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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### **AB 105 (Holden) - The Upward Mobility Act of 2021: boards and commissions: civil service: examinations: classifications**

**Version:** July 15, 2021

**Urgency:** No

**Hearing Date:** August 23, 2021

**Policy Vote:** L., P.E. & R. 4 - 0, JUD. 9 - 2

**Mandate:** No

**Consultant:** Robert Ingenito

**Bill Summary:** AB 105 would modify specified civil service job processes, including ones related to job announcements, examinations, and classifications. The bill also would require state agencies to collect more detailed data about California's residents of African descent.

#### **Fiscal Impact:**

- The California Department of Human Resources (CalHR) cites both one-time and ongoing General Fund costs resulting from the bill. The magnitude is unknown, but likely significant. In addition, the bill would result in unknown, likely significant ongoing costs to state agencies to comply with the bill's reporting requirements (General Fund and special funds). As an example, the Franchise Tax Board (FTB) anticipates ongoing compliance costs in the low hundreds of thousands of dollars annually.
- The Department of Justice (DOJ) indicates that it would incur first-year costs of \$223,000, and \$390,000 annually thereafter, to implement the provisions of the bill (General Fund and Legal Services Revolving Fund).

**Background:** California's civil service is theoretically objective and founded upon principles of merit; nevertheless, recent reports from Black civil servants and CalHR data provide evidence that, in practice, the civil service system is falling well short of those standards.

Specifically, the State's state civil service system is founded on the "merit principle." (Cal. Const., art. VII, §§ 1 and 4.) Originally intended as a way to eliminate the use of state jobs for political patronage, the "merit principle" means that all applicants for civil service jobs must take examinations to demonstrate that they are qualified for the position. Only candidates who pass the exam can be considered for a civil service job and those candidates scoring in the highest tier are supposed to receive consideration before the appointing authority goes on to consider those who scored in the next tier down, and so on. Promotion to a new class of position within the civil service also requires taking and scoring well on an exam.

This system is meant to be objective and uninfluenced by racial bias or other forms of discrimination. The author of this bill points out, however, that recent evidence from two different sources suggest that, in practice, there is significant racial disparity in upward mobility within the civil service system and that aspects of the examination system may themselves be susceptible to subtle but significant forms of discrimination.

The author first highlights findings from CalHR's 2018 Annual Census of Employees in State Civil Service. That report shows that people of color are reasonably well-represented in the state civil service when viewed as a whole. In 2018, people of color composed 57.5 percent of all California civil servants, while whites made up the remaining 42.5 percent. When the data is broken down by salary range, however, a very different picture emerges. Among civil servants making \$40,000 and below, annually, there are far more people of color (63.1 percent) than whites (36.9 percent). As salaries increase, however, that gap steadily decreases, reaching near parity at salaries between \$100,000 and \$130,000 annually, and then reversing: among civil servants earning \$130,000 and above, 50.1 percent are white, while only 41.9 percent are people of color. The same inversion can be observed with respect to gender: women outnumber men in the lower civil service salary ranges, but men predominate heavily in the higher salary ranges. This data strongly suggests that while California's civil service may be open to all generally at lower levels of compensation, something is preventing women and people of color from reaching the higher echelons of the civil service.

**Proposed Law:** This bill would among other things, do the following:

- Require that on or after January 1, 2022, all state boards and commissions consisting of one or more volunteer members or commissioners shall have at least one volunteer board member or commissioner who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender. These diversity requirements shall only apply as vacancies on state boards and commissions occur and only to a vacancy that may be filled by 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.
- Strip the State Personnel Board (SPB) of the authority to conduct independent audits and investigations of personnel practices of CalHR and appointing authorities.
- Direct CalHR to oversee compliance with rules prescribed by SPB consistent with a merit-based civil service system to govern appointments, classifications, examinations, probationary periods, disciplinary actions, and other matters related to the board's authority under Article VII of the California Constitution.
- Authorize CalHR, at the direction of and in conjunction with the SPB, to conduct audits and investigations of personnel practices of other departments and appointing authorities to ensure compliance with civil service policies, procedures, and statutes.
- Require CalHR, pursuant to a process established by SPB, to investigate complaints filed by employees in a state department's equal employment opportunity program and personnel office, other civil service employees, applicants, and members of the public alleging violations of civil service laws and report findings to the SPB for adjudication.

- Require state agencies that collect demographic data regarding Californians' ancestry or ethnic origin, either directly or by contract, to use separate collection categories and tabulations for the following and to include such categories in every such demographic report by state entities published or released on or after July 1, 2022: (1) African Americans who are descendants of persons enslaved in the United States, as defined, and (2) African-Americans who are not descendants of persons enslaved in the United States, including, but not limited to, African Blacks, Caribbean Blacks, and other African Americans or Blacks, as defined.
- Require 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.
- Require SPB to incorporate standards for statements of qualifications used in determining fitness and qualifications of employees for each class of positions.
- Require CalHR or a designated appointing power to announce or advertise, in addition to all other elements under existing law, the functional core competencies, as defined, and any applicable standard statement of qualifications.
- Require CalHR or the appointing power to video record and otherwise electronically record examinations that have an oral examination component and maintain all other examination materials, including examination questions and any written material for each examination.
- Specify that all examination materials, including examination questions and any written-material, shall be maintained for each examination for three years, after which they shall be disposed of pursuant to a policy adopted by the board.
- Further specify that examinations that have an oral examination component shall be video or otherwise electronically recorded. Examinees shall be informed that they are being recorded. The recordings shall be maintained for each examination for three years, after which they shall be disposed of pursuant to a policy adopted by the board.
- Require CalHR to develop by July 1, 2022, model upward mobility goals based on each department's workforce analysis and to post the model goals on its internet website. Authorizes the model goals to include race, gender, and LGBTQ identity as factors to the extent permissible under state and federal equal protection laws.
- Require CalHR, on before July 1, 2022, to 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.
- Require any appointing authority unable to meet its annual upward mobility goals and timetables for two consecutive fiscal years to submit a report to CalHR, the Director of the Department of Finance, and the Legislative Analyst explaining

why it failed to achieve its goals and what requirements are necessary to facilitate achieving its goals in the subsequent two fiscal years.

- Require each appointing power to provide CalHR no later than every April 1 a report detailing specified racial, ethnic, sexual orientation, and gender data of employees against whom adverse action was taken, if the employee elects to provide this information. Require CalHR to include this data in its existing annual workforce analysis and census report which must be submitted to the Legislature by June 1 of every year.

**Related Legislation:**

- AB 313 (C. Garcia) would modify the Limited Exam and Appointment Program (LEAP) administered by CalHR, which provides an alternative to the traditional civil service examination and appointment process to facilitate the hiring of persons with disabilities. The bill is currently pending in this Committee.
- AB 316 (Cooper), among other provisions, would require CalHR to prepare a report on pay equity in relation to gender and ethnicity in each classification under the Personnel Classification Plan where there is an underrepresentation of women and minorities. The bill is currently pending in this Committee.
- AB 3121 (Weber, Chapter 319, Statutes of 2020) established the Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States.
- ACA 5 (Weber, Resolution Chapter 23, Statutes of 2020) proposed, subject to voter approval, to amend the California Constitution by repealing Section 31 of Article I relating to the prohibition against discrimination or preferential treatment, among other provisions. The measure appeared on the November 2020 General Election ballot, but failed passage by California voters.

**Staff Comments:** This bill seeks to address the identified problem through a series of related measures. Generally, the bill would (1) mandate greater demographic diversity on the State's volunteer boards and commissions, and (2) make changes to the State's civil service system to discourage discrimination and encourage the advancement of civil servants of color. Additionally, the bill would require state agencies to collect demographic information about Californians of African descent in a more nuanced way, to capture, among other things, differences in how descendants of American slaves may be fairing in comparison to Californians who trace their ancestry in Africa through a different path.

Cal HR indicates that SPB would incur costs to conduct additional reviews of examinations, appointments, and mandated trainings. The bill would result in costs to CalHR for the redesign and coding of relevant IT databases, evaluating each relevant classification, collaborating with departments and developing an upward mobility report. In addition, additional costs to CalHR would result, to investigate complaints filed by employees in a state department's equal employment opportunity (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, the bill would result in unknown reductions to CalHR's operating budget resulting from its repeal of the provision allowing an appointing power to contract with CalHR to construct examinations and charge for services rendered. In addition, all departments that collect demographic data will be impacted as the new collection requirements will require staff time and technology to implement.

DOJ notes that the bill would authorize it, at the direction of and in conjunction with SPB, to conduct audits and investigations of personnel practices of other departments and appointing authorities to ensure compliance with civil service policies, procedures, and statutes. DOJ anticipates an increase in workload litigating discrimination cases resulting from the bill, requiring two ongoing positions.

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