer shall take such action against the local
18 agency as permitted by law or as necessary to obtain compliance
19 without an additional administrative hearing being held by such
20 officer.

21 ~~SEC. 112.~~

22 *SEC. 111.* Section 19808 of the Government Code is amended
23 to read:

24 19808. Local agencies shall provide such information and
25 reports relating to merit system administration as are required by
26 the department.

27 ~~SEC. 113.~~

28 *SEC. 112.* Section 19809 of the Government Code is amended
29 to read:

30 19809. State departments having responsibility for the overall
31 administration of grant-in-aid programs under Section 19800 shall
32 reimburse the department for all costs incurred by the department
33 in administering this chapter. The department may equitably prorate
34 such costs among such departments.

35 ~~SEC. 114.~~

36 *SEC. 113.* Section 19811 is added to the Government Code,
37 to read:

38 19811. (a) To the extent that any regulations adopted to make
39 specific or to carry out the provisions of this article are in conflict
40 with the amendments made to this article or become outdated at

1 any time due to a change in federal or state program requirements,
2 the regulations shall be repealed.

3 (b) The Legislature further finds and declares that regulations
4 interpreting and making specific this article are only necessary if
5 the regulations are required by federal law.

6 (c) Requirements imposed on local agencies pursuant to this
7 article shall not be considered regulations or standards of general
8 application and shall not impose any duty on the department to
9 adopt regulations.

10 ~~SEC. 115.~~

11 *SEC. 114.* Section 19815 of the Government Code is amended
12 to read:

13 19815. As used in this part:

14 (a) “Department” means the Department of Human Resources.

15 (b) “Director” means the Director of the Department of Human
16 Resources.

17 (c) “Division” means the Division of Labor Relations.

18 (d) “Employee” or “state employee,” except where otherwise
19 indicated, means employees subject to the Ralph C. Dills Act
20 (Chapter 10.3 (commencing with Section 3512), Division 4, Title
21 1), supervisory employees as defined in subdivision (g) of Section
22 3513, managerial employees as defined in subdivision (e) of
23 Section 3513, confidential employees as defined in subdivision
24 (f) of Section 3513, employees of the Legislative Counsel Bureau,
25 employees of the Bureau of State Audits, employees of the office
26 of the Inspector General, employees of the Public Employment
27 Relations Board, conciliators employed by the California State
28 Mediation and Conciliation Service, employees of the Department
29 of Human Resources, professional employees of the Department
30 of Finance engaged in technical or analytical state budget
31 preparation other than audit staff, intermittent athletic inspectors
32 who are employees of the State Athletic Commission, professional
33 employees in the Personnel/Payroll Services Division of the
34 Controller’s office, and all employees of the executive branch of
35 government who are not elected to office.

36 ~~SEC. 116.~~

37 *SEC. 115.* Section 19815.4 of the Government Code is amended
38 to read:

39 19815.4. The director shall do all of the following:

40 (a) Be responsible for the management of the department.

1 (b) Administer and enforce the laws pertaining to personnel.

2 (c) Observe and report to the Governor on the conditions of all
3 matters in the jurisdiction of the department.

4 (d) Formulate, adopt, amend, or repeal rules, regulations, and
5 general policies affecting the purposes, responsibilities, and
6 jurisdiction of the department pursuant to procedures established
7 by Chapter 4 (commencing with section 18210) of Part 1.

8 All regulations relating to personnel administration heretofore
9 adopted pursuant to this ~~part~~, *part*, and in effect on the operative
10 date of this part, shall remain in effect and shall be fully enforceable
11 unless and until readopted, amended, or repealed by the director.

12 (e) Hold hearings, subpoena witnesses, administer oaths, and
13 conduct investigations concerning all matters relating to the
14 department's jurisdiction.

15 (f) Act on behalf of the department and delegate powers to any
16 authorized representative.

17 (g) Serve as the Governor's designated representative pursuant
18 to Section 3517.

19 (h) Perform any other duties that may be prescribed by law, and
20 any other administrative and executive duties that have by other
21 law been previously imposed.

22 ~~SEC. 117.~~

23 *SEC. 116.* Section 19815.6 of the Government Code is amended
24 to read:

25 19815.6. (a) Notwithstanding the provisions of Sections 11042
26 and 11043, the chief counsel shall represent the department in all
27 legal matters in which the department is interested, before any
28 administrative agency or court of law.

29 (b) The department may charge state agencies and departments
30 for the actual and necessary costs of legal services rendered by the
31 legal division in unfair practice cases, representation cases, and
32 requests for injunctive relief arising pursuant to Chapter 10.3
33 (commencing with Section 3512) of Division 4 of Title 1, in
34 grievance arbitration cases arising under negotiated memoranda
35 of understanding, and in all labor law and personnel matters.

36 (c) In grievance arbitration cases arising pursuant to memoranda
37 of understanding negotiated pursuant to Sections 3517 and 3517.5,
38 the department may charge state agencies involved for the actual
39 and necessary costs of arbitration, including the state's share of
40 the arbitrator's fees, transcription fees, and other related costs.

1 (d) The department may charge state agencies for their pro rata
2 share of the actual and necessary costs of negotiating and
3 administering memoranda of understanding pursuant to Sections
4 3517 and 3517.5.

5 ~~SEC. 118.~~

6 *SEC. 117.* Section 19816 of the Government Code is repealed.

7 ~~SEC. 119.~~

8 *SEC. 118.* Section 19816.6 of the Government Code is amended
9 to read:

10 19816.6. All officers and employees of the State Personnel
11 Board and the Department of Personnel Administration, who, on
12 the operative date of this part, are serving in the state civil service,
13 other than as temporary employees, and engaged in the
14 performance of a function vested in the department shall be
15 transferred to the department. The status, positions, and rights of
16 these persons shall not be affected by the transfer and shall be
17 retained by them as officers and employees of the department
18 pursuant to the State Civil Service Act, except as to positions
19 exempt from civil service.

20 ~~SEC. 120.~~

21 *SEC. 119.* Section 19816.12 of the Government Code is
22 amended to read:

23 19816.12. The department shall establish and maintain in
24 suitable form an official roster of all persons holding positions
25 under this part and enter thereupon their names, complete record
26 of state employment, and other facts prescribed by rule.

27 ~~SEC. 121.~~

28 *SEC. 120.* Section 19818.2 of the Government Code is repealed.

29 ~~SEC. 122.~~

30 *SEC. 121.* Section 19818.4 of the Government Code is repealed.

31 ~~SEC. 123.~~

32 *SEC. 122.* Section 19818.14 of the Government Code is
33 amended to read:

34 19818.14. The department may designate an appointing power
35 to allocate positions to the Personnel Classification Plan in
36 accordance with Section 19818.6 and department rule. The
37 department may audit position allocations . If the department finds
38 that an appointing power has allocated positions inappropriately,
39 the department may order corrective action, including, but not
40 limited to, reallocating positions, voiding lawful personal

1 transactions, and revoking or restricting the appointing power's
2 ability to allocate positions. If an appointing power's allocation
3 authority is revoked, the Department of Finance may transfer a
4 sufficient number of personnel from the appointing power to the
5 department to perform the previously delegated work.

6 ~~SEC. 124.~~

7 *SEC. 123.* Section 19822.5 of the Government Code is amended
8 to read:

9 19822.5. The department shall by rule authorize such
10 expenditures as are reasonably necessary for the meals, lodging,
11 or travel of persons who provide nonsalaried assistance to the
12 department or a designated appointing power in the preparation
13 or conduct of written or oral examinations.

14 ~~SEC. 125.~~

15 *SEC. 124.* Section 19822.7 of the Government Code is amended
16 to read:

17 19822.7. (a) There is hereby created in the State Treasury the
18 Work and Family Fund to which funds shall be allocated from the
19 amount negotiated in memoranda of understanding between the
20 state and the recognized employee organization, as defined in
21 Section 3513, and appropriated by the Legislature, for the 2000–01
22 fiscal year and subsequent fiscal years.

23 (b) The fund shall be used to establish and maintain work and
24 family programs for state employees. These programs may include,
25 but are not limited to, financial assistance to aid in the development
26 of child care centers administered by either nonprofit corporations
27 formed by state employees or child care providers, or to provide
28 grants, subsidies, or both grants and subsidies for child care and
29 elder care. Other programs may include enhancement or
30 supplementation of existing employee assistance program services
31 and other work and family programs.

32 (c) The fund shall be administered by the Department of Human
33 Resources. The amounts to be allocated and expended from funds
34 available for compensation shall be determined by the department.

35 (d) Notwithstanding Section 13340, the fund shall be available
36 for expenditure without regard to fiscal years through June 30,
37 2005. As of June 30, 2005, the fund shall cease to exist and any
38 balance in the fund shall revert to the General Fund, unless the
39 existence of the fund is extended by statute and that statute is
40 enacted and becomes effective prior to June 30, 2005.

1 ~~SEC. 126.~~

2 *SEC. 125.* Section 19889 of the Government Code is amended
3 to read:

4 19889. It is the purpose of this article to encourage the
5 development and effective use in the civil service of well-qualified
6 and carefully selected executives. In order to carry out this purpose
7 the State Personnel Board shall establish rules for competitive
8 examinations of candidates for the classification of career executive
9 assignment. The department or a designated appointing authority
10 shall be responsible for conducting examinations, salary
11 administration, position classification, and for the motivation and
12 training of executive personnel.

13 ~~SEC. 127.~~

14 *SEC. 126.* Section 19889.2 of the Government Code is amended
15 to read:

16 19889.2. The provisions of this part governing the selection,
17 classification, and tenure of employees in the regular civil service
18 shall not apply to employees in the case of career executive
19 assignment except as provided by this article. The provisions of
20 Chapter 7 (commencing with Section 19570) of Part 2 relating to
21 adverse actions shall apply to employees serving in career executive
22 assignments, except that termination of a career executive
23 assignment as provided for in Section 19889.3 is not an adverse
24 action. With reference to termination of career executive
25 assignments, the State Personnel Board rules shall, as a minimum,
26 afford an employee a right of appeal to the State Personnel Board
27 for restoration of his or her assignment when he or she alleges that
28 his or her termination was for reasons prohibited in Chapter 10
29 (commencing with Section 19680) of Part 2.

30 ~~SEC. 128.~~

31 *SEC. 127.* Section 19889.3 of the Government Code is amended
32 to read:

33 19889.3. (a) Eligibility for appointment the class of career
34 executive category shall be limited to persons with permanent
35 status in the civil service who meet the minimum qualifications
36 established for the class.

37 (b) No person employed in a career executive assignment shall
38 be deemed to acquire as a result of that service any rights to or
39 status in positions governed by the provisions of this part relating

1 to the civil service other than the category of career executive
2 assignment, except as provided by rule.

3 (c) Anyone appointed to the classification of career executive
4 assignment shall, at the termination of his or her appointment to
5 a career executive assignment, be reinstated to a civil service
6 position that is (1) not a career executive assignment and (2) that
7 is at least at the same salary level as the last position that he or she
8 held as a permanent or probationary employee. If the employee
9 has completed a minimum of five years of state service, he or she
10 may return to a position that is (1) at substantially the same salary
11 level as the last position in which he or she had permanent or
12 probationary status or (2) at a salary level that is at least two steps
13 lower than that of the career executive position from which the
14 employee is being terminated.

15 (d) For the purpose of this section “employee” means a
16 permanent employee, or an employee serving under another
17 appointment who previously had permanent status and who, since
18 such permanent status, has had no break in the continuity of his
19 or her state service.

20 (e) This section shall become operative on January 1, 2013.

21 ~~SEC. 129.~~

22 *SEC. 128.* Section 19889.4 of the Government Code is repealed.

23 ~~SEC. 130.~~

24 *SEC. 129.* Section 13601 of the Penal Code is amended to read:

25 13601. (a) The CPOST shall develop, approve, and monitor
26 standards for the selection and training of state correctional peace
27 officer apprentices. The Department of Human Resources or the
28 Department of Corrections and Rehabilitation shall ensure that,
29 prior to training, each applicant who has otherwise qualified in all
30 physical and other testing requirements to be a peace officer in
31 either a youth or adult correctional facility, is determined to be
32 free from emotional or mental conditions that might adversely
33 affect the exercise of his or her duties and powers as a peace officer
34 pursuant to the standards developed by CPOST.

35 (b) The CPOST may approve standards for a course in the
36 carrying and use of firearms for correctional peace officers that is
37 different from that prescribed pursuant to Section 832. The
38 standards shall take into consideration the different circumstances
39 presented within the institutional setting from that presented to
40 other law enforcement agencies outside the correctional setting.

1 (c) Notwithstanding Section 3078 of the Labor Code, the length
2 of the probationary period for correctional peace officer apprentices
3 shall be determined by the CPOST subject to approval by the State
4 Personnel Board, pursuant to Section 19170 of the Government
5 Code.

6 (d) The CPOST shall develop, approve, and monitor standards
7 for advanced rank-and-file and supervisory state correctional peace
8 officer and training programs for the Department of Corrections
9 and Rehabilitation. When a correctional peace officer is promoted
10 within the department, he or she shall be provided with and be
11 required to complete these secondary training experiences.

12 (e) The CPOST shall develop, approve, and monitor standards
13 for the training of state correctional peace officers in the department
14 in the handling of stress associated with their duties.

15 (f) Toward the accomplishment of the objectives of this act, the
16 CPOST may confer with, and may avail itself of the assistance
17 and recommendations of, other state and local agencies, boards,
18 or commissions.

19 (g) Notwithstanding the authority of the CPOST, the department
20 shall design and deliver training programs, shall conduct validation
21 studies, and shall provide program support. The CPOST shall
22 monitor program compliance by the department.

23 (h) The CPOST may disapprove any training courses created
24 by the department pursuant to the standards developed by CPOST
25 if it determines that the courses do not meet the prescribed
26 standards.

27 (i) The CPOST shall annually submit an estimate of costs to
28 conduct those inquiries and audits as may be necessary to determine
29 whether the department and each of its institutions and parole
30 regions are adhering to the standards developed by the CPOST,
31 and shall conduct those inquiries and audits consistent with the
32 annual Budget Act.

33 (j) The CPOST shall establish and implement procedures for
34 reviewing and issuing decisions concerning complaints or
35 recommendations from interested parties regarding the CPOST
36 rules, regulations, standards, or decisions.

37 (k) This section shall become operative July 1, 2012.

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