



Bill Analysis

Author: Holden

Sponsor:

Bill Number: AB 1604

Related Bills: See Legislative
History

Amended: June 30, 2022, and
August 11, 2022

SUBJECT

The Upward Mobility Act of 2022

SUMMARY

This bill would, under the Government Code (GC), modify several processes related to civil service job announcements, examinations, and classifications. This analysis 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 30, 2022, amendments made a change to a definition that did not impact the department. The August 11, 2022, amendments removed several requirements related to demographic data collection, videotaping of oral examinations, and disciplinary hearings. The amendments also modified requirements related to the merit based civil service system, including employment lists, examinations, examination announcements, and the upward mobility goals progress reporting requirement.

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.

Amended June 30, 2022 and August 11, 2022

This bill would:

- Require the CalHR to establish best practices for each aspect of the design, announcement, and administration of examinations for the purpose of increasing diversity of applicant pools on employment lists for all state agencies.
- Require CalHR to develop standards for statements of qualifications used as the examination method in determining the fitness and qualifications of applicants. 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 the type of exam method, including the standard statement of qualifications, if applicable.
- By July 1 of each year, each department would be required to report to the CalHR on the progress made toward meeting upward mobility goals. 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. Each report is to include:
 - The upward mobility goals may include, race, gender, LGBTQ, and disability status as factors to the extent permissible under state and federal laws.
 - The progress made toward meeting upward mobility goals. At a minimum the report must include the number of employees that have progressed from positions in entry-level occupational groups to technical, professional, and administrative positions in the last calendar year.
- On or before January 1 of the year after each department provides the report on the progress made toward meeting upward mobility goals related to employees who have progressed in positions, the CalHR would be required to provide a copy to the Legislature.
- By July 1, 2024, CalHR would be required to post each department's upward mobility goals on its website.

Effective/Operative Date

This bill would become effective and operative January 1, 2023.

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Federal/State Law

Federal Law

No comparable provision 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 State Personnel Board (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.

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Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 105 (Holden, et al., 2021/2022), similar to this bill, would have made modified several processes related to civil service job announcements, examination and classifications. AB 105 was vetoed by the governor, whose veto message stated in part, "...elements of the bill conflict with existing constitutional requirements, labor agreements, and current data collection efforts. Therefore, it may have unintended consequences that warrant further consideration."

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 CalHR 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.

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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

Depending on the level of effort required by the department, related to data collection and process changes, this bill could increase costs. The department will pursue a budget change proposal if necessary.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended June 30, 2022 and August 11, 2022, would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

The August 15, 2022, Senate Floor Analysis included the following Support and Opposition.

Support

California Insurance Commissioner Ricardo Lara; Association of California State Employees with Disabilities; California Federation of Teachers AFL-CIO; California Hawaii State Conference of the NAACP; California Immigrant Policy Center; California Pan - Ethnic Health Network; California Teachers Association; Coalition for A Just and Equitable California; Disability Rights California; Hewlett-Packard Company; Laurel Leadership Institute Db a Diversity in Leadership Institute; National Assembly of American Slavery Descendants Los Angeles; and National Association of Social Workers, California Chapter.

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Opposition

Californians for Equal Right Foundation and Pacific Legal Foundation.

ARGUMENTS

The August 15, 2022, Senate Floor Analysis included the follow arguments.

Proponents

California Insurance Commissioner Ricardo Lara submitted the following argument in support:

In order to truly reflect all of California, our state must do more to not only promote diversity, but ensure that underrepresented community members are placed in positions of leadership. I believe this bill helps further set California's boards and commissions on a path towards equitable representation and empowers today's diverse leaders to blaze pathways for tomorrow. In fact, it is my continued priority to lift up leaders that reflect all of California and I am proud to report that, in 2021, 90 percent of the appointments that I made to my Department's various boards and task forces were self-reported diverse candidates.

Opponents

The Pacific Legal Foundation submitted the following argument in opposition:

AB 1604's discriminatory board and commission quota violates principles of equal protection under the United States and California constitutions. The quota denies prospective board members individualized consideration and subjects them to separate evaluation based on their race or sexual orientation – an act that has been repeatedly condemned by the Supreme Court. Californians should be granted the dignity of enjoying equal treatment before the law. By prioritizing the success of all residents, regardless of their race or sexual orientation, and tearing down barriers to opportunity, the Legislature will pursue worthy goals in a constitutional manner.

LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov