

AMENDED IN ASSEMBLY MARCH 1, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 105

Introduced by Assembly Member Holden

December 14, 2020

An act to amend Sections 11140, 18502, 18931, 18933, ~~18935~~, 18936, 19402, ~~19818.6~~, and ~~19889.3~~ 19574, and 19818.6 of, to add Sections 18553 and 19574.3 to, and to repeal and add Section 18930.5 of, the Government Code, relating to human resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 105, as amended, Holden. The Upward Mobility Act of 2021: boards and commissions: civil service: examinations: classifications.

Existing law provides that it is the policy of the State of California that the composition of state boards and commissions shall be broadly reflective of the general public, including ethnic minorities and women.

This bill would require that by December 31, 2022, all state boards and commissions have at least one director or commissioner from an underrepresented community. The bill would require by December 31, 2023, all state boards and commissions have at least 2 or 3 directors or commissioners, depending on the size of the entity, from an underrepresented community. The bill would define the term “director or commissioner from an underrepresented community” as an individual 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. The bill would require that these requirements only apply as vacancies on state boards and commissions occur.

The California Constitution establishes the State Personnel Board (board) and requires the board to, among other things, enforce the civil service statutes, prescribe probationary periods and classifications, adopt rules authorized by statute, and review disciplinary actions. The Constitution also requires the executive officer of the board to administer the civil service statutes under the rules of the board. Under existing law, the board is authorized to conduct audits and investigations of the personnel practices of the Department of Human Resources and appointing authorities to ensure compliance with civil service policies, procedures, and statutes. Existing law establishes the Department of Human Resources (department) and provides that, subject to the requirements of the California Constitution, it succeeds to and is vested with the duties, purposes, responsibilities, and jurisdiction exercised by the board as its designee with respect to the board's administrative and ministerial functions.

This bill, among other things, would instead authorize the department to conduct audits and investigations of personnel practices of other departments and appointing authorities to ensure compliance with civil service policies, procedures, and statutes. The bill would require the department to oversee compliance of rules prescribed by the board consistent with a merit-based civil service system to govern appointments, classification, examinations, probationary periods, disciplinary actions, and other matters related to the board's constitutional authority, and require the department 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 board for adjudication.

Existing law requires that lists of eligible applicants for civil service positions be established as a result of free competitive examinations. Existing law, with regard to the requirements governing examinations for establishing employment lists, authorizes the department to designate an appointing power to design, announce, or administer examinations and requires the board to establish minimum qualifications for determining the fitness and qualifications of employees for each class of position.

This bill would require instead that the board establish a process that includes diversity and best practices in each aspect of the design, announcement, and administration of the examinations and, in conjunction with the department, create standards for statements of

qualifications used as examination criteria for the State of California in determining the fitness and qualifications of employees for each class of position. The bill would also require ~~that the department or a designated appointing power conducting the examination be comprised of an ethnically diverse team of men and women, and~~ that examinations with an oral component be video and otherwise electronically recorded and all other examination materials be maintained for each examination. The bill would also require the announcement for an examination include the core competencies, as defined, and the standard statement of qualifications, if applicable.

Existing law requires all appointing authorities of state government to establish an effective program of upward mobility for employees in low-paying occupational groups. Existing law requires each upward mobility program to include annual goals for upward mobility and a timetable for when progress will occur, and requires the department to approve the goals and timetables. Existing law authorizes an appointing authority that determines that it will be unable to achieve the goals to ask the department for a reduction in the goals, as specified.

This bill would repeal the authorization for an appointing authority to ask the department for a reduction in their annual upward mobility goals, and would instead require the department to oversee the hiring process for that appointing authority if the appointing authority is unable to meet the goals or timelines for 2 consecutive fiscal years, as specified. The bill would, on or before July 1, 2022, require the department to develop model upward mobility goals that include ~~race and gender~~ *race, gender, and LGBTQ* as factors, and to provide a report to the Legislature outlining the department workforce analysis used to develop those model goals.

Existing law authorizes a state appointing power to take adverse action against state civil service employees for specified causes for discipline, and provides procedures for state civil service disciplinary proceedings. Existing law authorizes the board to hold hearings and make investigations concerning all matters relating to the enforcement and effect of the State Civil Service Act, as specified.

This bill would require each appointing power to *provide the Speaker of the Assembly and the President pro Tempore of the Senate with a report, no later than April 1 of each year, detailing certain information regarding adverse actions against state employees, including, but not limited to, the ethnicity, race, gender identity, or sexual orientation of each employee served with an adverse action in the preceding calendar*

year. ~~The bill also would require each appointing power to utilize an independent arbitrator to conduct state civil service specified disciplinary hearings when an adverse action is taken against an employee. The bill would require the department to establish a list of approved independent arbitrators for these purposes. The bill would specify that these provisions do not prevent an employee from appealing the decision of the arbitrator~~ any adverse action as provided or as otherwise authorized.

Existing law requires the department to administer the Personnel Classification Plan, including allocating every position to the appropriate class. Existing law requires the allocation of a position to a class be derived from, and determined by, ascertaining the duties and responsibilities of the position, and be based on the principle that all positions are to be included in the same class if certain qualifications apply, including, but not limited to, that the positions are sufficiently similar in respect to duties and responsibilities that the same descriptive title may be used, and substantially the same requirements as to education, experience, knowledge, and ability are demanded of incumbents.

This bill would require instead that the allocation of a position to a class be derived from, and determined by, the type of work, level of difficulty and responsibility, and qualifications requirements, and instead of the qualifications stated above, would require that the allocation be based on the principle that all positions are to be included in the same class if the positions share a similar objective, scope of job responsibility, and work conditions, and that substantially the same core competencies are demanded of incumbents.

~~Existing law requires the board to establish by rule a merit system specifically suited to the selection and placement of executive personnel. Eligibility for appointment to positions in the career executive assignment category is established as a result of competitive examinations, and all candidates are required to meet the minimum qualifications that the board determines are requisite to the performance of high administrative and policy influencing functions.~~

This bill, with exceptions, would require that the board, as a minimum requirement, require that all candidates for career executive assignment positions have 2 or more consecutive years of civil service experience, including the most recent 2 years.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 Upward Mobility Act of 2021.

3 SEC. 2. Section 11140 of the Government Code is amended to
4 read:

5 11140. (a) It is the policy of the State of California that the
6 composition of state boards and commissions shall be broadly
7 reflective of the general ~~public~~ public, including ethnic minorities
8 and women.

9 (b) By December 31, 2022, all state boards and commissions
10 shall have a minimum of one director or commissioner from an
11 underrepresented community.

12 (c) By December 31, 2023, all state boards and commissions
13 that consist of more than four but fewer than nine directors or
14 commissioners shall have a minimum of two directors or
15 commissioners from an underrepresented community.

16 (d) By December 31, 2023, all state boards and commissions
17 that consist of nine or more directors or commissioners shall have
18 a minimum of three directors or commissioners from an
19 underrepresented community.

20 (e) For purposes of this section, “director or commissioner
21 from an underrepresented community” means an individual who
22 self-identifies as Black, African American, Hispanic, Latino, Asian,
23 Pacific Islander, Native American, Native Hawaiian, or Alaska
24 Native, or who self-identifies as gay, lesbian, bisexual, or
25 transgender.

26 (f) Notwithstanding the dates specified in subdivisions (b) to
27 (d), inclusive, the requirements of those subdivisions shall only
28 apply as vacancies on state boards and commissions occur.

29 ~~SEC. 2.~~

30 SEC. 3. Section 18502 of the Government Code is amended
31 to read:

32 18502. (a) There is hereby created in state government the
33 Department of Human Resources. The department succeeds to and
34 is vested with the following:

35 (1) All of the powers and duties exercised and performed by
36 the Department of Personnel Administration.

37 (2) Those powers, duties, and authorities necessary to operate
38 the state civil service system pursuant to Article VII of the

1 California Constitution, this code, the merit principle, and
2 applicable rules duly adopted by the State Personnel Board.

3 (b) (1) The State Personnel Board shall prescribe rules
4 consistent with a merit based civil service system to govern
5 appointments, classification, examinations, probationary periods,
6 disciplinary actions, and other matters related to the board’s
7 authority under Article VII of the California Constitution. The
8 State Personnel Board shall ensure that all changes to regulations
9 are circulated for public comment.

10 (2) The department shall oversee compliance of rules prescribed
11 by the State Personnel Board consistent with a merit-based civil
12 service system to govern appointments, classification,
13 examinations, probationary periods, disciplinary actions, and other
14 matters related to the board’s authority under Article VII of the
15 California Constitution.

16 (3) The department may conduct audits and investigations of
17 personnel practices of other departments and appointing authorities
18 to ensure compliance with civil service policies, procedures, and
19 statutes.

20 (4) The department shall investigate complaints filed by
21 employees in a state department’s equal employment opportunity
22 program and personnel office, other civil service employees,
23 applicants, and members of the public alleging violations of civil
24 service laws and report findings to the State Personnel Board for
25 adjudication.

26 (c) This section shall not limit the authority of the Department
27 of Human Resources and the State Personnel Board to delegate,
28 share, or transfer between them responsibilities for programs within
29 their respective jurisdictions pursuant to an agreement.

30 (d) The rules and regulations of the State Personnel Board and
31 of the Department of Personnel Administration shall remain in
32 effect unless and until contradicted by the terms of this chapter or
33 amended or repealed by the board or the Department of Human
34 Resources.

35 ~~SEC. 3.~~

36 *SEC. 4.* Section 18553 is added to the Government Code, to
37 read:

38 18553. “Core competencies” mean the particular education,
39 experience, knowledge, and abilities that each applicant is required

1 to have in order to be considered eligible for a particular group of
2 classifications.

3 ~~SEC. 4.~~

4 *SEC. 5.* Section 18930.5 of the Government Code is repealed.

5 ~~SEC. 5.~~

6 *SEC. 6.* Section 18930.5 is added to the Government Code, to
7 read:

8 18930.5. The board shall establish a process that includes
9 diversity and best practices in each aspect of the design,
10 announcement, and administration of examinations for the
11 establishment of employment lists.

12 ~~SEC. 6.~~

13 *SEC. 7.* Section 18931 of the Government Code is amended
14 to read:

15 18931. (a) The board, in conjunction with the department,
16 shall create standards for statements of qualifications used as
17 examination criteria for the State of California in determining the
18 fitness and qualifications of employees for each class of position.
19 The department may require applicants for examination or
20 appointment to provide documentation as it deems necessary to
21 establish the applicants' qualifications.

22 (b) Whenever the law requires that an applicant for a position
23 as a peace officer be screened to ensure that the applicant is free
24 from emotional and mental impairment, the department or the
25 designated appointing authority shall undertake that screening
26 subject to the applicant's right to appeal to the board.

27 ~~SEC. 7.~~

28 *SEC. 8.* Section 18933 of the Government Code is amended
29 to read:

30 18933. (a) Within a reasonable time before the scheduled date,
31 the department or a designated appointing power shall announce
32 or advertise examinations for the establishment of eligible lists.
33 The announcement shall include the following:

- 34 (1) The date and place of the examination.
35 (2) The functional core competencies.
36 (3) The general scope of the examination.
37 (4) The relative weight of its several parts if more than one type
38 of test is to be utilized.
39 (5) Any other information the department deems proper.
40 (6) The standard statement of qualifications, if applicable.

1 (b) The department shall notify the Department of Veterans
 2 Affairs when any promotional examination for the establishment
 3 of an eligible list is announced or advertised to eligible candidates.
 4 The notification shall state the job position and include all of the
 5 information listed in paragraphs (1) to (6), inclusive, of subdivision
 6 (a).

7 ~~SEC. 8. Section 18935 of the Government Code is amended~~
 8 ~~to read:~~

9 ~~18935. (a) The department or a designated appointing power~~
 10 ~~shall be comprised of an ethnically diverse team of men and~~
 11 ~~women.~~

12 ~~(b) The department or a designated appointing power may refuse~~
 13 ~~to examine, or after examination may refuse to declare as eligible,~~
 14 ~~or may withhold or withdraw from an eligible list, before the~~
 15 ~~appointment, anyone who meets any of the following criteria:~~

16 ~~(1) Lacks any of the requirements for the examination or position~~
 17 ~~for which the person applied.~~

18 ~~(2) Has been dismissed from any position for any cause that~~
 19 ~~would be a cause for dismissal from state service.~~

20 ~~(3) Has resigned from any position not in good standing in order~~
 21 ~~to avoid dismissal.~~

22 ~~(4) Has misrepresented themselves in the application or~~
 23 ~~examination process, including permitting another person to~~
 24 ~~complete or attempt to complete a portion of the examination on~~
 25 ~~their behalf.~~

26 ~~(5) Has been found to be unsuited or not qualified for~~
 27 ~~employment pursuant to rule.~~

28 ~~(e) The remedies provided in this section are not exclusive and~~
 29 ~~shall not prevent the board, department, or appointing power from~~
 30 ~~taking additional actions pursuant to Chapter 10 (commencing~~
 31 ~~with Section 19680).~~

32 ~~SEC. 9. Section 18936 of the Government Code is amended~~
 33 ~~to read:~~

34 ~~18936. (a) Examinations that have an oral examination~~
 35 ~~component shall be video and otherwise electronically recorded~~
 36 ~~and all other examination materials, including examination~~
 37 ~~questions and any written material shall be maintained for each~~
 38 ~~examination.~~

39 ~~(b) The final earned rating of each person competing in any~~
 40 ~~examination shall be determined by the weighted average of the~~

1 earned ratings on all phases of the examination, according to the
2 weights for each phase established by the department or a
3 designated appointing power in advance of the giving of the
4 examination and published as a part of the announcement of the
5 examination.

6 (c) The department or a designated appointing power may set
7 minimum qualifying ratings for each phase of an examination and
8 may provide that competitors failing to achieve those ratings in
9 any phase shall be disqualified from any further participation in
10 the examination.

11 SEC. 10. Section 19402 of the Government Code is amended
12 to read:

13 19402. (a) All upward mobility programs shall include annual
14 goals that include the number of employees expected to progress
15 from positions in low-paying occupational groups to entry-level
16 technical, professional, and administrative positions, and the
17 timeframe within which this progress shall occur. The Department
18 of Human Resources shall be responsible for approving each
19 department's annual upward mobility goals and timetables.

20 (b) (1) By July 1, 2022, the Department of Human Resources
21 shall develop model upward mobility goals based on department
22 workforce analysis and shall post the model goals on its internet
23 website.

24 (2) The model upward mobility goals shall include ~~race and~~
25 ~~gender~~ *race, gender, and LGBTQ* as factors to the extent
26 permissible under state and federal equal protection laws.

27 (3) On or before July 1, 2022, the Department of Human
28 Resources shall provide a copy of the model upward mobility goals
29 and a corresponding report outlining the workforce analysis used
30 to develop the model upward mobility goals to each member of
31 the Legislature. The report shall be submitted in compliance with
32 Section 9795.

33 (c) If the appointing authority is unable to meet its annual
34 upward mobility goals and timetables for two consecutive fiscal
35 years, the Department of Human Resources shall oversee the hiring
36 process for that ~~appointing authority~~ *authority for two consecutive*
37 *fiscal years*. Unless otherwise prohibited by law, the appointing
38 authority shall reimburse the Department of Human Resources for
39 costs associated with overseeing the hiring process.

1 *SEC. 11. Section 19574 of the Government Code is amended*
2 *to read:*

3 19574. (a) The appointing power, or its authorized
4 representative, may take adverse action against an employee for
5 one or more of the causes for discipline specified in this article.
6 Adverse action is valid only if a written notice is served on the
7 employee prior to the effective date of the action, as defined by
8 board rule. The notice shall be served upon the employee either
9 personally or by mail and shall include: (1) a statement of the
10 nature of the adverse action; (2) the effective date of the action;
11 (3) a statement of the reasons therefor in ordinary language; (4) a
12 statement advising the employee of the right to answer the notice
13 orally or in writing; and (5) a statement advising the employee of
14 the time within which an appeal must be filed. The notice shall be
15 filed with the board not later than 15 calendar days after the
16 effective date of the adverse action.

17 (b) Effective January 1, 1996, this subdivision shall apply only
18 to state employees in State Bargaining Unit 5. This section shall
19 not apply to discipline as defined by Section 19576.1.

20 (c) (1) *No later than April 1 of each year, each appointing*
21 *power shall provide to the Speaker of the Assembly and the*
22 *President pro Tempore of the Senate a report detailing all of the*
23 *following information:*

24 (A) *The total number of adverse actions served on state*
25 *employees in the preceding calendar year.*

26 (B) *The ethnicity or race of each employee served with an*
27 *adverse action in the preceding calendar year.*

28 (C) *The gender identity or sexual orientation of each employee*
29 *served with an adverse action in the preceding calendar year.*

30 (D) *The statutory basis for discipline under Section 19572 for*
31 *each adverse action served in the preceding calendar year.*

32 (E) *A brief factual summary of the basis for discipline for each*
33 *adverse action served in the preceding calendar year.*

34 (F) *The type of discipline imposed in each adverse action,*
35 *including, but not limited to, outright termination, the nature of*
36 *any demotion, the length of any suspension, or any other type of*
37 *discipline.*

38 (2) *This report shall be submitted in compliance with Section*
39 *9795.*

1 ~~SEC. 11.~~

2 *SEC. 12.* Section 19574.3 is added to the Government Code,
3 to read:

4 19574.3. (a) The Department of Human Resources shall
5 establish, and update annually, ~~a list of approved independent~~
6 ~~arbitrators to conduct hearings performed in accordance with this~~
7 ~~article. Each independent arbitrator on the approved list shall be~~
8 ~~certified by an arbitration association, such as the American~~
9 ~~Arbitration Association or JAMS.~~ *a list of independent arbitrators*
10 *provided by the American Arbitration Association or JAMS to*
11 *conduct hearings performed pursuant to Skelly v. State Personnel*
12 *Bd. (1975) 15 Cal.3d 194.*

13 (b) Notwithstanding any other law, each appointing power shall
14 utilize an independent arbitrator from the list established in
15 subdivision (a) to conduct any hearing ~~against an employee under~~
16 ~~this article.~~ *performed pursuant to Skelly v. State Personnel Bd.*
17 *(1975) 15 Cal.3d 194.*

18 (c) This section shall not prevent an employee from appealing
19 ~~the decision of the arbitrator~~ *any adverse action as provided in*
20 *Section 19575 or as otherwise authorized under this article.*

21 (d) If the provisions of this section are in conflict with the
22 provisions of the memorandum of understanding reached pursuant
23 to Section 3517.5, the memorandum of understanding shall be
24 controlling.

25 ~~SEC. 12.~~

26 *SEC. 13.* Section 19818.6 of the Government Code is amended
27 to read:

28 19818.6. The department shall administer the Personnel
29 Classification Plan of the State of California, including the
30 allocation of every position to the appropriate class in the
31 classification plan. The allocation of a position to a class shall
32 derive from and be determined by the ascertainment of the type
33 of work, level of difficulty and responsibility, and qualifications
34 requirements, and shall be based on the principle that all positions
35 shall be included in the same class if:

36 (a) The positions share a similar objective, scope of job
37 responsibility, and work conditions.

38 (b) Substantially the same core competencies are demanded of
39 incumbents.

1 (c) Substantially the same tests of fitness may be used in
2 choosing qualified appointees.

3 (d) The same schedule of compensation can be made to apply
4 with equity.

5 ~~SEC. 13. Section 19889.3 of the Government Code is amended~~
6 ~~to read:~~

7 ~~19889.3. (a) (1) Eligibility for appointment to positions in the~~
8 ~~career executive assignment category shall be established as a~~
9 ~~result of competitive examinations. All candidates shall meet the~~
10 ~~minimum qualifications that the State Personnel Board may~~
11 ~~determine are requisite to the performance of high administrative~~
12 ~~and policy influencing functions.~~

13 ~~(2) The State Personnel Board shall include as a minimum~~
14 ~~requirement that all candidates for career executive assignment~~
15 ~~positions have two or more consecutive years of civil service~~
16 ~~experience, which shall include the most recent two years, except~~
17 ~~when otherwise specified under the law.~~

18 ~~(b) A person employed in a career executive assignment shall~~
19 ~~not be deemed to acquire as a result of that service any rights to~~
20 ~~or status in positions governed by the provisions of this part relating~~
21 ~~to the civil service other than the category of career executive~~
22 ~~assignment, except as provided by State Personnel Board rule.~~