

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1376 (Ramos and Reyes) – As Amended April 3, 2019

**SUBJECT:** Veterans: security clearances

**SUMMARY:** This bill would state the intent of the Legislature to authorize state departments and agencies that require security clearances to recognize the clearances held by veterans transitioning from the military in order to remove barriers to employment and accelerate the transition to civilian employment within cybersecurity. In furtherance of this intent, this bill would require the Department of Veterans Affairs (CalVet) to collaborate with state agencies and departments, including public colleges and universities, to establish a veterans' preference to be applied to employment opportunities within the field of cybersecurity that require a security clearance. It would further require a state agency or department that hires for a position in cybersecurity that requires a security clearance to apply this veterans' preference and establish a uniform hiring policy for veterans who have recently held a security clearance.

**EXISTING LAW:**

- 1) Requires that whenever any veteran, widow or widower of a veteran, or spouse of a 100% disabled veteran achieves a passing score on an entrance examination for state employment, he or she shall be ranked in the top rank of the resulting eligibility list. Prohibits, however, this preference from applying to any veteran who has been dishonorably discharged or released from the United States Armed Forces. (Gov. Code Sec. 18973.1.) A "100 percent disabled veteran" means any veteran, as otherwise defined, who is currently declared by the United States Veterans Administration to be 100% disabled as a result of his or her service. (Gov. Code Sec. 18973.)
- 2) Defines an entrance examination to mean any open competitive examination. Prohibits any veterans' preference from being granted to permanent civil service employees. (Gov. Code Sec. 18973.5.)
- 3) Provides that any member of the Armed Forces: (a) who successfully passes any state civil service examination, (b) whose name as a result is placed on an employment list, and (c) who within 12 months after the establishment of the employment list for which the examination was given qualifies for veterans' preference as specified, shall be allowed the appropriate veterans' credit to the same effect as though he or she were entitled to that credit at the time of the establishing of the employment list. (Gov. Code Sec. 18974.5.)
- 4) Requires that periods of service in the recognized military service be counted by the California Department of Human Resources (CalHR) and designated appointing authority as qualifying experience upon a showing by the veteran that the veteran's service involved duties and responsibilities of the kind for which credit for experience is being allowed. (Gov. Code Sec. 18975.)
- 5) Provides generally that request for and proof of eligibility for veterans' preference must be submitted by the veteran to CalHR or designated appointing authority conducting the

employment examination. The procedures and timing of filing that request shall be subject to rules promulgated by CalHR, in consultation with CalVet. (Gov. Code Sec. 18976.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Purpose of this bill:** This bill would require CalVet and state employers, including public colleges and universities, to collaborate together to create a preferential hiring system for veterans applying for state jobs in cybersecurity that require a security clearance, and require state employers to apply the veterans' preference when hiring for a position of cybersecurity that necessitates a security clearance. This bill is sponsored by the Disabled American Veterans.

- 2) **Author's statement:** According to the author:

Veterans continue to represent an available and underutilized workforce.

In 2015, the state's veteran unemployment rate was among the highest in the nation at 6.8 percent. Veterans with service related disabilities have a higher unemployment rate than other veterans. In addition, younger veterans – those who served post September 11, 2001, also have a higher unemployment rate compared to other veterans.

While the state provides programs for veterans to enter different professional fields, initiatives focuses on cybersecurity are often overlooked.

Hiring considerations in cybersecurity include lengthy security clearance delays and onboarding processes - severely impacting the sufficiency of the cybersecurity workforce.

Further, there is currently no uniform hiring system in place for employment opportunities with the state that accounts for a veteran's past experience in cybersecurity or whether he or she once or currently holds a national security clearance.

AB 1376 directs the California Department of Veteran Affairs to collaborate with other state agencies and colleges to establish a veterans' preference to employment opportunities within the field of cybersecurity that require a security clearance.

In addition, this bill requires state agencies hiring for cybersecurity positions to establish a uniform hiring policy for veterans who have recently held a security clearance.

- 3) **Security clearances as opposed to background checks:** This bill seeks to create a veterans' preference system specific to state jobs in cybersecurity that require a security clearance. As explained in the Assembly Veterans Affairs Committee analysis:

The security clearances granted to military personnel are not all alike. They range from the lowest, "CONFIDENTIAL," granting access only to information whose unauthorized disclosure could "reasonably be expected to cause damage to the national security," to the highest, "TOP SECRET," which grants access to information whose unauthorized

disclosure could “reasonably be expected to cause exceptionally grave damage to the national security.” These levels require background checks of varying scope and depth. Typically, clearances are granted for five-year terms, at the expiration of which a periodic reinvestigation is required for renewal. The Single Scope Background Investigation (SSBI) required for TOP SECRET access includes standard national and local agency checks, credit checks, but also extended interviews with the subject, friends and family and acquaintances. The SSBI has a 10-year scope, and may be expanded as the investigator deems necessary. This is well beyond what is required of a standard background check for state employment, and there is arguably a desirable efficiency in finding a way for people who have gone through such a process to be expedited through the state hiring process.

It is unclear, however, whether there are such jobs in California state government that require an actual security clearance. Almost exclusively, state law refers only to necessary “background checks” – except for one Penal Code statute that relates to shared gang databases. (*See* Pen. Code Sec. 186.36(k)(6), which requires personnel authorized to access a shared gang database be limited to sworn law enforcement personnel, nonsworn law enforcement support personnel, or noncriminal justice technical or maintenance personnel, including information technology and information security staff and contract employees, who have been subject to “character or security clearance” and who have received approved training.)

The following amendments replace certain references to “security clearances” with “background checks” – specifically where the term is used in the context of being required for cybersecurity positions, as opposed to the context of “security clearances” held by veterans.

Suggested amendments:

On page 2, line 4, strike “security clearances” and insert: “*background checks*”

On page 2, lines 18 and 20, strike “security clearance” and insert: “*background check*”

- 4) **Avoiding duplicative or conflicting preference programs:** Already, existing law requires that preference be granted to veterans in state hiring processes. That program is governed by CalHR under the Government Code, whereas this bill would add new provisions for a veterans’ preference under the Military and Veterans Code specific to security clearance issues and cybersecurity positions in state civil service. In support, the American Legion Department of California writes:

In 2015, the state’s veteran unemployment rate was among the highest in the nation at 6.8 percent. Veterans with service-related disabilities have a higher unemployment rate than other veterans. In addition, younger veterans – those who served post September 11, 2001, also have a higher unemployment rate compared to other veterans.

While the state provides programs for veterans to enter different professional fields, initiatives focuses on cybersecurity are often overlooked.

Hiring considerations in cybersecurity include lengthy security clearance delays and onboarding processes - severely impacting the sufficiency of the cybersecurity workforce.

Thus, as a matter of public policy, this bill would arguably be consistent with existing veterans' preference policies, and simply seek to address issues specific to the field of cybersecurity where the preference perhaps is not working as well as it could. That being said, as a practical matter, by requiring the development of a new preference system by CalVet and state agencies and departments, it is unclear how the bill will interact with, or supplement, the CalHR preferential program. Furthermore, while this bill requires that CalVet collaborate with "state agencies and departments, including public colleges and universities," to establish a preference program to be applied to employment opportunities within the field of cybersecurity that require security clearances, this bill does not appear to define or otherwise limit the scope of state agencies or departments with whom CalVet should collaborate

Arguably, the collaboration should be limited to those agencies and departments that have the greatest expertise regarding the state's needs in cybersecurity personnel (*e.g.*, the Office of Emergency Services; the Department of Technology which houses the Office of Information Security, California Highway Patrol and California Military Department, which collectively comprise the State's four core cybersecurity partners responsible for running the California Cybersecurity Integration Center), and CalHR, which has the expertise in the existing veterans' preference program. This would ensure that the advice of the departments holding the greatest expertise is not diluted, so that they can appropriately identify what the preference should be and which state classifications are cybersecurity-related for purposes of qualifying for this preference. This is particularly necessary, given that there are no "cybersecurity" classifications in civil service and this bill does not define which classifications qualify. Once those collaborating departments establish the preference program, then all state agencies or departments, including public colleges and universities, would apply the developed veterans' preference and establish a uniform hiring policy for veterans who qualify for this preference as otherwise required by the bill.

The author has accepted the following amendments to tailor the bill more carefully to a cybersecurity-related veterans' preference program by drawing on relevant expertise. Specifically the amendments would require that CalVet coordinate with CalHR, and the four core partners in cybersecurity for the State, to determine how to establish a veterans' preference program for cybersecurity-related positions. Lastly, these amendments replace "state agencies and departments" with the term "state agencies," and define the term broadly to mean any state office, officer, department, division, bureau, board, commission, or agency of the state.

Author's amendments:

On page 2, lines 15-16, strike "collaborate with state agencies and departments, including public colleges and universities," and insert: "*collaborate with the California Department of Human Resources, the California Office of Emergency Services, California Department of Technology, California Highway Patrol, and California Military Department*"

On page 2, line 19, strike “A state agency or department” and insert: “*Any state agency, including any public college and university,*”

On page 3, after line 2, insert: “*(d) For purposes of this section “state agency” means any state office, officer, department, division, bureau, board, commission, or agency of the state.*”

The author should also consider, perhaps after consultation with CalHR and CalVet, the following issues: (1) whether these requirements should be moved to the existing chapter of the Government Code governing veterans’ preferences, so as to reduce any confusion about how these provisions operate together; and (2) how veterans’ preferences would or should be prioritized if one veteran has an active security clearance and another does not have a security clearance, and both apply for the same position.

- 5) **Recent security clearances:** In furtherance of the bill’s stated intent to authorize state employers that require security clearances to recognize the clearances held by veterans transitioning from the military in order to remove barriers to employment and accelerate transition to civilian employment within cybersecurity, this bill requires state agencies and departments that hire for positions in cybersecurity requiring a security clearance to apply this veterans’ preference. It also requires those agencies and departments to establish a uniform hiring policy for veterans who have “recently held a security clearance.” The author has accepted the following amendment to better define what is “recently held” and ensure that the person left the military in good standing, or was otherwise honorably discharged in order to qualify for the preference. This reduces the possibility that a veteran who held a security clearance in recent years, but had an intervening event that, for example, caused them to be dishonorably discharged at the end of their military career, would be given preference under this bill.

Author’s amendment:

On page 3, lines 1-2 after “who have recently held a security clearance” insert “*in the last year and have left the military in good standing or were honorably discharged*”

- 6) **Double-referral:** This bill was double-referred to the Assembly Veterans Committee where it was heard on April 9, 2019, and approved on 10-0 vote.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Disabled American Veterans (sponsor)  
American Legion Department of California

**Opposition**

None on file

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