

Date of Hearing: July 12, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Chris Holden, Chair
SB 16 (Smallwood-Cuevas) – As Amended May 18, 2023

Policy Committee: Judiciary

Vote: 8 - 2

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill allows a local government to enforce the Fair Employment and Housing Act (FEHA) as long as the local government follows related regulations established by the Civil Rights Department (CRD).

The bill specifies that CRD's regulations must:

- 1) Ensure consistent application of employment and housing discrimination laws across the state.
- 2) Protect complainants against inadvertently losing federal or state legal claims.
- 3) Avoid duplication of investigatory work.
- 4) Minimize possible loss of federal funding for CRD's work.

FISCAL EFFECT:

Costs (General Fund) to CRD in the low millions of dollars annually. CRD reports this bill would require additional staffing to promulgate and update regulations, negotiate legal agreements between CRD and local enforcement agencies, and provide ongoing oversight over and technical assistance to local enforcement agencies. CRD may need to create and implement new case management and IT tools, the costs of which are currently unknown. CRD estimates costs of at least \$1.2 million for six positions in fiscal year (FY) 2024-25 and \$2.75 million for 14 positions in FY 2025-26 and ongoing. As described below, SB 16 may have additional effects on CRD's federal funding, of an unknown but potentially significant amount.

COMMENTS:

- 1) **Purpose.** According to the author:

Any form of discrimination robs people of their human dignity and often also of their financial stability and their health. When discrimination is allowed to ensue unchecked it also robs our communities of valuable opportunities to be better and to be stronger. Lack of enforcement of anti-discrimination laws is a problem that is well documented and if ever there were a time to reverse that pattern, it is now. SB 16 would do this by specifying nothing in the FEHA

restricts the ability of local agencies from enforcing the Act's provisions. This will expand the number of agencies actively addressing the problem of workplace and housing discrimination, and help ensure equity for all Californians.

- 2) **Background.** FEHA is a state law that prohibits employment and housing discrimination based on protected characteristics including race, color, ancestry, religion, age, disability, gender, sexual orientation, gender identity, and medical condition. FEHA is enforced only by CRD (formerly known as the Department of Fair Employment and Housing). CRD receives and investigates complaints of discrimination under FEHA, conducts alternative dispute resolutions, and, if needed, files civil lawsuits to enforce violations of the law. CRD also has contracts and work-sharing agreements with the Equal Employment Opportunity Commission (EEOC) and U.S. Department of Housing and Urban Development (HUD) through which CRD shares the workload of investigating and resolving discrimination complaints that violate both state and federal law. CRD receives federal funding for handling claims of discrimination that could otherwise be investigated by these federal agencies. Currently, FEHA expressly preempts local anti-discrimination laws and ordinances, and local governments cannot enforce FEHA.

This bill allows a local government to enforce FEHA as long as the local government complies with regulations promulgated by CRD. The bill requires CRD to create the related regulations and prescribes minimum requirements for the regulations, as listed above. These provisions will become operative January 1, 2025. It is unclear how this significant change in enforcement will affect CRD's workload and fiscal needs. Implementation of this bill will require coordination between local agencies, CRD, and, likely, federal agencies, but the details of how exactly they will share enforcement duties is unknown. CRD's caseload may decrease if local agencies handle complaints that would normally be filed with CRD. CRD may lose federal funding if other agencies handle cases that CRD would have dual-filed with EEOC and HUD.

- 3) **Prior Legislation.** SB 218 (Bradford), of the 2019-2020 Legislative Session, would have allowed a local government in Los Angeles County to enact and enforce its own employment discrimination laws, as long as the local laws were at least as protective as FEHA. In 2019, Governor Newsom vetoed the bill, writing:

I don't support lifting a preemption that has been in place for decades in the manner proposed in this bill. As crafted, this measure could create confusion, inconsistent enforcement of the law and increase costs without a corresponding increase in worker protections. This bill leaves ambiguities about local governments' ability to enforce both local ordinances and FEHA. I invite the Legislature to come back with a measure that makes it clear that local enforcement measures are exclusively focused on local ordinances.

As discussed in the analysis of SB 16 by the Assembly Committee on Judiciary, this bill does not directly address these concerns. Rather than focusing on enforcement of local antidiscrimination ordinances, as suggested in the Governor's veto message, SB 16 allows local governments to enforce FEHA, a state law. And rather than resolving the

implementation concerns cited in response to SB 218 and related legislation, SB 16 directs CRD to promulgate regulations that address those issues.

SB 491 (Bradford), of the 2017-2018 Legislative Session, would have required CRD to convene an advisory group to conduct a study about the feasibility of authorizing local government entities to enforce antidiscrimination laws. Governor Brown vetoed the bill, stating that the bill was unclear and too broadly drafted. He directed CRD to create an advisory group to study and report to the Legislature and the Governor's office about allowing the provisions of FEHA to be enforced by local authorities.

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