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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2023 - 2024 Regular Session

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### SB 16 (Smallwood-Cuevas) - Civil rights: discrimination: enforcement

**Version:** March 30, 2023

**Urgency:** No

**Hearing Date:** April 17, 2023

**Policy Vote:** JUD. 9 - 1

**Mandate:** No

**Consultant:** Matthew Fleming

**Bill Summary:** SB 16 would authorize local governments to enforce the housing and employment components of California's state civil rights laws.

**Fiscal Impact:** The Civil Rights Department (CRD) reports significant unknown costs in addition to approximately \$1.2 million for 6.0 PY in 2024-25 and \$2.75 million for 14.0 PY in 2025-26 and annually thereafter (General Fund). See Staff Comments for additional detail.

**Background:** California's Fair Employment and Housing Act (FEHA) is one of the strongest anti-discrimination laws in the nation. Its purpose is to prohibit and punish unequal treatment of any Californian on the basis of race, religion, color, national origin, disability, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation, among other grounds, in the areas of housing and employment. Existing law restricts the power to enforce the FEHA to the Civil Rights Department (formerly known as the Department of Fair Employment and Housing or DFEH). Local governments are preempted from attempting such enforcement themselves.

Over the years, CRD's enforcement of FEHA has been criticized as underwhelming. SB 491 (Bradford, 2018) sought to address that by eliminating FEHA's provision preempting local enforcement. There were questions, however, about the potential ramifications of making such a move. Those included the potential loss of claims for otherwise eligible complainants, unequal enforcement of the laws across the state with perhaps even weaker protections being afforded to California residents in certain parts of the States, and a loss of federal funding to the already limited resources of the CRD (or, the DFEH as it was known at that time). As a result, SB 491 was ultimately converted into a mandate for a task force to study the matter and return to the Legislature with recommended legislation. While he vetoed SB 491, then Governor Brown embraced its intent and ordered DFEH to convene an advisory group to study the concept of local civil rights enforcement.

After the advisory group concluded its work, DFEH released the resulting report on December 5, 2018. The report concluded that "DFEH and the advisory group find that local enforcement of anti-discrimination laws is feasible." Indeed the report stated that "[a]n effective mechanism for local enforcement of anti-discrimination employment laws could further advance the state's efforts to combat discrimination." At the same time, however, the report warned that "[i]f not handled correctly [...], lifting of preemption could have significant negative consequences, including accidental forfeiture of state or federal rights. Similar to the original version of SB 491, this bill would lift the preemption of SB 491 and allow for local enforcement of the FEHA.

**Proposed Law:**

- Authorizes efforts by any city, city and county, county, or other political subdivision of the state to enforce state law prohibiting housing or employment discrimination against any of the enumerated classes of persons covered by the FEHA.
- Requires CRD to promulgate regulations governing local enforcement of state law prohibiting discrimination against any of the enumerated classes of persons covered under this part in employment and housing by an unspecified date.
- Requires the regulations to 1) ensure consistent application of employment and housing discrimination laws across the state, 2) protect complainants against inadvertent loss of federal or state legal claims, and 3) avoid duplication of investigatory work.

**Related Legislation:**

- SB 218 (Bradford, 2019) would have authorized local governments within the County of Los Angeles to enact and enforce workplace anti-discrimination laws, including establishing remedies and penalties for violations, subject to specified procedural requirements. SB 218 was vetoed by Governor Newsom.
- SB 491 (Bradford, 2017) would have directed CRD to convene a group of experts and stakeholders to study the ramifications of authorizing local enforcement of FEHA and to report back to the Legislature with findings and draft legislation. Governor Brown vetoed SB 491 but directed CRD to create an advisory group to explore the matter and report back by December 31, 2018.
- AB 2534 (Shelley, 2000) would have provided that local governments are not pre-empted from providing or maintaining greater protections against discrimination than FEHA. AB 2534 died in the Assembly Judiciary Committee.

**Staff Comments:** SB 16 would require the CRD to promulgate regulations that ensure consistent application of employment and housing discrimination laws across the state. Such regulations are likely to be complex, as they will require the CRD to address numerous issues pointed out in the 2018 DFEH report. SB 16 will require the coordination of multiple state, local, and federal agencies including the United States Equal Employment Opportunity Commission (EEOC) and the United States Department of Housing and Urban Development (HUD). Potential complications include the possibility for loss of state and federal discrimination claims for eligible parties, a risk of inconsistent civil rights enforcement across the State, inefficient and conflicting duplication of work that result in result in contradictory outcomes, and a loss of revenue to the CRD for cases that would have been dual filed with the EEOC or HUD, and instead are filed with local agencies.

Implementation of SB 16 will likely require the negotiation of legal agreements between CRD and local enforcement agencies, ongoing oversight of local enforcement agencies, providing ongoing technical assistance to localities, and more. In order to accomplish these tasks and promulgate the regulations described above, CRD anticipates needing a minimum total of 14.0 permanent positions. Those include 9.0 attorney positions of

varying classification and 1.0 legal secretary, 1.0 Associate Governmental Program Analyst, 1.0 Human Resources position, and 2.0 IT positions.

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