Assembly Bill No. 1097

CHAPTER 277

An act to amend Sections 995.3, 18901.5, 19144, 19572, 19583.5, 19602, 19603, and 19683 of the Government Code, relating to state employees.

[Approved by Governor August 2, 1995. Filed with Secretary of State August 2, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1097, Cortese. State employees.

(1) Existing law requires the State Personnel Board to remove all names from open and promotional eligible lists not later than 4 years after the adoption of the lists that created their eligibility. Existing law permits the board, until January 1, 1996, to authorize the retention of eligibles on an employment list for up to 6 years, notwithstanding the above requirement, based on certain factors.

This bill would permit the board to authorize the retention of eligibles on an employment list for an indefinite period of time.

(2) Existing law permits a person who has retired from state service to be employed temporarily in a civil service position at any time following retirement if the position meets certain criteria.

This bill would specify that the person be retired from state civil service.

(3) Existing law permits any person, except for a current ward or inmate of the California Youth Authority or the Department of Corrections, with the consent of the State Personnel Board or the appointing power, to file charges against an employee requesting that adverse action be taken for one or more causes for discipline.

This bill would prohibit charges filed by persons who are state employees from including issues covered by the state's employee grievance or other merit appeals processes.

(4) Existing law authorizes the State Personnel Board, directly or through agreement or contract with one or more agencies and other public and private organizations, to conduct and evaluate demonstration projects. Existing law prohibits more than 5 active demonstration projects from being in effect at any time.

This bill would repeal this prohibition. It would also specify procedures for the adoption of projects and regulations implementing these projects.

(5) The bill would also make various technical, nonsubstantive changes.

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

SECTION 1. Section 995.3 of the Government Code is amended to read:

995.3. (a) If a state employee provides his or her own defense against an action brought for an alleged violation of Section 8547.3, and if it is established that no violation of Section 8547.3 occurred, the public entity shall reimburse the employee for any costs incurred in the defense.

(b) A public entity which does provide for the defense of a state employee charged with a violation of Section 8547.3 shall reserve all rights to be reimbursed for any costs incurred in that defense. If a state employee is found to have violated Section 8547.3, he or she is liable for all defense costs and shall reimburse the public entity for those costs.

SEC. 2. Section 18901.5 of the Government Code is amended to read:

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

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

(b) The qualifications of the eligibles.

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

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

(e) The availability of alternative appointment options.

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

SEC. 3. Section 19144 of the Government Code is amended to read:

19144. Subject to Sections 21152 and 21153, a person who has retired from state civil service may be employed temporarily in a civil service position at any time following retirement, provided that the position is either:

(a) In the class in which the person had permanent or probationary status or a career executive assignment appointment at the time of retirement.

(b) In another class to which the person could have been permanently transferred, reinstated, or demoted at the time of retirement.

SEC. 4. Section 19572 of the Government Code is amended to read:

19572. Each of the following constitutes cause for discipline of an employee, or person whose name appears on any employment list:

(a) Fraud in securing appointment.
(b) Incompetency.
(c) Inefficiency.
(d) Inexcusable neglect of duty.
(e) Insubordination.
(f) Dishonesty.
(g) Drunkenness on duty.
(h) Intemperance.
(i) Addiction to the use of controlled substances.
(j) Inexcusable absence without leave.
(k) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
(*l*) Immorality.
(m) Discourteous treatment of the public or other employees.
(n) Improper political activity.
(o) Willful disobedience.
(p) Misuse of state property.
(q) Violation of this part or board rule.
(r) Violation of the prohibitions set forth in accordance with Section 19990.
(s) Refusal to take and subscribe any oath or affirmation which is required by law in connection with the employment.
(t) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment.
(u) Any negligence, recklessness, or intentional act which results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.
(v) The use during duty hours, for training or target practice, of any material which is not authorized therefor by the appointing power.
(w) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, disability, marital status, sex, or age, against the public or other employees while acting in the capacity of a state employee.
(x) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.

SEC. 5. Section 19583.5 of the Government Code is amended to read:

19583.5. (a) Any person, except for a current ward or inmate of the California Youth Authority or the Department of Corrections, with the consent of the board or the appointing power may file charges against an employee requesting that adverse action be taken for one or more causes for discipline specified in this article. Charges filed by a person who is a state employee shall not include issues covered by the state's employee grievance or other merit appeals processes. Any request of the board to file charges pursuant to this section shall be filed within one year of the event or events that led to the filing. The employee against whom the charges are filed shall have a right to answer as provided in this article. In all of these cases, a hearing shall be conducted in accord with this article and if the board finds that the charges are true it shall have the power to take any adverse action as in its judgment is just and proper. An employee who has sought to bring a charge or an adverse action against another employee using the grievance process, shall first exhaust that administrative process prior to bringing the case to the board.

(b) This section shall not be construed to supersede Section 19682.

SEC. 6. Section 19602 of the Government Code is amended to read:

19602. Before conducting or entering into any agreement or contract to conduct a demonstration project, the board shall do all of the following:

(a) Develop a plan for the project that identifies all of the following:

(1) The purposes of the project.

(2) The types of employees categorized by occupational series, grade, or organizational unit.

(3) The number of employees to be included in the aggregate and by category.

(4) The methodology.

(5) The duration.

(6) The training to be provided.

(7) The anticipated costs.

(8) The methodology and criteria for evaluation.

(9) A specific description of any aspect of the project for which there is a lack of specific authority.

(10) A specific citation to any provision of law, rule, or regulation that, if not waived under this section, would prohibit the conducting of the project, or any part of the project as proposed.

(11) A specific description of the potential impact of the plan on the rights and status of the employees included within the plan, including their right of appeal.

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

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

(c) Publish in the California Regulatory Notice Register, notice of the board meeting or other public hearing at which the proposed adoption of the demonstration project will be considered and acted upon, at least 30 days prior to the meeting or hearing.

(d) Provide opportunity for written comment to the board, and oral comment at board meetings or hearings.

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

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

(g) Submit the proposed project to public hearings.

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

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

SEC. 7. Section 19603 of the Government Code is amended to read:

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

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

SEC. 8. Section 19683 of the Government Code is amended to read:

19683. (a) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as

prohibited by Section 10543 within 10 working days of its submission. The executive officer shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining state employee or applicant for state employment and to the appropriate supervisor, manager, or appointing authority. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not apply.

(b) If the findings of the executive officer set forth acts of alleged misconduct by the supervisor, manager, or appointing power, the supervisor, manager, or appointing power may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's normal rules governing appeals, hearings, investigations, and disciplinary proceedings.

(c) If, after the hearing, the State Personnel Board determines that a violation of Section 8547.3 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, backpay, restoration of lost service credit, if appropriate, and the expungement of any adverse records of the state employee or applicant for state employment who was the subject of the alleged acts of misconduct prohibited by Section 8547.3.

(d) Whenever the board determines that a manager or supervisor has violated Section 8547.3, it shall cause an entry to that effect to be made in the manager's or supervisor's official personnel records. Adverse action shall also be invoked by the appointing power against the offending manager or supervisor in accordance with Sections 8547.8 and 19572.

(e) Notwithstanding Section 8547.8, any state officer or employee filing a complaint of reprisal or retaliation pursuant to subdivision (a) also shall have previously filed a complaint of improper governmental activity with the Joint Legislative Audit Committee, pursuant to Section 8547.7.

(f) In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by public employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

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