

GOVERNOR'S VETO
AB 105 (Holden)
As Enrolled September 13, 2021
2/3 vote

SUMMARY

Modifies certain state civil service employment processes, including those related to job announcements, examinations and classifications; requires state boards and commissions that have at least one volunteer member to have at least one member from an underrepresented community; and, makes changes to departmental upward mobility programs, among other provisions. Specifically, the major provision of this bill:

- 1) Define "board member or commissioner from an underrepresented community" to mean an individual who has certain self-identified characteristics, as provided; an individual who has been discharged, other than dishonorably, from the United States Armed Forces, as provided; and, and individual who has a physical or mental disability, as defined under existing law.
- 2) Define "volunteer member or commissioner" to mean an "administrative officer" as defined under existing law, 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, also as defined under existing law. However, a volunteer may receive per diem and remain a volunteer, and must not be considered to be an employee solely on the basis of receiving the per diem.
- 3) Require a state agency, board, or commission that directly or by contract collects demographic data as to the ancestry of ethnic origin of Californians to use separate collection categories and tabs for African Americans.
- 4) Require the 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.
- 5) Require the SPB to establish minimum qualifications for determining the fitness of qualifications of employees for each class of position, and authorizes the Department of Human Resources (CalHR) to require applicants for examination or appointment to provide documentation as it deems necessary to establish the applicant's qualifications.
- 6) Remove the requirements that the SPB create standards for statements of qualifications in conjunction with the CalHR; and instead, require the SPB, in developing the qualifications, to incorporate certain standards.
- 7) Require that all examination materials, including examination questions and any written material, to be maintained for each examination for three years, after which they must be disposed of pursuant to a policy adopted by the SPB.
- 8) Require examinees to be informed that they are being recorded during an oral examination.
- 9) Remove a provision that required the CalHR to oversee the hiring process for an appointing authority for two consecutive fiscal years, if the appointing authority is unable to meet its

upward mobility goals, as specified. Instead, if the appointing authority is unable to meet its goals, it must submit a report to the CalHR, Director of Finance, and the Legislative Analyst as to the reasons in failing to achieve the goals and what requirements are necessary to facilitate its goals in subsequent fiscal years.

10) Include a severability clause.

11) Make technical and clarifying changes for these purposes.

Governor's Veto Message

This bill would modify several processes related to civil service job announcements, examinations, classifications, and hiring practices. Additionally, it would require certain boards and commissions to include appointed representatives of underrepresented groups and institute new data collection requirements.

I believe that California has a responsibility to recruit and retain a workforce that reflects California's diversity and treats all of our employees with respect, dignity, and equity. My Administration remains committed to furthering that cause and that's why we have established the California Leads as an Employer Initiative. The goal of this initiative is to implement policies that promote a diverse and inclusive workforce reflective of California, ensure a respectful workplace free of harassment, and address gender and racial pay gaps in the state workforce. Additionally, we established a Chief Equity Officer at the Government Operations Agency this year who will focus on diversifying state hiring, recruitment, retention, and training.

The Governor's veto message further states that, "[w]hile the goals of Assembly Bill 105 are laudable, 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. Furthermore, as [this bill] would cost tens of millions of dollars, these one-time and significant ongoing costs should be considered through the annual state budget process.

I would encourage the author to collaborate with the Administration to address these concerns and look forward to continued partnership as we continue to work to build a more inclusive state government.

COMMENTS

1) Expanded Summary of This Bill

Although California's civil service is theoretically objective and founded upon principles of merit, recent reports from Black civil servants and data from the CalHR provide troubling evidence that, in practice, the civil service system is falling well short of those standards. This bill aims to address the problem through a series of related measures. In broad strokes, the bill: mandates greater demographic diversity on the state's volunteer boards and commissions, and makes changes to the state's civil service system to discourage discrimination and encourage the advancement of civil servants of color. Simultaneously, the bill requires state agencies to collect demographic information about Californians of African descent in a more nuanced way, so as 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.

This bill employs a substantially broad, and multi-faceted approach to trying to address some of the problems detailed above. The various approaches proposed by the bill can be described as being directed to achieving two goals: a) encouraging greater diversity within the high levels of California civil service and on volunteer state boards and commissions; and b) discouraging discrimination in civil service hiring practices.

2) Please see the respective policy committee analyses 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 departments 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 Coalition for a Just and Equitable California states that, "[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 [United States (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. [This bill] is a big step in the right direction."

"The African-American Community Empowerment Council states that, "[s]ystemic 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."

Arguments in Opposition

Californians for Equal Rights states that, "[u]nder the veneer of addressing "barriers to upward mobility and inclusion for people of color working in California's civil services system", [this bill] 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. [This bill's] implementation would undoubtedly lead to de facto quotas and preferences, which violates a series of federal legislation and the U.S. Constitution."

FISCAL COMMENTS

According to the Senate Appropriations Committee's analysis of this bill, this bill would result in the following:

- 1) The CalHR cites both one-time and ongoing General Fund (GF) 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 (GF and Special Funds). As an example, the Franchise Tax Board anticipates ongoing compliance costs in the low hundreds of thousands of dollars annually.
- 2) The Department of Justice indicates that it would incur first-year costs of \$223,000, and \$390,000 annually thereafter, to implement the provisions of the bill (GF and Legal Services Revolving Fund).

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

ASSEMBLY FLOOR: 58-12-9

YES: 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

NO: Bigelow, Cunningham, Megan Dahle, Davies, Gallagher, Kiley, Lackey, Mathis, Seyarto, Smith, Valladares, Voepel

ABS, ABST OR NV: Chen, Choi, Flora, Fong, Frazier, Mayes, Nguyen, Patterson, Waldron

SENATE FLOOR: 29-8-3

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener

NO: Bates, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

ABS, ABST OR NV: Borgeas, Eggman, Stern

ASSEMBLY FLOOR: 58-12-10

YES: 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

NO: Bigelow, Cunningham, Megan Dahle, Davies, Gallagher, Kiley, Lackey, Mathis, Seyarto, Smith, Valladares, Voepel

ABS, ABST OR NV: Chen, Choi, Cooley, Flora, Fong, Frazier, Mayes, Nguyen, Patterson, Waldron

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