
THIRD READING

Bill No: AB 105
Author: Holden (D), et al.
Amended: 8/31/21 in Senate
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-0, 6/21/21
AYES: Cortese, Durazo, Laird, Newman
NO VOTE RECORDED: Ochoa Bogh

SENATE JUDICIARY COMMITTEE: 9-2, 7/13/21
AYES: Umberg, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Skinner, Stern,
Wieckowski
NOES: Borgeas, Jones

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/26/21
AYES: Portantino, Bradford, Kamlager, Laird, McGuire
NOES: Bates, Jones

ASSEMBLY FLOOR: 58-12, 6/1/21 - See last page for vote

SUBJECT: The Upward Mobility Act of 2021: boards and commissions: civil
service: examinations: classifications

SOURCE: Author

DIGEST: This bill requires diversity appointments to California's governmental volunteer boards, as specified. This bill also modifies state civil service examination processes, as specified, to promote diverse appointments to California civil service positions. This bill also requires state agencies to collect and report diversity data in state employment, as specified.

ANALYSIS:

Existing law:

- 1) Creates the state civil service that includes every officer and employee of the state except a limited number of specified, exempted officers and employees.

Existing law also requires that the state make “permanent appointment and promotion in the civil service under a general system based on merit ascertained by competitive examination.” Case law and custom refer to this provision as the merit principle and it governs the administration of the state’s civil service system. (CA CONST. art. VII, §1 and §4)

- 2) Creates the State Personnel Board (SPB) to enforce the civil service statutes and prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions. (CA CONST. art. VII, § 2 and §3)
- 3) Establishes the State Civil Service Act to facilitate the operation of the Constitution’s merit principle for the state civil service. (GC § 18500).
- 4) Creates the California Department of Human Resources (CalHR) and vests it with the powers, duties, and authorities necessary to operate the state civil service system pursuant to Article VII of the California Constitution, the Government Code, the merit principle, and applicable rules duly adopted by the State Personnel Board. (GC § 18502)
- 5) Authorizes CalHR to designate an appointing power to design, announce, or administer examinations for the establishment of employment lists as specified. Existing law also permits a designated appointing power to contract with CalHR or another designated appointing power for the purpose of designing, publicizing, or administering an examination. (GC § 18930.5)
- 6) Requires SPB to prescribe rules consistent with a merit based civil service system to govern appointments classifications, examinations, probationary periods, disciplinary actions, and other matters related to SPB’s authority under Article VII of the California Constitution. Existing law also authorizes SPB to conduct audits and investigations of the personnel practices of CalHR and appointing authorities to ensure compliance with civil service policies, procedures, and statutes. (GC § 18502)
- 7) Permits CalHR and SPB to delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement. (GC §18502)
- 8) Requires SPB to establish minimum qualifications for determining the fitness and qualifications of employees for each class of position. Existing law also authorizes CalHR to require applicants for examination or appointment to

provide documentation as it deems necessary to establish the applicants' qualifications. (GC § 18931)

- 9) Requires all state appointing authorities to establish an effective program of upward mobility for employees in low-paying occupational groups. An upward mobility program is one in which the state develops and publishes career opportunities and provides assistance which will allow employees in low-paying occupations to develop and advance to their highest potential. (GC § 19400 and § 19401)
- 10) Requires all upward mobility programs to include annual goals that include the number of employees expected to progress from positions in low-paying occupational groups to entry-level technical, professional, and administrative positions, and the timeframe within which this progress shall occur. Existing law also makes CalHR responsible for approving each department's annual upward mobility goals and timetables. (GC § 19402)
- 11) Permits an appointing power, or its authorized representative, to take adverse action against an employee for one or more of causes for discipline as specified. (GC § 19574)
- 12) Requires CalHR to administer the state's Personnel Classification Plan, including the allocation of every position to the appropriate class in the classification plan, and allocate positions based on the positions' duties and responsibilities. CalHR must include positions in the same class based on the principle of shared criteria, as specified. (GC § 19818.6)
- 13) Prohibits the inclusion of any question relative to an applicant's race, sex, marital status, or religion in any application blank or form the state requires an applicant to complete and submit to any state department, board, commission, officer, agent, or employee. However, provides that subsequent to employment, the state may collect such data, as specified, for research and statistical purposes. (GC § 8310)
- 14) Requires state agencies that collect demographic data, either directly or by contract, regarding Californians' ancestry or ethnic origin to use separate collection categories and tabulations for each major Asian group and each major Pacific Islander group, as specified, and to include such categories in every such demographic report by state entities published or released on or after July 1, 2012. (GC § 8310.5)

- 15) Declares that it is the state's policy that the composition of state boards and commissions shall be broadly reflective of the public including ethnic minorities and women. (Government Code § 11140)
- 16) Requires the Governor and every other appointing authority to be responsible for nominating a variety of persons of different backgrounds abilities, interests, and opinions but clarifies that it is not the intent of the Legislature that they utilize formulas or specific ratios in complying with the policy. (GC § 11141)
- 17) Prohibits the state from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. (CA CONST., art. I, § 31)

This bill:

- 1) Requires 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 from an underrepresented community.
- 2) Provides the following definitions:
 - a) "Board member or commissioner from an underrepresented community" to mean all of the following: an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native; an individual who self-identifies as gay, lesbian, bisexual, or transgender; a U.S. military veteran, as specified; or an individual with a disability, as specified.
 - b) "Volunteer member or commissioner" means an "administrative volunteer" who is selected to serve on a board or commission by the appropriate nominating authority and who does not receive any compensation or financial gain from any state agency, as specified. A volunteer may receive per diem and remain a volunteer within the meaning of this section, and that volunteer shall not be considered to be an employee solely on the basis of receiving the per diem.
- 3) Provides that this bill's requirements regarding the composition of state boards and commission shall only apply as vacancies on state boards and commissions occur. This bill's requirements shall only apply 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.

- 4) Requires the SPB to ensure that it circulates all changes to SPB regulations for public comment.
- 5) Requires CalHR to oversee compliance with SPB's rules consistent with a merit-based civil service system governing appointments, classifications, examinations, probationary periods, disciplinary actions, and other matters related to SPB's constitutional authority.
- 6) Permits CalHR discretion, 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.
- 7) Requires 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 SPB for adjudication.
- 8) Requires state agencies that collect demographic data, either directly or by contract, regarding Californians' ancestry or ethnic origin 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 January 1, 2022:
 - a) African Americans who are descendants of persons enslaved in the United States; and
 - b) 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 specified.
- 9) Defines "Core competencies" to mean the particular education, experience, knowledge, and abilities that each applicant is required to have in order to be considered eligible for a particular group of classifications and requires departments to include a description of the core competencies required for a position in its examination announcements, as specified.

- 10) Requires 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.
- 11) Requires SPB, in developing minimum qualifications (MQs) for positions to also incorporate standards for statements of qualifications used as examination criteria in determining the fitness and qualifications of employees for each class of position.
- 12) Permits CalHR discretion to require applicants for examination or appointment to provide documentation as it deems necessary to establish the applicants' qualifications.
- 13) Requires CalHR or the appointing power to also include in position examination announcements, as specified, the functional core competencies required for the position and the standard statement of qualifications for the position, if applicable.
- 14) Requires CalHR or the appointing power to maintain all examination materials, including examination questions and any written material, for each examination for three years, after which the appointing power shall dispose of the materials pursuant to a policy adopted by SPB.
- 15) Requires CalHR or the appointing power to video or otherwise electronically record examinations that have an oral examination component. The responsible department shall inform examinees that they are recording the examination. The responsible department shall maintain the recordings for each examination for three years, after which the responsible department shall dispose of the recordings pursuant to a policy adopted by SPB.
- 16) Requires CalHR to develop by July 1, 2022, "upward mobility goals" based on each department's workforce analysis and post the model goals on its internet website. This bill authorizes the model goals to include race, gender, LGBTQ, veteran status, and physical or mental disability as factors to the extent permissible under state and federal equal protection laws.
- 17) Requires CalHR or 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, as specified.
- 18) Requires the appointing authority, if it is unable to meet its annual upward mobility goals and timetables for two consecutive fiscal years, to submit a report explaining why it failed to achieve its goals and what requirements are

necessary to facilitate achieving its goals in the subsequent two fiscal years. The appointing authority shall submit the report to the department, the Director of the Department of Finance, and the Legislative Analyst.

- 19) Requires each appointing power to provide CalHR no later than every April 1 a report detailing specified racial, ethnic, sexual orientation, and gender data of its averse actions against employees and requires CalHR to include the data by every June 1 in its existing annual workforce analysis and census report and submit the report to the Legislature. However, an employee has discretion whether to provide the requested data or information elements regarding race, ethnicity, gender identity or sexual orientation for inclusion in the report and an appointing power may not require the employee to disclose this information.
- 20) Includes a severability clause so that if any provision of this bills or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/27/21)

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

OPPOSITION: (Verified 8/27/21)

Californians for Equal Rights Foundation

ARGUMENTS IN SUPPORT: According to the Coalition for a Just and Equitable California:

[...] [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 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.

ARGUMENTS IN OPPOSITION: According to the Californians for Equal Rights Foundation:

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.

ASSEMBLY FLOOR: 58-12, 6/1/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Daly, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Cunningham, Megan Dahle, Davies, Gallagher, Kiley, Lackey, Mathis, Seyarto, Smith, Valladares, Voepel

NO VOTE RECORDED: Chen, Choi, Flora, Fong, Frazier, Mayes, Nguyen, Patterson, Waldron

Prepared by: Glenn Miles / L., P.E. & R. / (916) 651-1556
8/31/21 9:25:26

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