AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 1062

Introduced by Assembly Member Jones-Sawyer

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

Existing law, with regard to the civil service, requires the appointing power to provide service of notice of certain actions, including a disciplinary action, a rejection during probation, a medical action, and various termination actions, by personal service or by mail or express service carrier, pursuant to a specified process.

The bill would modify the above-mentioned process by deleting certain requirements and would instead require service to be conducted in the manner provided in specified provisions of the Code of Civil Procedure that relate to service of process.

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

This bill would delete the above-mentioned prohibition.

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

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

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

This bill would repeal these provisions.

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

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

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

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

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

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

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

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

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

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

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

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

This bill would repeal these provisions.

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

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

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

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

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

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

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

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

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

This bill would repeal those provisions.

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

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

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

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

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

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

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

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

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. 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 a language survey and develop and update an implementation plan that complies with the requirements of this chapter.

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

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

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

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

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

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

(6) 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.

(7) 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.

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

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

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

(11) 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.

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

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

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

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

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

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

(c) The language 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.~~ *year.*

(d) Every odd-numbered year, each agency that served a substantial number of non-English-speaking people who comprise 5 percent or more of the people served shall develop an implementation plan that provides 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 will be remedied.

(e) In developing its implementation plan, each state agency may rely upon data gathered from its most recent language 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 of Human Resources shall review each implementation plan, and, if it determines that the implementation 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. 2. 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 survey cycles, 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. 3. Section 18210 of the Government Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The notice of proposed action.

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

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

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

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

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

SEC. 7. Section 18502 of the Government Code is amended 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 pursuant to 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, disciplinary actions, and other matters related to the board's authority under Article VII of the California Constitution. 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) This section shall not limit 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. 8. Section 18525.3 of the Government Code is amended to read:

18525.3. "Transfer" means both of the following:

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

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

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

18527. "Probationer" means an employee who has probationary status. "Probationary status" means the status of an employee who has been certified and appointed from an employment list, or has been reinstated after resignation, or has been transferred or demoted but who has not completed the probationary period.

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

18528. "Permanent employee" means an employee who has permanent status. "Permanent status" means the status of an employee who is lawfully retained in his position after the completion of the probationary period.

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

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

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

18533. (a) "Subdivisional promotional list" means a list of persons eligible for certification for a specific class resulting from a promotional examination for a particular subdivision of a state agency.

(b) "Departmental promotional list" means a list of persons eligible for certification for a specific class resulting from a promotional examination for a particular state agency.

(c) "Multidepartmental promotional list" means a list of persons eligible for certification for a specific class resulting from a promotional examination for a group of state departments.

(d) "Servicewide promotional list" means a list of persons eligible for certification for a specific class resulting from a promotional examination for the entire state service.

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

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

18540. "Armed forces" means the United States Air Force, Army, Navy, Marine Corps, and Coast Guard.

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

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

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

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

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

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

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

(A) Notice of disciplinary action.

(B) Notice of rejection during probationary period.

(C) Notice of medical action.

(D) Notice of nonpunitive action.

(E) Notice of career executive assignment termination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 21.~~

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

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

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

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

~~SEC. 22.~~

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

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

~~SEC. 23.~~

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

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

~~SEC. 24.~~

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

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 remedies including, but not limited to, any or all of the ~~following~~ *:following:*

(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.

~~SEC. 25.~~

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

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

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

~~SEC. 26.~~

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

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

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

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

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

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

~~SEC. 27.~~

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

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

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

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

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

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

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

~~SEC. 28.~~

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

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

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

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

~~SEC. 29.~~

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

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

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

~~SEC. 30.~~

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

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

~~SEC. 31.~~

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

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

~~SEC. 32.~~

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

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

~~SEC. 33.~~

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

~~SEC. 34.~~

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

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

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

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

~~SEC. 35.~~

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

18900.5. For purposes of this part, "designated appointing power" means an appointing power designated by the department under Section 18930.5.

~~SEC. 36.~~

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

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

(1) There is a job analysis that meets legal ~~standards.~~ *standards.*

(2) The class is used on a servicewide basis.

(3) The class is broad and includes a number of distinct assignments.

(4) It is in the best interest of the state to use skills-based certification.

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

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

~~SEC. 37.~~

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

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

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

~~SEC. 38.~~

SEC. 37. 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. The department may audit examinations and order corrective action, including withdrawing or limiting the authority previously exercised by the designated appointing authority, 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. 39.~~

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

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

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

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

~~SEC. 40.~~

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

18933. (a) Within a reasonable time before the scheduled date, the department or a designated appointing power shall announce or advertise examinations for the establishment of eligible lists. The announcement shall include the following:

(1) The date and place of the examination.

(2) The nature of the minimum qualifications.

(3) The general scope of the examination.

(4) The relative weight of its several parts if more than one type of test is to be utilized.

(5) Any other information the department deems proper.

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

~~SEC. 41.~~

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

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

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

~~SEC. 42.~~

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

~~SEC. 43.~~

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

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

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

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

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

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

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

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

~~SEC. 44.~~

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

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

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

~~SEC. 45.~~

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

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

~~SEC. 46.~~

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

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

~~SEC. 47.~~

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

~~SEC. 48.~~

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

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

~~SEC. 49.~~

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

~~SEC. 50.~~

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

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

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

~~SEC. 51.~~

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

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

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

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

~~SEC. 52.~~

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

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

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

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

~~SEC. 53.~~

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

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

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

~~SEC. 54.~~

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

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

~~SEC. 55.~~

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

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

~~SEC. 56.~~

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

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

~~SEC. 57.~~

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

19050.4. A transfer may be accomplished without examination pursuant to 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. 58.~~

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

~~SEC. 59.~~

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

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

~~SEC. 60.~~

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

19057.1. Notwithstanding Section 19057, for positions in classes designated 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 used by, the Department of the California Highway Patrol for its peace officer classes.

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

~~SEC. 61.~~

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

19057.2. Notwithstanding the provisions of Section 19057, for positions in classes designated as management, there shall be certified to the appointing power the names and addresses of all those applicants whose scores, at the 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 such classes shall be divided into six ranks. The first rank shall consist of eligibles who receive a score of 95 percent or higher. The second rank shall consist of eligibles who receive a score of 90 to 94 percent, inclusive. The third rank shall consist of eligibles who receive a score of 85 to 89 percent, inclusive. The fourth rank shall consist of eligibles who receive a score of 80 to 84 percent, inclusive. The fifth rank shall consist of eligibles who receive a score of 75 to 79 percent, inclusive. The sixth rank shall consist of eligibles who receive a score of 70 to 74 percent, inclusive. All

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

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 such 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.

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

~~SEC. 62.~~

SEC. 61. 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 department, 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. 63.~~

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

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

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

~~SEC. 64.~~

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

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

~~SEC. 65.~~

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

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

~~SEC. 66.~~

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

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

~~SEC. 67.~~

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

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

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

(b) Reinstatement shall be undertaken subject to rule.

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

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

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

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

(3) In a recognized military service.

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

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

(1) The class vacated or from which separated.

(2) A lower class in the same series.

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

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

~~SEC. 68.~~

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

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

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

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

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

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

~~SEC. 69.~~

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

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

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

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

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

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

~~SEC. 70.~~

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

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

~~SEC. 71.~~

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

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

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

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

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

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

~~SEC. 72.~~

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

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

~~SEC. 73.~~

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

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

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

~~SEC. 74.~~

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

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

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

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

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

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

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

upon a written statement submitted to the appointing power by the employee as to the employee's condition or upon medical reports submitted to the appointing power by the employee.

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

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

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

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

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

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

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

~~SEC. 75.~~

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

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

~~SEC. 76.~~

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

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

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

~~SEC. 77.~~

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

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

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

(b) Appropriate academic counseling.

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

(d) Training and development assignments.

(e) On-the-job training.

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

~~SEC. 78.~~

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

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

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

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

~~SEC. 79.~~

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

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

~~SEC. 80.~~

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

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

~~SEC. 81.~~

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

~~SEC. 82.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 83.~~

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

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

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

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

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

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

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

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

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

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

~~SEC. 84.~~

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

~~SEC. 85.~~

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

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

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

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

~~SEC. 86.~~

SEC. 85. 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, 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. 87.~~

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

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

~~SEC. 88.~~

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

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

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

~~SEC. 89.~~

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

19680. It is unlawful for any person:

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

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

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

~~SEC. 90.~~

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

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

~~SEC. 91.~~

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

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

~~SEC. 92.~~

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

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

~~SEC. 93.~~

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

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

~~SEC. 94.~~

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

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

(b) For the purposes of this chapter:

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

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

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

~~SEC. 95.~~

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

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

~~SEC. 96.~~

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

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

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

~~SEC. 97.~~

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

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

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

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

~~SEC. 98.~~

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

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

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

~~SEC. 99.~~

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

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

~~SEC. 100.~~

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

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

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

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

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

~~SEC. 101.~~

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

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

~~SEC. 102.~~

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

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

~~SEC. 103.~~

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

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

~~SEC. 104.~~

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

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

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

~~SEC. 105.~~

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

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

~~SEC. 106.~~

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

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

~~SEC. 107.~~

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

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

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

~~SEC. 108.~~

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

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

~~SEC. 109.~~

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

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

~~SEC. 110.~~

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

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

~~SEC. 111.~~

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

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

~~SEC. 112.~~

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

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

~~SEC. 113.~~

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

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

~~SEC. 114.~~

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

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

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

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

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

~~SEC. 115.~~

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

19815. As used in this part:

(a) "Department" means the Department of Human Resources.

(b) "Director" means the Director of the Department of Human Resources.

(c) "Division" means the Division of Labor Relations.

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

~~SEC. 116.~~

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

19815.4. The director shall do all of the following:

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

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

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

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

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

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

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

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

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

~~SEC. 117.~~

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

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

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

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

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

~~SEC. 118.~~

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

~~SEC. 119.~~

SEC. 118. 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 of Personnel Administration, 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 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. 120.~~

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

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

~~SEC. 121.~~

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

~~SEC. 122.~~

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

~~SEC. 123.~~

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

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

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

~~SEC. 124.~~

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

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

~~SEC. 125.~~

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

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

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

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

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

~~SEC. 126.~~

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

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

~~SEC. 127.~~

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

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

~~SEC. 128.~~

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

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

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

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

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

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

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

~~SEC. 129.~~

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

~~SEC. 130.~~

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

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

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

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

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

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

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

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

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

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

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

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

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