

## Senate Bill No. 1309

### CHAPTER 360

An act to amend Sections 7296, 7299.2, 7299.4, 7299.5, 7299.6, 11435.40, 11435.45, 11435.50, 18522, 18524, 18538, 18573, 18576, 18720, 18720.1, 18720.3, 18720.4, 18901, 18901.5, 18902, 18906, 18930, 18930.5, 18934, 18935, 18938, 18938.5, 18938.6, 18939, 18990, 18991, 18992, 19050.4, 19050.5, 19052, 19055, 19057.1, 19057.3, 19058, 19063, 19063.1, 19063.4, 19063.8, 19172, 19180, 19232, 19233, 19236, 19237, 19240, 19241, 19242, 19242.2, 19242.8, 19243, 19243.2, 19600, 19600.1, 19602, 19603, 19606, 19609, 19701, 19702.5, 19705, 19790, 19792, 19792.5, 19794, 19795, 19798.5, 19816.4, and 19816.6 of, to add Sections 18501, 18502, and 18521.5 to, to add Article 1.5 (commencing with Section 18660) to Chapter 2 of Part 2 of Division 5 of Title 2 of, to repeal Sections 19815.2 and 19816.22 of, and to repeal and add Section 19702 of, the Government Code, relating to human resources.

[Approved by Governor September 17, 2012. Filed with  
Secretary of State September 17, 2012.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1309, Negrete McLeod. Human resources.

The California Constitution establishes the State Personnel Board (board) and requires the board to, among other things, enforce the civil service statutes, prescribe probationary periods and classifications, adopt rules authorized by statute, and review disciplinary actions. The Constitution also requires the executive officer of the board to administer the civil service statutes under the rules of the board. Existing law established the Department of Personnel Administration for purposes of managing the nonmerit aspects of the state's personnel system.

The Governor's Reorganization Plan No. 1 of 2011, operative July 1, 2012, created the Department of Human Resources, which is vested with the duties, purposes, responsibilities, and jurisdiction exercised by the board as its designee with respect to the board's administrative and ministerial functions.

This bill would instead vest the Department of Human Resources with those powers, duties, and authorities necessary to operate the state civil service system in accordance with the California Constitution, statutory law, the merit principle, and applicable rules duly adopted by the board. The bill would transfer certain functions and duties from the responsibility of the board to the Department of Human Resources. The bill would make related changes.

The plan also abolished the Department of Personnel Administration, and transferred the functions and duties performed by the Department of

Personnel Administration to the Department of Human Resources. The plan eliminated certain functions of the board relating to investigating and hearing complaints of discrimination in the civil service. The plan also authorizes the Department of Human Resources to establish disciplinary criteria applicable to adverse actions taken by appointing bodies pursuant to causes of discipline for employees and individuals established pursuant to specified provisions of law. The plan requires the board to give consideration and respect to any applicable disciplinary criteria established by the Department of Human Resources in making certain decisions relating to disciplinary proceedings.

This bill would also specify that the rules and regulations of the board and of the Department of Personnel Administration would remain in effect unless amended or repealed by the board or the Department of Human Resources.

The bill would authorize the board to perform audits on the personnel practices of any appointing authority, as defined, to ensure compliance with the civil service laws and board regulations.

The bill would also prohibit a person from being discriminated against in the terms, conditions, and privileges of his or her employment with the state based on his or her medical condition, mental disability, or physical disability, as defined, and would require the board, upon a finding that discrimination has occurred, to order the appointing authority to cause the discrimination to cease and desist, as specified.

Existing law authorizes the Department of Personnel Administration to assess special funds, bond funds, and nongovernmental cost funds in sufficient amounts to support the cost of the Human Resources Modernization Project, as specified.

This bill would also repeal that provision.

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

SECTION 1. Section 7296 of the Government Code is amended to read: 7296. (a) As used in this chapter, a “qualified bilingual person,” “qualified bilingual employee,” or “qualified interpreter” is a person who is proficient in both the English language and the non-English language to be used. For any state agency, “qualified” means one of the following:

(1) A bilingual person or employee who the Department of Human Resources has tested and certified as proficient in the ability to understand and convey in English and a non-English language commonly used terms and ideas, including terms and ideas regularly used in state government.

(2) A bilingual employee who was tested and certified by a state agency or other approved testing authority as proficient in the ability to understand and convey in English and a non-English language commonly used terms and ideas, including terms and ideas regularly used in state government.

(3) An interpreter who has met the testing or certification standards for outside or contract interpreters, as proficient in the ability to communicate

commonly used terms and ideas between the English language and the non-English language to be used and has knowledge of basic interpreter practices, including, but not limited to, confidentiality, neutrality, accuracy, completeness, and transparency.

(b) The determination of what constitutes “qualified” for local agencies, shall be left to the discretion of the local agency.

SEC. 2. Section 7299.2 of the Government Code is amended to read:

7299.2. The Department of Human Resources shall be responsible for informing state agencies of their responsibilities under this chapter and providing state agencies with technical assistance, upon request on a reimbursable basis.

SEC. 3. Section 7299.4 of the Government Code is amended to read:

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

(b) Each agency shall conduct a survey of each of its local offices every two years to determine all of the following:

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

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

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

(4) The number of anticipated vacancies in public contact positions.

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

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

(7) A list of materials identified in paragraph (6) that have been translated and languages into which they have been translated.

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

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

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

The survey results and any additional information requested shall be reported in the form and at the time required by the Department of Human Resources, and delivered to the department not later than October 1 of every even-numbered year beginning with 2008.

(d) Beginning in 2009 and in every odd-numbered year thereafter, each state agency shall develop an implementation plan that, at a minimum, addresses all of the following:

(1) The name, position, and contact information of the employee designated by the agency to be responsible for overseeing implementation of the plan.

(2) A description of the agency's procedures for identifying written materials that need to be translated.

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

(4) A description of how the agency recruits qualified bilingual staff.

(5) A description of any training the agency provides to its staff on the provision of services to non- or limited-English-speaking individuals.

(6) A detailed description of how the agency plans to address any deficiencies in meeting the requirements of this chapter, including, but not limited to, the failure to translate written materials or employ sufficient numbers of qualified bilingual employees in public contact positions at local offices, the proposed actions to be taken to address the deficiencies, and the proposed dates by when the deficiencies can be remedied.

(7) A description of the agency's procedures for accepting and resolving complaints of an alleged violation of this chapter.

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

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

(e) In developing its implementation plan in 2003, each state agency may rely upon data gathered from its 2002 survey.

(f) Each state agency shall submit its implementation plan to the Department of Human Resources no later than October 1 of each applicable year. The department shall review each plan, and, if it determines that the plan fails to address the identified deficiencies, shall order the agency to supplement or make changes to its plan. A state agency that has been determined to be deficient shall report to the Department of Human Resources every six months on its progress in addressing the identified deficiencies.

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

SEC. 4. Section 7299.5 of the Government Code is amended to read:

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

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

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

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

SEC. 5. Section 7299.6 of the Government Code is amended to read:

7299.6. The Department of Human Resources shall review the results of the surveys and implementation plans required to be made by Section 7299.4, compile this data, and provide a report to the Legislature every two years. The report shall identify significant problems or deficiencies and propose solutions where warranted.

SEC. 6. Section 11435.40 of the Government Code is amended to read:

11435.40. (a) The Department of Human Resources shall designate the languages for which certification shall be established under Sections 11435.30 and 11435.35. The languages designated shall include, but not be limited to, Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese until the Department of Human Resources finds that there is an insufficient need for interpreting assistance in these languages.

(b) The language designations shall be based on the following:

- (1) The language needs of non-English-speaking persons appearing before the administrative agencies, as determined by consultation with the agencies.
- (2) The cost of developing a language examination.
- (3) The availability of experts needed to develop a language examination.
- (4) Other information the department deems relevant.

SEC. 7. Section 11435.45 of the Government Code is amended to read:

11435.45. (a) The Department of Human Resources shall establish and charge fees for applications to take interpreter examinations and for renewal of certifications. The purpose of these fees is to cover the annual projected costs of carrying out this article. The fees may be adjusted each fiscal year by a percent that is equal to or less than the percent change in the California Necessities Index prepared by the Commission on State Finance.

(b) Each certified administrative hearing interpreter and each certified medical examination interpreter shall pay a fee, due on July 1 of each year, for the renewal of the certification. Court interpreters certified under Section 68562 shall not pay any fees required by this section.

(c) If the amount of money collected in fees is not sufficient to cover the costs of carrying out this article, the department shall charge and be reimbursed a pro rata share of the additional costs by the state agencies that conduct administrative hearings.

SEC. 8. Section 11435.50 of the Government Code is amended to read:

11435.50. The Department of Human Resources may remove the name of a person from the list of certified interpreters if any of the following conditions occurs:

- (a) The person is deceased.

(b) The person notifies the department that the person is unavailable for work.

(c) The person does not submit a renewal fee as required by Section 11435.45.

SEC. 9. Section 18501 is added to the Government Code, to read:

18501. This part and Part 2.6 shall be known as the State Civil Service Act.

SEC. 10. Section 18502 is added to the Government Code, to read:

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

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

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

(b) The State Personnel Board shall prescribe rules consistent with a merit based civil service system to govern classification, examinations, probationary periods, and disciplinary actions. The State Personnel Board may conduct audits and investigations of personnel practices of the department and appointing authorities to ensure compliance with civil service policies, procedures, and statutes.

(c) Nothing in this section limits the authority of the Department of Human Resources and the State Personnel Board to delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement.

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

SEC. 11. Section 18521.5 is added to the Government Code, to read:

18521.5. "Department" means the Department of Human Resources.

SEC. 12. Section 18522 of the Government Code is amended to read:

18522. "Position" means any office or employment in the "state civil service" as the phrase is defined in Section 1 of Article VII of the Constitution.

"Former position" means either of the following:

(a) A position in the classification to which an employee was last appointed as a probationer, permanent employee, or career executive, under the same appointing power where that position was held, and within a designated geographical, organizational, or functional subdivision of that state agency.

(b) With the concurrence of both the appointing power and the employee, a position in a different classification to which the same appointing power could have assigned such an employee in accordance with this part. However, the former position shall not include positions from which the employee

has been separated through disciplinary action, rejected during a probationary period, terminated under Section 19889.3, or terminated, demoted, or transferred in accordance with Section 19253.5; or terminated on a nonpunitive basis under Section 19585.

SEC. 13. Section 18524 of the Government Code is amended to read:

18524. “Appointing authority” or “appointing power” means a person or group having authority to make appointments to positions in the state civil service.

SEC. 14. Section 18538 of the Government Code is amended to read:

18538. “Part” means this part, Part 2.5 (commencing with Section 19800), and Part 2.6 (commencing with Section 19815) and those portions of Part 1 (commencing with Section 18000) that confer powers or impose duties on the board or the department.

SEC. 15. Section 18573 of the Government Code is amended to read:

18573. Each appointing power shall provide access to records and prepare reports as required by the board or the department.

Information given to the board and the department by any person shall not be open to public inspection except under conditions prescribed by board rule, except that a person may inspect any record relating to his or her own services.

SEC. 16. Section 18576 of the Government Code is amended to read:

18576. Judicial notice shall be taken of board and department rules, regulations, and amendments.

SEC. 17. Article 1.5 (commencing with Section 18660) is added to Chapter 2 of Part 2 of Division 5 of Title 2 of the Government Code, to read:

#### Article 1.5. Policy and Audit

18660. Pursuant to Section 3 of Article VII of the California Constitution, the board shall establish rules implementing and enforcing the merit principle in the state civil service system.

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

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

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

(d) If the board finds an appointing authority deficient in personnel practices, policies, and procedures, the appointing authority shall be subject to corrective action. The board may order any or all of the following remedies:

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

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

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

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

18662. The board shall recover from an audited department the entire cost of any audit or investigation conducted under this article.

SEC. 18. Section 18720 of the Government Code is amended to read:

18720. The employment procedures of the department and of each state agency shall conform to the federal and state laws governing employment practices, including the use of employment forms. The department and the Department of Fair Employment and Housing shall work cooperatively to develop uniform employment forms where possible pursuant to the provisions of this article and shall coordinate their enforcement of this article.

SEC. 19. Section 18720.1 of the Government Code is amended to read:

18720.1. The department shall be responsible for the collection and review of all employment forms used by state agencies for civil service employment and for the development of standard employment forms for general use by all state agencies. The department may designate an appointing power to review employment forms in accordance with Section 18654 and board rules. Each state agency shall use the standard forms. However, the department, or an appointing power designated by the department, may approve the use of a nonstandard form by a state agency if the information requested on the form is job-related and the forms and procedures to be used conform with federal and state law governing employment practices. Copies of nonstandard forms approved by a designated appointing power shall be transmitted to the department. Nonstandard forms proposed by a state agency shall be accompanied by a petition submitted by the agency which specifies the reasons why a nonstandard form is necessary to meet the agency's needs.

SEC. 20. Section 18720.3 of the Government Code is amended to read:

18720.3. Each state agency is responsible for ensuring that the employment application forms, and occupational licensing and registration forms, used by the agency conform to federal and state laws governing

registration and employment practices. An agency shall not use a form which is not approved by either the department or by the Department of Fair Employment and Housing.

SEC. 21. Section 18720.4 of the Government Code is amended to read:

18720.4. State agencies shall exhaust existing supplies of forms which conform with federal and state law before using any new form approved by the department or the Department of Fair Employment and Housing pursuant to this article.

SEC. 22. Section 18901 of the Government Code is amended to read:

18901. (a) The department may remove all names from open and promotional eligible lists after they have remained thereon for more than one year from the date of the adoption of the lists that created their eligibility, and shall remove all names from lists of eligibles not later than four years after the adoption of the lists that created their eligibility.

Whenever an open or a promotional eligible list has fewer than three names of persons who are willing to accept employment, all names on the list may be removed even though one year has not elapsed from the date of the adoption of the list.

(b) When a list of eligibles becomes exhausted for temporary or permanent employment before the legal expiration of the list, and a new list of eligibles for the same class is created by examination to supply the demands of the service, such new list shall become a part of the list of eligibles to be certified to the positions covered by the list. Those holding places on the prior list shall be given preference for appointment until such time as the prior list may automatically expire or all names are removed therefrom by action of the department. When the prior list has expired by reason of limitation of time, or the names have been removed therefrom by order of the department, then certification shall be made solely from the latter list.

(c) The department or a designated appointing power shall include in the announcement of any examination that the list of eligibles secured thereby will expire not less than one but less than four years after the adoption of such list.

(d) The department or a designated appointing power may make changes in its records to correct clerical errors both before and after the announcement of an eligible list; provided, that any changes of rank, or addition or subtraction of names, made on lists of eligibles because of clerical errors or reratings, shall not change the date of the adoption of such lists, nor give to any persons the right to claim beginning date of eligibility other than the date of the adoption of the original eligible list that created their eligibility.

SEC. 23. Section 18901.5 of the Government Code is amended to read:

18901.5. Notwithstanding subdivision (a) of Section 18901, the department may authorize the retention of eligibles on an employment list for an indefinite period of time based on the following factors:

(a) The number of names remaining on the list in relation to the anticipated number of vacancies.

(b) The qualifications of the eligibles.

(c) The gender, ethnic, and disability composition of the eligibles remaining on the list.

(d) The lack of unreasonable denial of a competitive opportunity for potential applicants.

(e) The availability of alternative appointment options.

(f) The modifications that have been made in the duties, responsibilities, and qualifications in the class specifications since the establishment of the eligible list.

SEC. 24. Section 18902 of the Government Code is amended to read:

18902. The department may divide the state into districts and departments and establish district eligible lists and departmental eligible lists therefor. A person on an eligible list or a departmental eligible list may be included in any other eligible or departmental eligible list on which he or she indicates a desire to be placed, when in the judgment of the department the best interests of the state are served thereby.

SEC. 25. Section 18906 of the Government Code is amended to read:

18906. Any name, after a period of five consecutive years, shall be removed from the reemployment lists for the class unless the period is extended by action of the department.

SEC. 26. Section 18930 of the Government Code is amended to read:

18930. Examinations for the establishment of eligible lists shall be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors actually to perform the duties of the class of position for which they seek appointment.

Examinations for managerial positions, except for career executive assignments as defined in Section 18547, peace officers defined in subdivision (a) of Section 830.2 of the Penal Code, and managerial positions of the Department of Forestry and Fire Protection in the classes of State Forest Ranger IV and Assistant Deputy State Forester, shall be held on an open basis unless the appointing authority determines otherwise. "Managerial position" means those positions having the duties which are defined under "managerial employees" in subdivision (e) of Section 3513. When an open examination is administered for a noncareer executive assignment managerial position, the names of the applicants who pass the examination with a passing score shall be placed on one list and ranked in the relative order of the examination score received.

Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skill, or any combination of these; and any investigation of character, personality, education, and experience and any tests of intelligence, capacity, technical knowledge, manual skill, or physical fitness which the department deems are appropriate, may be employed.

SEC. 27. Section 18930.5 of the Government Code is amended to read:

18930.5. The department may designate an appointing power to design, announce, or administer examinations for the establishment of employment lists in accordance with Section 18654 and board rule. No later than January 1, 1987, the board shall authorize or assess the ability of appointing powers to design, announce, or administer designated examinations for the

establishment of employment lists. The board may audit examinations and order corrective action or nullify any examination or parts thereof which have been conducted improperly.

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

SEC. 28. Section 18934 of the Government Code is amended to read:

18934. Every applicant for examination shall file a formal signed application in the office of the department or a designated appointing power within a reasonable length of time before the date of examination. Blank application forms shall be furnished without charge to all persons requesting them. Such applications when filed and all other examination materials, including examination questions and booklets, are the property of the department and are confidential records open to inspection only if and as provided by rule.

The application form shall include a place for listing volunteer experience and such experience shall be considered if it is relevant to the position being applied for. Each form shall have prominently displayed on its face the fact that volunteer experience will be given consideration as qualifying experience for state employment.

SEC. 29. Section 18935 of the Government Code is amended to read:

18935. The department may refuse to examine or, after examination, may refuse to declare as eligible or may withhold or withdraw from certification, prior to appointment, anyone who comes under any of the following categories:

- (a) Lacks any of the requirements established by the board for the examination or position for which he or she applies.
- (b) At the time of examination has permanent status in a position of equal or higher class than the examination or position for which he or she applies.
- (c) 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.
- (d) Is addicted to the use of intoxicating beverages to excess.
- (e) Is addicted to the use of controlled substances.
- (f) Has been convicted of a felony, or convicted of a misdemeanor involving moral turpitude.
- (g) Has been guilty of infamous or notoriously disgraceful conduct.
- (h) Has been dismissed from any position for any cause which would be a cause for dismissal from the state service.
- (i) Has resigned from any position not in good standing or in order to avoid dismissal.
- (j) Has intentionally attempted to practice any deception or fraud in his or her application, in his or her examination, or in securing his or her eligibility.
- (k) Has waived appointment three times after certification from the same employment list.
- (l) Has failed to reply within a reasonable time to communications concerning his or her availability for employment.

(m) Has made himself or herself unavailable for employment by requesting that his or her name be withheld from certification.

(n) Is, in accordance with rule, found to be unsuited or not qualified for employment.

(o) Has engaged in unlawful reprisal or retaliation in violation of Article 3 (commencing with Section 8547) of Chapter 6.5 of Division 1, as determined by the board or the court.

SEC. 30. Section 18938 of the Government Code is amended to read:

18938. The department or a designated appointing power may issue certificates of competence to candidates who are successful in certain phases of examinations involving a particular knowledge, ability, or skill. For the period named in such a certificate, the department or a designated appointing power may accept it as evidence of the candidate's competence in lieu of participation in that phase of an examination.

SEC. 31. Section 18938.5 of the Government Code is amended to read:

18938.5. When the employment list resulting from examination has been established, each competitor shall be notified in writing of the results of the examination. For competitors unsuccessful in an oral examination, the department or a designated appointing power shall, upon the written request of the competitor, specify the reasons why such person was unsuccessful.

SEC. 32. Section 18938.6 of the Government Code is amended to read:

18938.6. The department shall provide for the inspection of examination papers for all written test competitors.

SEC. 33. Section 18939 of the Government Code is amended to read:

18939. For classes of positions for which the department or a designated appointing power finds it difficult to maintain adequate eligible lists it may receive applications, conduct examinations, and create eligible lists continuously. The names of eligibles who took the same or a comparable examination on different dates may be ranked for purposes of certification in the order of final earned ratings, except as the order may be modified by the application of veterans preferences or career credits, consistent with applicable statutes. Eligibility from a continuous examination may be deemed to be established as of the date of examination.

SEC. 34. Section 18990 of the Government Code, as added by Section 4 of Chapter 353 of the Statutes of 2008, is amended to read:

18990. (a) Notwithstanding any other provision of law or rule, persons employed by the Legislature for two or more consecutive years shall be eligible to apply for promotional civil service examinations, including examinations for career executive assignments, for which they meet the minimum qualifications as prescribed by the class specification. Persons receiving passing scores shall have their names placed on promotional lists resulting from these examinations or otherwise gain eligibility for appointment. In evaluating minimum qualifications, related legislative experience shall be considered state civil service experience in a comparable class, based on the duties and responsibilities assigned.

(b) In cases where promotional examinations are given by more than one department for the same classification, the employee shall select one

department in which to compete. Once this selection is made, it cannot be changed for the duration of the promotional list established from the examination in which the employee participated. Employees may transfer list eligibility between departments in the same manner as provided for civil service employees.

(c) Employees who meet the requirements of this section, are employed by the Legislature, and who resign or are released from service, shall be eligible to take promotional civil service examinations, including examinations for career executive assignments, for one year following their resignation or release in accordance with subdivisions (a) and (b).

(d) Employees who meet the requirements of this section, are employed by the office of the Auditor General or the office of the Legislative Analyst as of January 1, 1992, and who resign or are released from service due to a force reduction of the Legislature before January 1, 1994, shall be eligible to take promotional civil service examinations, including career executive assignments, for three years following their resignation or release in accordance with subdivisions (a) and (b).

(e) An employee who establishes eligibility on a promotional civil service list, either pursuant to subdivision (c) or (d) or prior to having resigned or having been released in a manner to which subdivision (c) or (d) would apply, shall maintain that eligibility for the duration of that particular list.

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

SEC. 35. Section 18991 of the Government Code is amended to read:

18991. (a) Notwithstanding any other provision of law, persons retired from the United States military, honorably discharged from active military duty with a service-connected disability, or honorably discharged from active duty, shall be eligible to apply for promotional civil service examinations, including examinations for career executive assignments, for which they meet the minimum qualifications as prescribed by the class specification. Persons receiving passing scores shall have their names placed on promotional lists resulting from these examinations or otherwise gain eligibility for appointment. In evaluating minimum qualifications, related military experience shall be considered state civil service experience in a comparable class, based on the duties and responsibilities assigned.

(b) In cases where promotional examinations are given by more than one department for the same classification, the employee shall select one department in which to compete. Once this selection is made, it cannot be changed for the duration of the promotional list established from the examination in which the employee participated. Employees may transfer list eligibility between departments in the same manner as provided for civil service employees.

SEC. 36. Section 18992 of the Government Code, as added by Section 6 of Chapter 353 of the Statutes of 2008, is amended to read:

18992. (a) Notwithstanding any other provision of law or rule, persons holding, for two or more consecutive years, nonelected exempt positions in the executive branch of government as defined in subdivisions (c), (e), (f), (g), (i), and (m) of Section 4 of Article VII of the Constitution and

excluding those positions for which the salaries are set by statute, shall be eligible to apply for promotional civil service examinations, including, but not limited to, examinations for career executive assignments for which they meet the minimum qualifications as prescribed by the class specification. Persons receiving passing scores shall have their names placed on promotional lists resulting from these examinations or otherwise gain eligibility for appointment. In evaluating minimum qualifications, related exempt experience shall be considered state civil service experience in a comparable class.

(b) In cases where promotional examinations are given by more than one appointing authority for the same classification, the employee shall select one appointing authority in which to compete. Once this selection is made, it cannot be changed for the duration of the promotional list established from the examination in which the employee participated. Employees may transfer list eligibility between appointing authorities in the same manner as provided for civil service employees.

(c) Employees who meet the requirements of this section and who resign or are released from exempt employment of the executive branch of government shall be eligible to take promotional civil service examinations, including examinations for career executive assignments, for one year following their resignation or release in accordance with subdivisions (a) and (b).

(d) An employee who establishes eligibility on a promotional civil service list, either pursuant to subdivision (c) or prior to having resigned or having been released in a manner to which subdivision (c) would apply, shall maintain that eligibility for the duration of that particular list.

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

SEC. 37. Section 19050.4 of the Government Code is amended to read: 19050.4. A transfer may be accomplished without examination pursuant to board rule. The department or appointing authority may require an employee to demonstrate in an examination that he or she possesses any additional or different requirements that are included in the minimum qualifications of the class to which the employee is transferring.

SEC. 38. Section 19050.5 of the Government Code is amended to read: 19050.5. Notwithstanding Section 3517.6, an appointing power may transfer any employee under his or her jurisdiction to a position in the same class or to another position in a different class pursuant to board rule.

SEC. 39. Section 19052 of the Government Code is amended to read: 19052. Whenever a vacancy in any position is to be filled and not by transfer, demotion, or reinstatement, the appointing power shall 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. When the appointing power establishes to the satisfaction of the department that the necessary qualifications for the vacant position include fluency in a language in addition to English only the names of persons possessing such fluency shall be certified.

SEC. 40. Section 19055 of the Government Code is amended to read:

19055. The department may, consistent with board rules, provide for certification of names from appropriate employment lists of the same or higher level in the event an employment list is not available for the class to which a position belongs.

SEC. 41. Section 19057.1 of the Government Code is amended to read:

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

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

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

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

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

SEC. 42. Section 19057.3 of the Government Code is amended to read:

19057.3. (a) Notwithstanding Section 19057, for a position in the Department of Corrections and Rehabilitation, there shall be certified to the appointing power the names and addresses of all those eligibles for peace officer and closely allied classes whose scores, at the time of certification, represent the three highest ranks on the employment list for the class in which the position belongs and who have indicated their willingness to accept appointment under the conditions of employment specified.

(b) For purposes of ranking, scores of eligibles on employment lists for the classes shall be rounded to the nearest whole percent. A rank consists of one or more eligibles with the same whole percentage score.

(c) If fewer than three ranks of persons willing to accept appointment are on the list from which certification is to be made, then additional eligibles shall be certified from the various lists next lower in order of preference until names from three ranks are certified. If there are fewer than three names on those lists, and the appointing power does not choose to appoint from among these, the appointing power may demand certification of three names

and examinations shall be conducted until at least three names may be certified. The appointing power shall fill the position by the appointment of one of the persons certified.

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

(e) The department may, consistent with board rules, allow for the names of eligibles to be transferred from lists for the same class or comparable classes where names from one list were certified under the rule of three ranks, and names from the other list were certified under the rule of three names.

SEC. 43. Section 19058 of the Government Code is amended to read:

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

SEC. 44. Section 19063 of the Government Code is amended to read:

19063. (a) Any person receiving state public assistance under the CalWORKs program (Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code) who meets the minimum qualifications for any civil service position as a seasonal or an entry level nontesting class that does not require an examination shall be given priority consideration. "Priority consideration" means, for the purposes of this article, that after consideration has been made for all conditions described in this section, the state agency involved shall hire all qualified job applicants who are receiving state public assistance before hiring any other applicant. The department shall review all nontesting classes and determine those that are subject to this article.

(b) Public assistance recipients who apply for openings under this article shall be required to undergo the same employment process used by state agencies to select any other person for appointment to a position in such a class. If a state agency does not select a public assistance recipient to fill an opening, it shall document in its employment records the reasons why the public assistance recipient was not selected and any other information determined to be necessary by the department.

(c) The employment of public assistance recipients shall be consistent with the goals established by each agency under Section 19790.

(d) This section shall not preclude a state agency from hiring any person appointed during the prior 12 months in the class for which the vacancy exists.

SEC. 45. Section 19063.1 of the Government Code is amended to read:

19063.1. Each state agency that intends to establish qualified hiring pools, as defined by the department, for seasonal or entry level nontesting class employment shall notify the Employment Development Department or its delegate in the area where the openings are expected to occur at least 45 calendar days prior to the establishment of the pool. The state agency shall request referrals of public assistance recipients and at the same time shall provide necessary job-related information.

SEC. 46. Section 19063.4 of the Government Code is amended to read:

19063.4. If no public assistance recipient applies for an opening within the time limits established by this article, the state agency may fill the opening with a person not receiving public assistance. In the event a person not receiving public assistance is hired, the state agency shall place a certification in its employment records stating the date it contacted the Employment Development Department or its designate, the name of the person contacted, the date the position was filled, and any other information determined to be necessary by the department.

SEC. 47. Section 19063.8 of the Government Code is amended to read:

19063.8. Any seasonal or entry level nontesting classifications specifically designed to support a program to train students, as determined by the department, to the extent that they are authorized as of the effective date of this article, shall be exempt from this article. However, state agencies shall be encouraged by the department to increase their efforts to recruit disadvantaged youth or students for these jobs.

SEC. 48. Section 19172 of the Government Code is amended to read:

19172. During the probationary period the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require.

SEC. 49. Section 19180 of the Government Code is amended to read:

19180. If the board restores a rejected probationer to his or her position it shall direct the payment of salary to the employee for such period of time as the rejection was improperly in effect.

Salary shall not be authorized or paid for any portion of a period of rejection that the employee was not ready, able, and willing to perform the duties of his or her position, whether such rejection is valid or not.

There shall be deducted from any amount approved under this section any compensation the employee earned or might reasonably have earned in private or public employment during the period the rejection was improperly in effect.

SEC. 50. Section 19232 of the Government Code is amended to read:

19232. Each state agency shall be responsible for establishing an effective affirmative action program to ensure individuals with a disability, who are capable of remunerative employment, access to positions in state service on an equal and competitive basis with the general population.

Each state agency shall develop and implement an affirmative action employment plan for individuals with a disability, which shall include goals and timetables. These goals and timetables shall be set annually for disabilities identified pursuant to guidelines established by the Department of Human Resources, and shall be submitted to the department no later than June 1 of each year beginning in 1978, for review and approval or modification. Goals and timetables shall be made available to the public upon request.

SEC. 51. Section 19233 of the Government Code is amended to read:

19233. The department shall be responsible for the following:

(a) Outline specific actions to improve the representation of individuals with a disability in the state workforce and to ensure equal and fair employment practices for employees who are individuals with a disability.

(b) Survey the number of individuals with a disability in each department by at least job category and salary range for the purpose of developing goals and timetables pursuant to Section 19232 and compare those numbers with the number of individuals with a disability in the workforce.

(c) Establish guidelines for state agencies and departments to set goals and timetables to improve the representation of individuals with a disability in the state workforce. Goals and timetables shall be set by at least job category.

SEC. 52. Section 19236 of the Government Code is amended to read:

19236. The Department of Human Resources shall provide technical assistance, statewide advocacy, coordination, and monitoring of plans to overcome any underrepresentation determined pursuant to Section 19234.

SEC. 53. Section 19237 of the Government Code is amended to read:

19237. On or before November 15 of each year, the department shall report to the Governor and the Legislature on the current activity, future plans, and past accomplishments of the overall employment program for individuals with a disability in state government, including an evaluation of the achievement of annual employment objectives.

SEC. 54. Section 19240 of the Government Code is amended to read:

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

(b) "Disability" for the purposes of this article has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(c) Notwithstanding subdivision (b), if the definition of "disability" used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental or physical disability, as defined in subdivision (b), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definition in subdivision (b). The definition of "disability" contained in subdivision (b) shall not be deemed

to refer to or include conditions excluded from the federal definition of “disability” pursuant to Section 511 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

SEC. 55. Section 19241 of the Government Code is amended to read:

19241. The department, consistent with board rules, shall be responsible for the implementation of this chapter, which may provide for the establishment of eligibility criteria for participation, special job classifications, examination techniques, and appointment and appeals procedures.

SEC. 56. Section 19242 of the Government Code is amended to read:

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

SEC. 57. Section 19242.2 of the Government Code is amended to read:

19242.2. The department or its designee shall refer the names of persons with disabilities who meet eligibility criteria for participation and the minimum qualifications of the job classification and any other requirements deemed appropriate by the board to appointing powers for examination appointments. Notwithstanding any other provision of law, and to provide for appropriate job-person placement, all candidates meeting referral requirements shall be eligible for examination appointment. The department may prescribe the method for referring names to appointing powers.

SEC. 58. Section 19242.8 of the Government Code is amended to read:

19242.8. The department or its designee shall develop evaluation standards which are appropriate tests of fitness for the job classification. During the job examination period, the appointing power shall prepare written evaluations of the candidate’s performance. The final evaluation shall contain a recommendation as to whether or not to appoint the candidate to an appropriate position where civil service status may accumulate.

SEC. 59. Section 19243 of the Government Code is amended to read:

19243. Upon successful completion of the job examination period, the candidate shall have qualified in the examination. With the approval of the department, the appointing power may appoint the candidate, without further examination, to an appropriate position where civil service status may accumulate.

SEC. 60. Section 19243.2 of the Government Code is amended to read:

19243.2. With the approval of the department, the appointing power may shorten or extend the duration of the job examination period.

SEC. 61. Section 19600 of the Government Code is amended to read:

19600. The department may, directly or through agreement or contract with one or more appointing authorities and other public and private organizations, with approval of the board, conduct and evaluate demonstration projects.

Nothing in this section shall infringe upon or conflict with the merit principle as embodied in Article VII of the California Constitution, nor shall

any project undertaken pursuant to this act conflict with, or infringe upon the merit principles of the civil service system.

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

- (a) The methods of establishing qualification requirements for, recruitment for, and appointment to positions.
- (b) The methods of classifying positions and compensating employees.
- (c) The methods of assigning, reassigning, or promoting employees.
- (d) The methods of disciplining employees.
- (e) The methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay.
- (f) The hours of work per day or per week.
- (g) The methods of involving employees, labor organizations, and employee organizations in personnel decisions.
- (h) The methods of reducing overall agency staff and grade levels.

SEC. 62. Section 19600.1 of the Government Code is amended to read:

19600.1. "Demonstration project" means a project approved by the board and conducted by the department or another appointed authority to determine whether a specified change in personnel management policies or procedures would result in improved state personnel management.

SEC. 63. Section 19602 of the Government Code is amended to read:

19602. (a) Before conducting or entering into any agreement or contract to conduct a demonstration project, the appointing authority proposing the project shall describe its proposal to the department, and specifically address the following factors:

- (1) The purposes of the project.
- (2) The employees affected by the project categorized by classification, occupational series, or organizational unit.
- (3) The number of employees affected.
- (4) The methodology.
- (5) The duration.
- (6) The training to be provided.
- (7) The anticipated costs.
- (8) The methodology and criteria for evaluating the project during its term and at its conclusion.
- (9) A specific description of any aspect of the project for which there is a lack of specific authority.
- (10) A specific citation to any provision of law, rule, or regulation that, if not waived under this section, would prohibit the conducting of the project, or any part of the project as proposed.
- (11) A specific description of the potential impact of the plan on the rights and status of the employees included within the plan, including their right of appeal.

(12) Provisions for determining the status, rights, compensation, and benefits of affected employees upon the termination of the project.

(b) The department shall notify employees who are likely to be affected by the project and to each house of the Legislature, at least 180 days in advance of the date any project proposed under this section is to take effect.

(c) After the department reviews the proposal, it shall transmit it to the board. The board shall publish notice of the project in the California Regulatory Notice Register with notice of the board meeting or other public hearing at which the proposed adoption of the demonstration project will be considered and acted upon. The notice shall be published at least 30 days prior to the meeting or hearing.

(d) The board shall provide an opportunity for written comment to the board, and oral comment at board meetings or hearings.

(e) The appointing authority proposing the project shall provide to persons who have submitted comments written notice of substantive changes made to the project after the board meeting, and provide an additional 15-day period for submission of comments prior to the final adoption of the demonstration project by the board.

(f) Any regulations implementing the demonstration project shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations. These regulations shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3). However, no regulation implementing a demonstration project shall be exempt from the act if the project limits competition in particular examinations or limits entry into particular classifications on the basis of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, mental disability, or other non-job-related factors.

(g) Submit the proposed project to public hearings.

(h) Obtain approval from each agency involved in the final version of the plan.

(i) Provide the Legislature with a report at least 90 days in advance of the date the project is to take effect setting forth the final version of the plan as so approved.

SEC. 64. Section 19603 of the Government Code is amended to read:

19603. Each demonstration project shall terminate before the end of the five-year period beginning on the date on which the project takes effect, except that the project may continue beyond the date to the extent necessary to validate the results of the project.

Subject to the terms of any written agreement or contract between the department and an appointing authority, a demonstration project involving the appointing authority may be terminated by the board or the appointing authority, if either determines that the project creates a substantial hardship on, or is not in the best interests of, the public, employees, or state government.

SEC. 65. Section 19606 of the Government Code is amended to read:

19606. The department shall provide for an evaluation of the results of each demonstration project and its impact on improving public management.

All agencies shall cooperate with and assist the department, to the extent practicable, in any evaluation and provide the department with requested information and reports relating to demonstration projects in their respective agencies.

SEC. 66. Section 19609 of the Government Code is amended to read:

19609. (a) For a demonstration project made permanent pursuant to legislation operative on or after January 1, 2008, an appointing authority participating in the demonstration project shall file a report on all aspects of the demonstration project with the State Personnel Board. The report shall include, but not be limited to, all of the following:

- (1) The number of applicants.
- (2) The number of applicants that were hired.
- (3) The cost of the hiring process.
- (4) The number and nature of examination appeals.
- (5) The length of time to complete the hiring and testing process.

(b) For a three-year period from the date that the demonstration project becomes permanent, the appointing authority shall file the report described in subdivision (a) on an annual basis. After the expiration of the three-year period, the appointing authority shall file a report if a report is requested by the State Personnel Board.

(c) When the board receives a report described in this section, the board may hold a public hearing to provide for the exchange of information and an opportunity for public comment about the demonstration project that is the subject of the report.

SEC. 67. Section 19701 of the Government Code is amended to read:

19701. A person shall not be discriminated against under this part because of total or partial blindness unless normal eyesight is absolutely indispensable to do the physical acts to be performed.

It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification as determined by a validation study conducted by the Department of Human Resources, for the state to refuse to hire, employ, promote, or select for a training program leading to employment, or to discriminate in compensation or in terms or privileges of employment because of color vision anomaly or defect, commonly known as color blindness or color weakness, in the vision of any person.

SEC. 68. Section 19702 of the Government Code is repealed.

SEC. 69. Section 19702 is added to the Government Code, to read:

19702. (a) A person shall not be discriminated against in the terms, conditions, and privileges of his or her employment with the state under this section based on his or her medical condition, mental disability, or physical disability as those terms are defined in subdivisions (i), (j), and (l) of Section 12926. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

(b) For purposes of this article, “discrimination” includes harassment.

(c) (1) Except as otherwise provided in paragraph (2), if the board finds that discrimination has occurred in violation of subdivision (a) of this section, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this section. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order may include a requirement of reporting the manner of compliance.

(2) Notwithstanding paragraph (1), this paragraph applies to state employees in State Bargaining Unit 6 or 8. If the board finds that discrimination has occurred in violation of subdivision (a) of this section, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, adding additional seniority, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this section. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order may include a requirement of reporting the manner of compliance.

(d) Any person claiming discrimination based upon medical condition, mental disability, or physical disability within the state civil service may submit a written complaint with the appointing authority that states the particulars of the alleged discrimination. The written complaint shall be filed with the appointing authority within one year of the alleged discrimination or the failure to act. Any person claiming discrimination based upon medical condition, mental disability, or physical disability may file a complaint of discrimination with the board subsequent to lodging a complaint with the appointing authority. Complaints of discrimination filed with the board shall satisfy and comply with board rules.

(e) If an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination under subdivision (a) of this section, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action that will effectuate the purpose of this section.

(f) If a person demonstrates by a preponderance of the evidence that the person’s opposition to any practice made an unlawful employment practice under this section, or the person’s charging, testifying, assisting, or participation in any manner in an investigation, proceeding, or hearing under this section, was a contributing factor in any adverse employment action taken against him or her, the burden of proof shall be on the supervisor, manager, employee, or appointing power to demonstrate by clear and convincing evidence that the alleged adverse employment action would

have occurred for legitimate, independent reasons even if the person had not engaged in activities protected under this section. If the supervisor, manager, employee, or appointing power fails to meet this burden of proof in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the person shall have a complete affirmative defense to the adverse employment action.

(g) As used in this section, “adverse employment action” includes promising to confer, or conferring, any benefit, effecting, or threatening to effect, any reprisal, or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

SEC. 70. Section 19702.5 of the Government Code is amended to read:

19702.5. (a) The Department of Human Resources shall provide to the Fair Employment and Housing Commission a copy of each affirmative action plan, and all subsequent amendments of such plans, adopted by each state agency, department, office, or commission.

(b) The department shall annually, commencing January 1, 1975, submit to the Fair Employment and Housing Commission a statistical survey of the employment of each state agency, department, office, or commission. The survey shall include, but not be limited to: sex, age, ethnic origin, current employment classification, salary, full-time or other employment status, department and administrative unit, and county of employment of employees.

SEC. 71. Section 19705 of the Government Code is amended to read:

19705. Notwithstanding Section 19704, the Department of Human Resources may, after public hearing, adopt a system in which applicants for employment in the state civil service shall be asked to provide, voluntarily, ethnic data about themselves where such data is determined by the department to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. The department shall provide by rule for safeguards to insure that such data shall not be used in a discriminatory manner in the selection process. Ethnic data may be compiled for women and minorities. Ethnic data information gathered pursuant to this section on an individual applicant shall not be available to any interviewer or any officer or employee empowered to make or influence the civil service appointment of such individual. The department shall report annually to the Governor and the Legislature on the results of the selection process as determined by data gathered under this section.

SEC. 72. Section 19790 of the Government Code is amended to read:

19790. Each state agency is responsible for an effective equal employment opportunity program. The department shall be responsible for statewide advocacy, coordination, enforcement, and monitoring of these programs.

SEC. 73. Section 19792 of the Government Code is amended to read:

19792. The department shall do all of the following:

- (a) Provide statewide leadership, designed to achieve equal employment opportunity in the state civil service.
- (b) Develop, implement, and maintain equal employment opportunity guidelines.
- (c) Provide technical assistance to state agencies in the development and implementation of their equal employment opportunity programs.
- (d) Review and evaluate departmental equal employment opportunity programs to ensure that they comply with state and federal statutes and regulations.
- (e) Establish programs to ensure equal employment opportunity for all state job applicants and employees through broad, inclusive recruitment efforts and other measures as allowed by law.
- (f) Provide statewide training to departmental equal employment opportunity officers who will conduct training on equal employment opportunity.
- (g) Review, examine the validity of, and update qualifications standards, selection devices, including oral appraisal panels and career advancement programs.
- (h) Maintain a statistical information system designed to yield the data and the analysis necessary for the evaluation of equal employment opportunity within the state civil service. The statistical information shall include specific data to determine the underutilization of groups based on race, ethnicity, gender, and disability. The statistical information shall be made available during normal working hours to all interested persons. Data generated on a regular basis shall include, but not be limited to, all of the following:
  - (1) Current state civil service workforce composition by race, ethnicity, gender, age, department, salary level, occupation, and attrition rates by occupation.
  - (2) Current local and regional workforce and population data for groups based on race, ethnicity, gender, and age.
    - (i) The data analysis referred to in subdivision (h) above shall include, but not be limited to, all of the following:
      - (1) Data relating to the utilization of groups based on race, ethnicity, and gender compared to their availability in the relevant labor force.
      - (2) Turnover data by department and occupation.
      - (3) Data relating to salary administration, including average salaries for groups based on race, ethnicity, gender, and disability and comparisons of salaries within state service and comparable state employment.
      - (4) Data on employee age, and salary level compared among groups based on race, ethnicity, gender, and disability.
      - (5) Data on the number of individuals of each race, ethnicity, gender, and disability who are recruited for, participate in, and pass state civil service examinations. This data shall be analyzed pursuant to the provisions of Sections 19704 and 19705.

(6) Data on the job classifications, geographic locations, separations, salaries, and other conditions of employment that provide additional information about the composition of the state civil service workforce.

SEC. 74. Section 19792.5 of the Government Code is amended to read:

19792.5. (a) In order to permit the public to track upward mobility and the impact of equal opportunities on persons, categorized by race, ethnicity, gender, and disability in state civil service, the department shall annually track, by incremental levels of ten thousand dollars (\$10,000), the salaries of persons, categorized by race, ethnicity, gender, and disability, in state civil service. For purposes of this subdivision, “upward mobility” means the advancement of persons, categorized by race, ethnicity, gender, and disability, to better paying and higher level positions.

(b) The department shall report salary data collected pursuant to subdivision (a) to the Governor and the Legislature in its Annual Census of State Employees and Equal Employment Opportunity Report, as required in Section 19793, and shall include in this report information regarding the progress of individuals by race, ethnicity, gender, and disability in attaining high-level positions in state employment. The salary data shall be reported in annual increments of ten thousand dollars (\$10,000) by job category, race, ethnicity, gender, and disability in a format easily understandable by the public.

SEC. 75. Section 19794 of the Government Code is amended to read:

19794. In cooperation with the department, the appointing power of each state agency shall have the major responsibility for monitoring the effectiveness of the equal employment opportunity programs of the state agency. To that end, the appointing power shall do all of the following:

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

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

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

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

SEC. 76. Section 19795 of the Government Code is amended to read:

19795. (a) The appointing power of each state agency and the director of each state department shall appoint, at the managerial level, an equal employment opportunity officer, who shall report directly to, and be under the supervision of, the director of the department, to develop, implement, coordinate, and monitor the agency’s equal employment opportunity program. In a state agency with less than 500 employees, the equal employment opportunity officer may be the personnel officer. The agency equal employment opportunity officer shall, among other duties, analyze and report on appointments of employees, bring issues of concern regarding equal employment opportunity to the appointing power and recommend

appropriate action, submit an evaluation of the effectiveness of the total equal employment opportunity program to the department annually by July 1, monitor the composition of oral panels in departmental examinations, and perform other duties necessary for the effective implementation of the agency equal employment opportunity plans.

(b) (1) Each state agency shall establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities, and matters relating to the formulation and implementation of the plan to overcome and correct any underrepresentation determined pursuant to Section 19234.

(2) Departments shall invite all employees to serve on the committee and shall take appropriate steps to ensure the final committee is comprised of members who have disabilities or who have an interest in disability issues. Each department shall ensure that at least two-thirds of the members of the committee are individuals with disabilities or retain documentation that demonstrates that the number of employees invited to participate, and willing and able to serve, was insufficient to meet this requirement.

SEC. 77. Section 19798.5 of the Government Code is amended to read:  
19798.5. State departments, agencies, and the department shall continue to carry out their respective duties required by Sections 19230 to 19237, inclusive, with respect to establishing, monitoring, and reporting on an affirmative action plan, including goals and timetables, for ensuring individuals with disabilities access to state employment. These activities shall be coordinated with and integrated into the planning, reporting, and monitoring activities required by this chapter.

SEC. 78. Section 19815.2 of the Government Code, as added by GRP 1 of the 2011–12 Regular Session, is repealed.

SEC. 79. Section 19816.4 of the Government Code is amended to read:  
19816.4. The department shall have possession and control of all records, papers, offices, equipment, supplies, moneys, funds, appropriations, land, and other property real or personal held for the benefit or use by the State Personnel Board and the department in the performance of the duties, powers, purposes, responsibilities, and jurisdiction that are vested in the department.

SEC. 80. Section 19816.6 of the Government Code is amended to read:  
19816.6. All officers and employees of the State Personnel Board and the department, who, on the operative date of this part, are serving in the state civil service, other than as temporary employees, and engaged in the performance of a function vested in the department by Section 19816 shall be transferred to the department. The status, positions, and rights of these persons shall not be affected by the transfer and shall be retained by them as officers and employees of the department pursuant to the State Civil Service Act, except as to positions exempt from civil service.

SEC. 81. Section 19816.22 of the Government Code is repealed.