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SB-644 Limited Examination and Appointment Program: persons with developmental disabilities. (2015-2016)

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Senate Bill No. 644

CHAPTER 356

An act to amend, repeal, and add Sections 19240, 19241, 19242, and 19242.2 of, and to add and repeal Sections 19241.5, 19242.05, and 19242.3 of, the Government Code, relating to state employment.

[Approved by Governor September 28, 2015. Filed with Secretary of State September 28, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 644, Hancock. Limited Examination and Appointment Program: persons with developmental disabilities.

Existing law requires the Department of Human Resources to administer the Limited Examination and Appointment Program (LEAP) to provide an alternative to the traditional civil service examination and appointment process to facilitate the hiring of persons with disabilities in the state civil services. Existing law requires the department to conduct competitive examinations to determine eligibility for appointment under LEAP and to refer the names of eligible applicants who meet the minimum qualifications of a job classification to the appointing powers for examination appointments, as specified.

This bill would permit a person with a developmental disability to either complete a written examination or readiness evaluation or an internship, as specified, to qualify for service under LEAP. The bill would require that the use of an internship as a competitive examination in this context consist of a successful completion of an internship with a state agency of not less than 512 hours in duration and a specified certification by the agency. The bill would require the department to refer the names of eligible applicants who successfully complete the internship to the appointing powers for examination appointments. The bill would require the department to create that internship program in coordination with the State Department of Developmental Services and the Department of Rehabilitation, as specified. The bill would require a state agency that provides the internship or appoints a person with a developmental disability to a position under LEAP to allow that person to receive on-the-job support. The bill would authorize an agency to finance the internship or position with personnel funds or other available funds assigned to a vacant or unfilled position, as specified, but would provide that on-the-job support services are not the financial or programmatic responsibility of any state agency engaged in establishing the LEAP internship process. The bill would specify that LEAP is not a mandate on any state agency employer or job applicant except to the extent specifically directed by the State Personnel Board. The bill would repeal these provisions on January 1, 2021.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Persons with developmental disabilities have to struggle to find gainful employment. Statewide unemployment among people with developmental disabilities of working age is approximately 90 percent.

(b) According to the Employment Development Department, the average annual earnings of employed persons with developmental disabilities is approximately five thousand five hundred dollars (\$5,500).

(c) Within the community of people with developmental disabilities, people diagnosed with autism are the fastest growing population, making up approximately 50 percent of the annual new caseload of regional centers in some areas of the state.

(d) Seven years after exiting the K-12 school system, one in three adults with autism still does not have paid work experience or a college or technical education.

(e) Nationally recognized employment internship training models like Project SEARCH have demonstrated that many people with developmental disabilities can be successfully employed in jobs that earn a living wage.

(f) The key elements of successful programs like Project SEARCH are:

(1) The opportunity for people with developmental disabilities to be exposed to real work through internships.

(2) The opportunity for people with developmental disabilities to receive on-the-job customized training and support during internships.

(3) The opportunity for employers, in an internship setting, to experience firsthand the quality of work of a person with a developmental disability.

(g) The existing state hiring process for people with disabilities, known as the Limited Examination and Appointment Program, or LEAP, is not well suited to correctly assess the qualifications and abilities of many people with developmental disabilities because it relies on written testing as an assessment tool and is not performance based. As a result, very few people with developmental disabilities are represented in the state workforce.

(h) The Governor and the Legislature must address the lack of access people with developmental disabilities have to employment opportunities with the State of California and take steps to become a "model employer" to demonstrate the potential of this untapped workforce.

(i) In enacting this measure, the Legislature intends to create more access to state employment for people with developmental disabilities by allowing successful internship performance in a state agency, in lieu of a written test, to serve as meeting the minimum qualifications for consideration for hire into an entry-level position with the State of California. The Legislature further intends to grant flexibility to state agencies to hire persons with developmental disabilities who meet specific needs of those agencies into entry-level positions without requiring those persons to be able to perform the full range of tasks typically required by the entry-level job classification.

(j) The Legislature intends that these model employer practices be targeted at people with developmental disabilities who are between 18 and 30 years of age and are deemed eligible by the Department of Rehabilitation to receive supported employment services. If this population is left without purposefully designed pathways to employment, these young adults will remain at a high risk of public dependency throughout the course of their lives.

SEC. 2. Section 19240 of the Government Code is amended to read:

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

(b) For purposes of this article, the following terms have the following meanings:

(1) "Developmental disability" has the definition set forth in Section 4512 of the Welfare and Institutions Code.

(2) "Disability" has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(3) "LEAP" means the Limited Examination and Appointment Program implemented and administered by the department pursuant to this chapter.

(4) "Person with a developmental disability" means a person who the State Department of Developmental Services deems eligible for services pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and who is a consumer of a regional center pursuant to Chapter 5 (commencing with Section 4620) of the act.

(c) Notwithstanding subdivision (b), if the definition of "disability" used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of persons with a mental or physical disability, as

defined in subdivision (b), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definition in subdivision (b). The definition of "disability" contained in subdivision (b) shall not be deemed to refer to or include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 3. Section 19240 is added to the Government Code, to read:

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

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

(c) Notwithstanding subdivision (b), if the definition of "disability" used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental or physical disability, as defined in subdivision (b), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definition in subdivision (b). The definition of "disability" contained in subdivision (b) shall not be deemed to refer to or include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

(d) This section shall become operative on January 1, 2021.

SEC. 4. Section 19241 of the Government Code is amended to read:

19241. (a) The department, consistent with board rules, shall be responsible for the implementation of this chapter, which may provide for the establishment of eligibility criteria for participation, special job classifications, examination techniques, the creation of a LEAP internship program for persons with developmental disabilities in coordination with the State Department of Developmental Services and the Department of Rehabilitation, and appointment and appeals procedures.

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 5. Section 19241 is added to the Government Code, to read:

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

(b) This section shall become operative on January 21, 2021.

SEC. 6. Section 19241.5 is added to the Government Code, to read:

19241.5. (a) This chapter establishes the Limited Examination and Appointment Program as a voluntary, additional method of applying for state employment and is not a mandate on any state agency employer or job applicant except to the extent specifically directed by the board.

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 7. Section 19242 of the Government Code is amended to read:

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

(b) (1) The department or its designee shall permit a person with a developmental disability to choose to complete a written examination or readiness evaluation, or to complete an internship as described in subparagraphs (A) and (B), in order to qualify for service in a position under the Limited Examination and Appointment Program. The use of an internship as a competitive examination of a person with a developmental disability shall consist of both of the following:

(A) Successful completion of an internship with a state agency of at least 512 hours in duration.

(B) Certification by the state agency that the employee has completed the internship and has demonstrated the skills, knowledge, and abilities necessary to successfully perform the requirements of the position.

(2) A person with a developmental disability who successfully completes the examination or internship required by this subdivision is deemed to meet the minimum qualifications, as determined by the board, for the position in which the internship was performed.

(c) Examination results may be ranked or unranked.

(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 8. Section 19242 is added to the Government Code, to read:

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

(b) This section shall become operative on January 1, 2021.

SEC. 9. Section 19242.05 is added to the Government Code, immediately following Section 19242, to read:

19242.05. (a) The LEAP internship program created in accordance with Section 19241 shall be designed to allow persons with developmental disabilities to meet the minimum qualifications of the LEAP classification to which he or she seeks an examination appointment. The length of a LEAP internship shall be for a minimum period of 512 working hours.

(b) A person with a developmental disability who successfully completes a LEAP internship upon certification by the appointing power shall be considered as meeting the referral requirements necessary to be eligible for an examination appointment, as specified in Section 19242.2, without being required to pass a written examination or readiness evaluation.

(c) The LEAP internship program may be accessed as an unpaid or paid internship if the state agency providing the internship has available funding authority within its personnel budget.

(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 10. Section 19242.2 of the Government Code is amended to read:

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

(b) (1) The department or its designee shall refer the names of persons with developmental disabilities to appointing powers for selection for participation in an internship examination as set forth in subdivision (b) of Section 19242.

(2) The department or its designee may refer the names of persons with developmental disabilities who have successfully completed an internship examination to appointing powers for consideration for appointment in the same job classification as the position in which the applicant successfully completed his or her internship.

(3) The department may prescribe the method for referring names to appointing powers, including, but not limited to, working with the appointing power to identify positions that could successfully be filled by persons with developmental disabilities.

(c) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 11. Section 19242.2 is added to the Government Code, to read:

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

(b) This section shall become operative on January 1, 2021.

SEC. 12. Section 19242.3 is added to the Government Code, to read:

19242.3. (a) A state agency that provides an internship to a person with a developmental disability or appoints a person with a developmental disability to a position under the Limited Examination and Appointment Program may finance the internship or position with personnel or any other funds available for this purpose and assigned to a vacant or unfilled position. A state agency that transfers funds from a vacant or unfilled position pursuant to this section does not eliminate the vacant or unfilled position, and may return or assign funds to fill the position.

(b) (1) A state agency that provides an internship to a person with a developmental disability or appoints a person with a developmental disability to a position under the Limited Examination and Appointment Program shall allow the person to receive on-the-job support, as determined by the Department of Rehabilitation or the State Department of Developmental Services pursuant to existing rules and the service authorization of those supported employment programs, as a reasonable accommodation for the person's disability.

(2) On-the-job supportive services, in addition to the services set forth in subdivision (q) of Section 4851 of the Welfare and Institutions Code, may consist of, but need not be limited to, time spent with a job coach on any of the following:

(A) Conducting job analysis, specific training, and supervision of the intern while the intern is engaged in his or her internship.

(B) Conducting skills-building training, including, but not limited to, adaptive functional and social skills training and support as necessary to ensure internship adjustment.

(C) Working with families and other support networks to ensure internship adjustment.

(D) Evaluation of performance of the intern, including, but not limited to, communication with the internship supervisor.

(3) The services of the job coach are not the responsibility of the state agency providing the internship, unless the agency is otherwise the direct payor of those services.

(4) In order for the internship to meet the minimum qualifications of the desired position, the internship shall be successfully completed, as set forth in subdivision (b) of Section 19242, in the same job classification as the position the person is applying for.

(5) If a job examination period is required prior to the permanent hiring of a qualified person with a developmental disability, the appointing authority may apply some or all of the internship hours performed to meet some or all of the job examination period requirement.

(6) On-the-job supportive services are allowable to the extent authorized by other state programs and are not the financial or programmatic responsibility of any state agency engaged in establishing the LEAP internship process.

(c) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.