



Bill Analysis

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Sponsor:

Bill Number: AB 105

Related Bills: See Legislative History

Amended: June 23, 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 classifications. 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 June 23, 2021, amendments modified provisions of the bill related to, job announcement and classifications, and added a retention period for electronically recorded examinations. The June 23, 2021, amendments resolved all of the Implementation Considerations and Policy Concerns.

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.

This bill would;

- 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.

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- Modify the requirement for the SPB to establish minimum qualifications by requiring the SPB, while developing the minimum qualifications, to incorporate, for each class of position, standards for statements of qualifications used as examination criteria in determining the fitness and qualifications of employees. CalHR could require applicants for examination or appointment to provide documentation as it deems necessary to establish the applicants' qualifications.
- Adds requirements for an examination announcement to include "the functional core competencies" in addition to "the nature of the minimum qualifications" and 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 for three years, after which will be disposed of pursuant to a SPB adopted policy. Examinees will be required to be notified that they are being recorded.
- 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. If an appointing authority fails to meet these goals for two consecutive fiscal years, it must submit a report explaining why it failed and what is necessary to achieve its goals in the subsequent two fiscal years to CalHR, the Director of the Department of Finance and the Legislative Analyst.
- 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, for the preceding calendar year:
 - The number of adverse actions taken on state employees;
 - The gender identity, sexual orientation, ethnicity, or race of each employee served with an adverse action, if available (This information 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;
 - A brief factual summary of the action taken for each employee; and
 - The type of discipline imposed in each adverse action.
- 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.

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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.

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

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 83 (Committee on Budget and Fiscal Review, Chapter 24, Statutes of 2019), allowed the department to charge designated appointing powers for the design, announcement or administration of examinations for the establishment of employment lists, and requires the Controller to transfer to the department any moneys owed to the department under these provisions.

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)

According to the SPB website, 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)

According to the CalHR website, 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

Staff estimates the departmental costs to implement this bill would be approximately \$126,000 in fiscal year 2021-2022; \$271,000 in fiscal year 2022-2023; and \$141,000 in fiscal year 2023-2024 and ongoing for new staff and equipment and software.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended June 23, 2021, would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Senate Judiciary Committee analysis dated July 9, 2021, lists the following support and opposition for AB 105.

Support

African American Community Empowerment Council; California State NAACP; Coalition for a Just and Equitable California; National Assembly of American Slavery Descendants, Los Angeles.

Opposition

Californians for Equal Rights Foundation.

ARGUMENTS

Senate Judiciary Committee analysis dated July 9, 2021, includes the following arguments in support of AB 105:

“The Coalition for a Just and Equitable California writes: [...] [D]iversity in our state workforce means more than just increasing access to positions on boards and commissions for African Americans, particularly those who descend from U.S. Slavery and the employment discrimination of the Jim Crow era. Workforce diversity means our state takes an active, not passive, role in ensuring access, enforcement, and

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ultimately outcomes. We know our state has more work to do to fully achieve the kind of workforce diversity it both desires and deserves. AB 105 is a big step in the right direction.”

“African-American Community Empowerment Council writes: Systemic barriers have historic and lasting consequences, which results in some individuals from underrepresented groups receiving unequal access or being excluded from participation in employment, services, or programs. Such outcomes are avoidable and result from institutional-level practices and policies that may be unintended to those who do not experience them, but that have serious and lasting impacts on the lives of those affected by limiting their career trajectories. Policymakers must recognize that every impediment to full participation in California’s civil service system perpetuates a legacy of unequal opportunity for everyone.”

Senate Judiciary Committee analysis dated July 9, 2021, includes the following argument in opposition of AB 105.

“Californians for Equal Rights writes: Under the veneer of addressing “barriers to upward mobility and inclusion for people of color working in California’s civil services system”, AB105 proposes setting up annual goals and timetables for civil service positions which will “include race and gender as factors”. This is tantamount to instituting government handouts and racial preferences, thereby violating the state constitution, stoking racial divisions, and legalizing racial discrimination in public employment. AB 105’s implementation would undoubtedly lead to de facto quotas and preferences, which violates a series of federal legislation and the U.S. Constitution.”

LEGISLATIVE CONTACT

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