

**ASSEMBLY BILL**

**No. 124**

---

---

**Introduced by Assembly Member Dymally**

January 13, 2005

---

---

An act to amend Sections 19790, 19791, 19792, 19792.5, 19793, 19794, 19795, 19796, 19797, and 19798 of, and to amend the heading of Chapter 12 (commencing with Section 19790) of Part 2 of Division 5 of Title 2 of, the Government Code, relating to state civil service.

LEGISLATIVE COUNSEL'S DIGEST

AB 124, as introduced, Dymally. Civil service: equal opportunity programs.

The State Civil Service Act requires each state agency and department to establish an effective affirmative action program with specified components, and to establish goals and timetables designed to overcome any identified underutilization of minorities and women in their respective organizations. Existing law requires the State Personnel Board to conduct specified activities in this regard.

Portions of these provisions have been held to be in violation of the California Constitution and the United States Constitution.

This bill would revise and recast these provisions to instead require each state agency to establish an equal opportunity program to ensure that the state policy of providing equal access to state jobs, work assignment, training, and other employment-related opportunities for all qualified job applicants and employees, based on merit and nondiscrimination in every aspect of personnel policies and employment practices, is fully implemented. It would require the State Personnel Board to conduct specified activities, including the collection of specific employment data based on race, ethnicity, and gender, in this regard.

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. The heading of Chapter 12 (commencing with  
2 Section 19790) of Part 2 of Division 5 of Title 2 of the  
3 Government Code is amended to read:

4

5 CHAPTER 12. STATE CIVIL SERVICE ~~AFFIRMATIVE ACTION~~  
6 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

7

8 SEC. 2. Section 19790 of the Government Code is amended  
9 to read:

10 19790. Each *state agency and department* is responsible for  
11 establishing an effective ~~affirmative action~~ *equal employment*  
12 *opportunity* program. The State Personnel Board shall be  
13 responsible for ~~providing~~ *taking all steps necessary to provide*  
14 statewide advocacy, coordination, enforcement, and monitoring  
15 of these programs.

16 ~~Each agency and department shall establish goals and~~  
17 ~~timetables designed to overcome any identified underutilization~~  
18 ~~of minorities and women in their respective organizations.~~  
19 ~~Agencies and departments shall determine their annual goals and~~  
20 ~~timetables by June 1 of each year beginning in 1978. These goals~~  
21 ~~and timetables shall be made available to the public upon request.~~  
22 ~~All goals and timetables shall then be submitted to the board for~~  
23 ~~review and approval or modification no later than July 1 of each~~  
24 ~~year.~~

25 SEC. 3. Section 19791 of the Government Code is amended  
26 to read:

27 19791. As used in this chapter, *the following definitions*  
28 *apply:*

29 (a) ~~“Goal” means a projected level of achievement resulting~~  
30 ~~from an analysis by the employer of its deficiencies in utilizing~~  
31 ~~minorities and women and what reasonable remedy is available~~  
32 ~~to correct such underutilization. Goals shall be specific by the~~  
33 ~~smallest reasonable hiring unit, and shall be established~~  
34 ~~separately for minorities and women.~~

1 ~~(b) “Timetable” means an estimate of the time required to~~  
2 ~~meet specific goals.~~

3 ~~(e)–~~

4 (a) *“Equal employment opportunity” mean ensuring*  
5 *nondiscrimination and providing equal access to state jobs, work*  
6 *assignments, training, and other employment-related*  
7 *opportunities for all qualified job applicants and employees.*

8 (b) *“Underutilization” means having fewer a statistically*  
9 *significant, smaller percentage of persons of a particular group in*  
10 *an occupation or at a level in a ~~department~~ state agency than*  
11 *would reasonably be expected by their ~~availability~~ percentage*  
12 *representation in the relevant labor force. An identified*  
13 *underutilization is not necessarily indicative of a denial of equal*  
14 *employment opportunity, but warrants an analysis of the cause of*  
15 *the underutilization.*

16 SEC. 4. Section 19792 of the Government Code is amended  
17 to read:

18 19792. The State Personnel Board shall *do all of the*  
19 *following:*

20 (a) Provide statewide leadership, designed to achieve ~~positive~~  
21 ~~and continuing affirmative action programs~~ *equal employment*  
22 *opportunity* in the state civil service.

23 (b) Develop, implement, and maintain ~~affirmative action and~~  
24 ~~equal employment opportunity~~ guidelines.

25 (c) Provide technical assistance to state ~~departments~~ *agencies*  
26 *in the development and implementation of their ~~affirmative~~*  
27 ~~action~~ *equal employment opportunity* programs.

28 (d) Review and evaluate departmental ~~affirmative action~~  
29 ~~equal employment opportunity~~ programs to ~~insure~~ *ensure* that  
30 they comply with *state and* federal statutes and regulations.

31 (e) Establish ~~requirements for improvement or corrective~~  
32 ~~action to eliminate the underutilization of minorities and women~~  
33 ~~programs to ensure equal employment opportunity for all state~~  
34 ~~job applicants and employees through broad, inclusive~~  
35 ~~recruitment efforts and other measures as allowed by law.~~

36 (f) Provide statewide training to departmental ~~affirmative~~  
37 ~~action~~ *equal employment opportunity* officers who will conduct  
38 ~~supervisory~~ training on ~~affirmative action~~ *equal employment*  
39 *opportunity.*

1 (g) Review, examine the validity of, and update qualifications  
2 standards, selection devices, including oral appraisal panels and  
3 career advancement programs.

4 (h) Maintain a statistical information system designed to yield  
5 the data and the analysis necessary for the evaluation of ~~progress~~  
6 ~~in affirmative action and~~ equal employment opportunity within  
7 the state civil service. ~~Such~~ *The* statistical information shall  
8 include specific data to determine the underutilization of  
9 ~~minorities and women~~ *groups based on race, ethnicity, and*  
10 *gender*. The statistical information shall be made available during  
11 normal working hours to all interested persons. Data generated  
12 on a regular basis shall include, but not be limited to, *all of* the  
13 following:

14 (1) Current state civil service work force composition by race,  
15 ~~sex~~ *ethnicity, gender, age, department, salary level, occupation,*  
16 and attrition rates by occupation.

17 (2) Current local and regional work force and population data  
18 ~~of women and minorities~~ *for groups based on race, ethnicity,*  
19 *gender, and age.*

20 (i) ~~Data~~ *The data analysis referred to in subdivision (h) above*  
21 shall include, but not be limited to, *all of* the following:

22 (1) Data relating to the utilization ~~by department of minorities~~  
23 ~~and women~~ *of groups based on race, ethnicity, gender, and*  
24 *disability* compared to their availability in the *relevant* labor  
25 force.

26 (2) Turnover data by department and occupation.

27 (3) Data relating to salary administration, ~~such as~~ *including*  
28 *average salaries by race and sex, for groups based on race,*  
29 *ethnicity, gender, and disability* and comparisons of salaries  
30 within state service and comparable state employment.

31 (4) Data on employee age, and salary level compared among  
32 ~~rac~~ ~~es and sexes~~ *groups based on race, ethnicity, gender, and*  
33 *disability.*

34 (5) Data on the number of ~~women and minorities~~ *individuals*  
35 *of each race, ethnicity, and gender who are recruited for,*  
36 ~~participating in~~ *participate in,* and ~~passing~~ *pass* state civil  
37 service examinations. ~~Such~~ *This* data shall be analyzed pursuant  
38 to the provisions of Sections 19704 and 19705.

39 (6) Data on the job classifications, geographic locations,  
40 separations, salaries, and other conditions of employment ~~which~~

1 *that provide additional information about the composition of the*  
2 *state civil service ~~work force~~ workforce.*

3 SEC. 5. Section 19792.5 of the Government Code is amended  
4 to read:

5 19792.5. (a) In order to permit the public to track ~~the “glass~~  
6 ~~ceiling” patterns affecting women and minorities~~ *upward*  
7 *mobility and the impact of equal opportunities on persons,*  
8 *categorized by race, ethnicity, and gender* in state civil service,  
9 the State Personnel Board shall annually track, by incremental  
10 levels of ten thousand dollars (\$10,000), the salaries of ~~women~~  
11 ~~and minorities~~ *persons, categorized by race, ethnicity, and*  
12 *gender* in state civil service ~~up to the level of one hundred~~  
13 ~~thousand dollars (\$100,000)~~. For purposes of this subdivision,  
14 ~~“glass ceiling”~~ *“upward mobility”* means ~~the artificial barrier~~  
15 ~~caused by discriminatory employment practices that prevents or~~  
16 ~~hinders the advancement of women and minorities~~ *persons,*  
17 *categorized by race, ethnicity, and gender* to better paying and  
18 higher level positions.

19 (b) The board shall report salary data collected pursuant to  
20 subdivision (a) to the Governor and the Legislature in its Annual  
21 Census of State Employees and ~~Affirmative Action Report~~  
22 *Equal Employment Opportunity Report, as required in Section*  
23 *19793, and shall include in this report information regarding the*  
24 *progress of women and minorities individuals by race, ethnicity,*  
25 *and gender* in attaining high level positions in state employment  
26 ~~and affirmative action efforts made in this regard~~. The salary data  
27 shall be reported in annual increments of ten thousand dollars  
28 (\$10,000) by job category, ~~minority group~~ *race, ethnicity,* and  
29 gender in a format easily understandable by the public.

30 SEC. 6. Section 19793 of the Government Code is amended  
31 to read:

32 19793. By November 15 of each year, ~~beginning in 1978,~~ the  
33 State Personnel Board shall ~~report~~ *submit* to the Governor, the  
34 Legislature, and the Department of Finance ~~on a census of the~~  
35 ~~state workforce and any underutilization problems in a state~~  
36 ~~agency or department that may indicate failure to provide equal~~  
37 ~~employment opportunity to minorities, women, and persons with~~  
38 ~~disabilities during the past fiscal year~~ *a census report that shall*  
39 *include demographic information on employees in the state civil*  
40 *service, based upon the analysis of the data collected pursuant to*

1 Section 19792. The report shall specifically include, but be not  
 2 limited to, identified underutilizations and, where warranted by  
 3 analysis of the underutilizations, steps taken to ensure equal  
 4 employment opportunity in the state civil service. The report  
 5 shall also ~~shall~~ include information ~~on~~ to the Legislature on laws  
 6 that discriminate or have the effect of ~~discrimination~~  
 7 ~~discriminating~~ on the basis of ~~political affiliation or any basis~~  
 8 ~~listed in subdivision (a) of Section 12940, as those bases are~~  
 9 ~~defined in Sections 12926 and 12926.1~~ race, ethnicity, and  
 10 gender. The Legislature shall evaluate the equal employment  
 11 opportunity efforts of state agencies during its evaluation of the  
 12 Budget Bill.

13 SEC. 7. Section 19794 of the Government Code is amended  
 14 to read:

15 19794. In cooperation with the State Personnel Board, the  
 16 ~~director~~ appointing power of each ~~department~~ state agency shall  
 17 have the major responsibility for monitoring the effectiveness of  
 18 the ~~affirmative action program~~ equal employment opportunity  
 19 programs of the ~~department~~ state agency. To that end, the  
 20 appointing power shall do all of the following:

21 (a) Issue a policy statement committing to equal employment  
 22 opportunity.

23 (b) Issue procedures for filing, processing, and resolving  
 24 discrimination complaints within the state agency, consistent  
 25 with state laws and rules, and for filing appeals from agency  
 26 decisions on these complaints.

27 (c) Issue procedures for providing equal upward mobility and  
 28 promotional opportunities to state employees.

29 (d) Cooperate with the board by providing access, in  
 30 accordance with subdivisions (o) and (p) of Section 1798.24 of  
 31 the Civil Code, to all files, documents, and data necessary for the  
 32 board to carry out its mandates under this chapter.

33 SEC. 8. Section 19795 of the Government Code is amended  
 34 to read:

35 19795. (a) The ~~secretary~~ appointing power of each state  
 36 agency and the director of each state department shall appoint ~~an~~  
 37 ~~affirmative action~~, at the managerial level, an equal employment  
 38 opportunity officer, other than the personnel officer, ~~except~~ .  
 39 However, in a ~~department~~ state agency with less than 500  
 40 employees, the ~~affirmative action~~ equal employment opportunity

1 officer may be the personnel officer who shall report directly,  
2 and be under the supervision of, the director of the department, to  
3 develop, implement, coordinate, and monitor the ~~agency or~~  
4 ~~departmental affirmative action~~ *agency's equal employment*  
5 *opportunity* program. The ~~departmental or agency affirmative~~  
6 ~~action~~ *equal employment opportunity* officer shall, among other  
7 duties, analyze and report on appointments of employees, ~~request~~  
8 ~~appropriate action of the departmental director or agency~~  
9 ~~secretary,~~ *bring issues of concern regarding equal employment*  
10 *opportunity to the appointing power and recommend appropriate*  
11 *action,* submit an evaluation of the effectiveness of the total  
12 ~~affirmative action~~ *equal employment opportunity* program to the  
13 State Personnel Board annually, monitor the composition of oral  
14 panels in departmental examinations, and perform other duties  
15 necessary for the effective implementation of the ~~departmental~~  
16 ~~and agency affirmative action~~ *equal employment opportunity*  
17 plans.

18 (b) Each state agency shall establish a *separate* committee of  
19 employees who are individuals with a disability, *or who have an*  
20 *interest in disability issues,* to advise the head of the agency on  
21 *issues of concern to employees with disabilities, and* matters  
22 relating to the formulation and implementation of the plan to  
23 overcome and correct any underrepresentation determined  
24 pursuant to Section 19234.

25 SEC. 9. Section 19796 of the Government Code is amended  
26 to read:

27 19796. Bureau or division chiefs within a ~~department or state~~  
28 agency shall be accountable to the ~~department director~~  
29 *appointing power* for the effectiveness and results of the *equal*  
30 *employment opportunity* program within their division or bureau.  
31 ~~Each bureau or division may assign an administrator to assist the~~  
32 ~~departmental affirmative action officer.~~

33 All ~~management levels, including firstline supervisors,~~  
34 *managers and supervisors* shall provide program support and  
35 take ~~all~~ *any* positive action necessary to ensure and advance  
36 equal employment opportunity at their respective levels.

37 SEC. 10. Section 19797 of the Government Code is amended  
38 to read:

39 19797. Each state agency ~~and department~~ shall develop,  
40 update annually, and implement an ~~affirmative action~~ *equal*

1 *employment opportunity* plan which shall ~~at least~~, *at a minimum*,  
 2 identify the areas of *significant* underutilization of ~~minorities and~~  
 3 ~~women~~ *specific groups based on race, ethnicity, and gender*,  
 4 within each department by job category and level, contain an  
 5 equal employment opportunity analysis of all job categories and  
 6 levels within the hiring jurisdiction, and include an explanation  
 7 and specific actions for ~~improving the representation of~~  
 8 ~~minorities and women~~ *removing any non-job-related*  
 9 *employment barriers*.

10 SEC. 11. Section 19798 of the Government Code is amended  
 11 to read:

12 19798. In establishing order and subdivisions of layoff and  
 13 reemployment, the board, when it finds past discriminatory  
 14 hiring practices, ~~shall by rule, adopt a process that provides that~~  
 15 ~~the composition of the affected workforce will be the same after~~  
 16 ~~the completion of a layoff, as it was before the layoff procedure~~  
 17 ~~was implemented~~ *may authorize modification of the order of*  
 18 *layoff, in accordance with board rule, only if failure to do so by*  
 19 *a department would result in ineligibility for a federal program*  
 20 *with a loss of federal funds or if required by federal law or the*  
 21 *United States Constitution*.