

ASSEMBLY THIRD READING

AB 105 (Holden)

As Amended April 21, 2021

Majority vote

SUMMARY

Establishes the Upward Mobility Act of 2021 relating to state boards and commissions, state civil service, examinations, and classifications involving the California Human Resources Department (CalHR), the State Personnel Board (SPB), and appointing authorities.

Major Provisions

- 1) Establishes that it is the policy of the state that the composition of state boards and commissions be broadly reflective of the general public.
- 2) Requires, on or after January 1, 2022, 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 an underrepresented community, and defines "board member or commissioner from an underrepresented community" for these purposes.
- 3) Establishes that the requirement regarding appointments to state boards and commissions apply only as vacancies occur, and vacancy appointments made by the Governor or its designees, the chair of a board or commission or its designees, the Speaker of the Assembly, and the President pro Tempore of the Senate or Senate Rules Committee, or any combination thereof.
- 4) Removes the mandated authority from the SPB to conduct audits and investigations of personnel practices of the CalHR and appointing authority to ensure compliance with civil service policies, procedures and statutes, to instead, authorize the CalHR to conduct these activities.
- 5) Requires the CalHR to oversee compliance of rules prescribed by the SPB consistent with a merit-based civil service system to govern appointments, classification, examinations, probationary periods, disciplinary actions, and other matters related to the SPB's constitutional authority.
- 6) Requires the CalHR to investigate complaints filed by employees in a state department's equal opportunity program and personnel office, other civil service employees, applicants, and members of the public alleging violations of civil service laws and to report findings to the SPB for adjudication.
- 7) Requires the 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.
- 8) Amends existing law that requires the SPB to establish minimum qualifications for determining the fitness and qualifications of employees for each class of position, to instead, require the SPB, in conjunction with the CalHR, to create standards for statements of qualifications used as examination criteria for the State in determining the desired attributes of employees for each class of position.

- 9) Modifies existing law relating to oral examinations and video or otherwise electronic recording of the examinations and all other examination materials.
- 10) Relating to upward mobility programs:
- a) Requires the CalHR to, by July 1, 2022, develop upward mobility goals based on department workforce analysis and post the model goals on its internet website; that the model goals may include race, gender, LGBTQ as factors to the extent permissible under state and federal equal protection laws, and that on or before July 1, 2022, the CalHR provide a copy of the model upward mobility goals and corresponding report outlining the workforce analysis used to develop such goals to each member of the Legislature.
 - b) Modifies existing law relating to an appointing authority's inability to achieve the upward mobility goals.
- 11) Relating to adverse action against an employee, no later than April 1 of each year, each appointing power is required to provide the CalHR a report detailing certain information and that the CalHR, by June 1 of each year, include this data and information in its existing annual workforce analysis and census report and submit the report to the Legislature. However, data or information elements regarding race, ethnicity, gender identity or sexual orientation that are required for inclusion in the report are subject to the discretion of the employee, and an appointing power must not require the employee to disclose this information.
- 12) Amends existing law relating to the state's Personnel Classification Plan where the allocation of a position to a class must derive from and be determined by the ascertainment of the "duties and responsibilities of the position," to instead, must derive from and be determined by the ascertainment of the "type of work, level of difficulty and responsibility, and qualifications requirements."

In addition, all positions must currently be included in the same class if, among others, a) the positions are sufficiently similar in respect to duties and responsibilities that the same descriptive title may be used, and b) substantially the same requirements as to education, experience, knowledge, and ability are demanded of incumbents, the bill modifies these specific attributes, and instead, replaces them with the following attributes that are among others which are maintained: a) the positions share a similar objective, scope of job responsibility, and work conditions, and b) substantially the same core competencies are demanded of incumbents.

COMMENTS

1) Census of the State Workforce, 2018

The CalHR's "Annual Census of Employees in State Civil Service (2018)" report states in part that, "As California continues to become increasingly diverse, CalHR strives to make employment with the State of California match its diverse population."

In regard to state employment practices, the report also notes that, "To fully achieve the goal of Equal Employment Opportunity and non-discriminatory employment practices within civil service, CalHR provides statewide leadership, coordination, and technical guidance to state

agencies." In addition, "While delegation of authority to agencies has occurred, oversight of the above stated goals and other critical functions are lacking."

S to this report, the author states that, "In reviewing the annual census data provided by the CalHR from 2014–2018, a troubling pattern emerges; a glass ceiling limiting upward mobility for people of color has developed, which limits career advancement." The author further notes that, "Data for the 2014-2018 period shows the same pattern, which is that: 1) The majority of Non-White civil service personnel are paid a salary in the '\$40,000 and Below' range, and 2) as progression into the next salary range occurs, the percentage of Non-White civil servants moving into management positions decreased concurrently; however, the exact opposite takes place for White civil servants. Whites (2018) accounted for 36.9% of the '\$40,000 and Below' salary range; however, this demographic steadily climbed as a percentage of the civil service workforce as they moved towards upper management. The fact that this pattern has been consistent for a five-year period demonstrates that there is a system in place that hinders Non-White civil service personnel from moving into upper management positions."

2) Please see the policy committee analysis for a full discussion of this bill.

According to the Author

"Upward mobility is integral to achieving racial justice and we should be setting the example. The existing systems in place at our own state agencies fail to create inclusive workplace environments and hinder qualified individuals to move up within their department simply based on the color of their skin.

"In September 2020, California took a bold step to address racial inequity in the private sector when [the Governor] signed my bill, Assembly Bill 979 that requires diversity on corporate boards of corporations based in California – a policy that will help drive upward mobility for people of color. We already mandated the private sector to do their part. It's high time for the state to step up and do theirs."

Arguments in Support

The Association of California State Employees with Disabilities (ACSED) supports the intent of this bill; however, the ACSED conditions its support of the bill if, "... several amendments are made that recognize that individuals with disabilities are an under-represented community, and which will improve the representation of individuals with disabilities on state boards and commissions and in the state civil service."

Arguments in Opposition

Californians for Equal Rights makes arguments against this bill citing state constitutional prohibitions on preferential treatment to members of a protected class for purposes of state employment.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, this bill would result in the following:

- 1) One-time and ongoing General Fund costs, of an unknown but significant amount, to SPB and CalHR.

Costs to SPB to conduct additional reviews of examinations, appointments, equal employment opportunity (EEO), personal services contracts and mandated trainings. Costs to CalHR to redesign and coding of relevant information technology databases, evaluating each relevant classification, collaborating with departments and developing an upward mobility report. In addition, costs to CalHR to investigate complaints filed by employees in a state department's EEO and personnel offices and workload associated with other civil service employees, applicants and members of the public filing complaints to CalHR for investigation. Lastly, unknown losses to CalHR's operating budget resulting from this bill's repeal of a provision allowing an appointing power to contract with CalHR to construct examinations and charge for services rendered.

- 2) Ongoing costs to state agencies, of an unknown amount, to fulfill this bill's reporting requirements.

VOTES

ASM PUBLIC EMPLOYMENT AND RETIREMENT: 5-1-1

YES: Cooper, Calderon, Cervantes, Cooley, O'Donnell

NO: Seyarto

ABS, ABST OR NV: Voepel

ASM APPROPRIATIONS: 12-3-1

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

NO: Bigelow, Megan Dahle, Davies

ABS, ABST OR NV: Fong

UPDATED

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