



Bill Analysis

Author: Holden

Sponsor:

Bill Number: AB 105

Related Bills: See Legislative
History

Amended: April 21, 2021

SUBJECT

The Upward Mobility Act of 2021

SUMMARY

This bill would, under the Government Code (GC), modify several processes related to civil service job announcements, examinations, and classification. This analysis only addresses the provisions that would impact the Franchise Tax Board (FTB) and only with regard to the FTB.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 21, 2021, amendments removed provision of the bill related to establishing a list of approved independent arbitrators, added a reporting requirement, and made other technical and clarifying changes. All prior implementation and policy considerations remain.

REASON FOR THE BILL

The reason for this bill is to provide civil service employees with greater opportunity to move upward within state service through additional accountability and procedural requirements.

ANALYSIS

As explained in detail below, this bill would under the GC, add oversight authority to the Department of Human Resources (CalHR) with respect to state agency hiring, discipline, and promotion.

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This bill would;

- Specify that all state boards and commissions, consisting of one or more volunteer members or commissioners, to have at least one volunteer board member or commissioner from underrepresented communities, as specified, on or after January 1, 2022. These requirements would only apply as vacancies become available and only to a vacancy appointment by the Governor or the Governor's designees, the chair of a board or commission or the chair's designees, the Speaker of the Assembly, and the President pro Tempore of the Senate or Senate Rules Committee, or any combination thereof.
- Remove existing provisions, which authorizes CalHR to designate an appointing power to design, announce, or administer examinations, and replaces it with provisions requiring State Personnel Board (SPB) to establish a process that includes diversity and best practices in each aspect of the design, announcement, and administration of examinations for the establishment of employment lists for all state agencies.
- Eliminates the requirement that the SPB establish minimum qualifications for each class of position, instead requiring the SPB and CalHR to work together to create, for each class of position, standards for statements of qualifications used as examination criteria in determining the fitness and qualifications of employees.
- Replaces the requirement that a job announcement include "the nature of the minimum qualifications" with the requirement to include "the functional core competencies" and requires job announcements to contain a standard statement of qualifications, if applicable.
- Require oral examinations to be video and otherwise electronically recorded with all other examination materials being used to be maintained, with no data retention date specified.
- Require CalHR to develop model upward mobility goals that may include, race, gender, and LGBTQ factors to the extent permissible under state and federal laws, and to oversee the hiring process for any department that fails to meet these goals for two consecutive fiscal years.
- Require each appointing power to utilize an independent arbitrator to conduct state civil service disciplinary hearings when an adverse action is taken against an employee. By April 1 of each year, each appointing power shall provide to CalHR a report. The report must include the type of discipline imposed in each adverse action and be submitted in compliance with rules regarding submission of reports by state agencies to the Legislature. In addition, the report must include, for the preceding calendar year:
 - The number of adverse actions taken on each state employee;
 - The gender identity, sexual orientation, ethnicity, or race of each employee served with an adverse action, if available (This information

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- may be provided at the discretion of the employee, and an appointing power shall not require an employee to disclose this information);
- The statutory basis for discipline for each adverse action; and
- A brief factual summary of the action taken for each employee.
- CalHR would be required to include in its annual workforce analysis and census report the items as reported by each appointing authority and submit this report to the Legislature by June 1 of each year. The report would be required to be submitted in compliance with Section 9795 of the GC.

Effective/Operative Date

This bill would become effective and operative January 1, 2022.

Federal/State Law

Federal Law

No provision comparable in federal law.

State Law

CalHR may designate an appointing power to design, announce, or administer examinations for the establishment of employment lists as specified. The SPB may audit examinations and order corrective action or nullify any examination or parts thereof which have been conducted improperly. A designated appointing power may contract with CalHR or another designated appointing power for the purpose of designing, publicizing, or administering an examination, as specified.

The SPB establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position. CalHR may require applicants for examination or appointment to provide documentation as it deems necessary to establish the applicants' qualifications.

CalHR or a designated appointing power announce or advertise examinations for the establishment of eligible lists.

CalHR 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 criteria as specified.

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Eligibility for appointment to positions in the career executive assignment category is established as a result of competitive examinations. Candidates must meet the minimum qualifications as specified by the SPB. No person employed in a CEA position shall be deemed to acquire as a result of such 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 SPB rule.

Section 9795 of the GC provides that reports required or requested by law to be submitted by a state or local agency to the Members of either house of the Legislature generally, shall be submitted as a printed copy to the Secretary of the Senate, as an electronic copy to the Chief Clerk of the Assembly, and as an electronic or printed copy to the Legislative Counsel. Each report must include a summary of its contents, as specified. State agencies submitting reports, must also provide an electronic copy of the summary directly to each member of the appropriate house or houses of the Legislature. Notice of receipt of the report shall also be recorded in the journal of the appropriate house or houses of the Legislature by the secretary or clerk of that house.

Implementation Considerations

FTB staff has identified the following implementation considerations with regard to its operations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. FTB staff is available to discuss these and other concerns with the author's office.

This bill would require oral examinations be video recorded and otherwise electronically recorded. FTB conducts numerous hiring interviews on an ongoing and frequent basis and electronically recording each would require significant changes to FTB's processes, which could be costly to implement. If this provision remains in the bill, allowing the option to use either video or other electronic recordings would be helpful.

Technical Considerations

None noted.

Policy Considerations

The bill indicates that oral examinations must be video and otherwise electronically recorded with all data and materials used retained, however the bill does not specify a retention period.

LEGISLATIVE HISTORY

SB 83 (Committee on Budget and Fiscal Review, Chapter 24, Statutes of 2019), the department shall charge designated appointing powers an amount sufficient to recover the costs to the department of these services and, pursuant to Section 11255, the Controller shall transfer to the department any moneys owed to the department by any designated appointing power for charges due under this subdivision.

AB 1062 (Jones-Sawyer, Chapter 427, Statutes of 2013), named the Department of Human Resources as the successor of the powers and duties exercised and performed by the Department of Personnel Administration.

PROGRAM BACKGROUND

State Personnel Board (SPB)

The SPB oversees the merit-based, job-related recruitment and selection process for the hiring of state employees. SPB provides direction to departments through simplifying civil service laws, rules, and policy. In addition, SPB audits departments for merit system compliance, investigates and arbitrates alleged violations of civil service law which are filed by employees, applicants, and members of the public.

Department of Human Resources (CalHR)

CalHR was created by Governor Brown's Reorganization Plan, which consolidated the State of California's two personnel departments, combining the Department of Personnel Administration with certain programs of the SPB. CalHR is responsible for issues related to employee salaries and benefits, job classifications, civil rights, training, examinations, recruitment and retention.

FISCAL IMPACT

The FTB's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified but could be significant.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended April 21, 2021, would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

In the Assembly Committee on Public Employment and Retirement committee analysis dated April 29, 2021, the following support and opposition was provided.

Support

Association of California State Employees with Disabilities (Support, if amended), Coalition for a Just and Equitable California (Prior version), National Assembly of American Slavery Descendants, Los Angeles (Prior version).

Opposition

Californians for Equal Rights (Prior version).

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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