

AMENDED IN SENATE JUNE 23, 2021

AMENDED IN SENATE JUNE 14, 2021

AMENDED IN ASSEMBLY APRIL 21, 2021

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CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 105**

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**Introduced by Assembly Member Holden  
(Coauthor: Assembly Member Cooper)**

December 14, 2020

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An act to amend Sections 11140, 18502, 18931, 18933, 18936, 19402, 19574, and 19818.6 and 19574 of, and to add Sections ~~8310.6 and 18553~~ 8310.6, 18553, and 18930.1 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, on or after January 1, 2022, all state boards and commissions consisting of one or more volunteer members have at least one board member or commissioner from an underrepresented community. The bill would define the term "board member 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 apply these requirements only 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~~ *department, at the direction of and in conjunction with the State Personnel Board*, 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, classifications, examinations, probationary periods, disciplinary actions, and other matters related to the board's constitutional authority, and require the ~~department~~ *department, pursuant to a process established by the State Personnel Board*, 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 any state agency, board, or commission that directly or by contract collects demographic data as to the ancestry or ethnic origin of Californians to use separate collection categories and tabulations for major Asian and Pacific Islander groups, as specified.

This bill would require any state agency, board, or commission that directly or by contract collects demographic data as to the ancestry or

ethnic origin of Californians to use separate collection categories and tabulations for specified African American groups. The bill would distinguish between African Americans who are descendants of persons enslaved in the United States and African Americans who are not descendants of persons enslaved in the United States, as defined.

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,~~ *developing qualifications for determining the fitness and qualifications of employees,* 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 examinations with an oral component be video and otherwise electronically recorded and all other examination materials be maintained for each ~~examination.~~ *examination, as specified.* 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 appointing authority to submit a report explaining the failure to*

*achieve the goals and what requirements are necessary to facilitate achieving the goals, as specified, and then submit the report to specified persons.* The bill would, on or before July 1, 2022, require the department to develop model upward mobility goals that include 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.

~~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.~~

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  
4 to 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.

8 (b) On or after January 1, 2022, all state boards and commissions  
9 consisting of one or more volunteer members or commissioners  
10 shall have at least one volunteer board member or commissioner  
11 from an underrepresented community.

12 (c) For purposes of this section, ~~“board”~~ *the following definitions*  
13 *apply:*

14 (1) *“Board member or commissioner from an underrepresented*  
15 *community” means an individual who self-identifies as Black,*  
16 *African American, Hispanic, Latino, Asian, Pacific Islander, Native*  
17 *American, Native Hawaiian, or Alaska Native, or who*  
18 *self-identifies as gay, lesbian, bisexual, or transgender.*

19 (2) *“Volunteer member or commissioner” means an*  
20 *“administrative volunteer” as defined in subdivision (b) of Section*  
21 *3111, who is selected to serve on a board or commission by the*  
22 *appropriate nominating authority and who does not receive any*  
23 *compensation or financial gain from any state agency, as defined*  
24 *in Section 11000. A volunteer may receive per diem and remain*  
25 *a volunteer within the meaning of this section, and that volunteer*  
26 *shall not be considered to be an employee solely on the basis of*  
27 *receiving the per diem.*

28 (d) Notwithstanding the date specified in subdivision (b), the  
29 requirements of this section shall only apply as vacancies on state  
30 boards and commissions occur.

31 (e) Subject to subdivision (d), this section shall only apply to a  
32 vacancy appointment by the Governor or the Governor’s designees,  
33 the chair of a board or commission or the chair’s designees, the  
34 Speaker of the Assembly, and the President pro Tempore of the  
35 Senate or Senate Rules Committee, or any combination thereof.

1 SEC. 3. Section 18502 of the Government Code is amended  
2 to read:

3 18502. (a) There is hereby created in state government the  
4 Department of Human Resources. The department succeeds to and  
5 is vested with the following:

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

8 (2) Those powers, duties, and authorities necessary to operate  
9 the state civil service system pursuant to Article VII of the  
10 California Constitution, this code, the merit principle, and  
11 applicable rules duly adopted by the State Personnel Board.

12 (b) (1) The State Personnel Board shall prescribe rules  
13 consistent with a merit based civil service system to govern  
14 appointments, classifications, examinations, probationary periods,  
15 disciplinary actions, and other matters related to the board's  
16 authority under Article VII of the California Constitution. The  
17 State Personnel Board shall ensure that all changes to regulations  
18 are circulated for public comment.

19 (2) The department shall oversee compliance of rules prescribed  
20 by the State Personnel Board consistent with a merit-based civil  
21 service system to govern appointments, classifications,  
22 examinations, probationary periods, disciplinary actions, and other  
23 matters related to the board's authority under Article VII of the  
24 California Constitution.

25 (3) ~~The department~~ *department, at the direction of and in*  
26 *conjunction with the State Personnel Board,* may conduct audits  
27 and investigations of personnel practices of other departments and  
28 appointing authorities to ensure compliance with civil service  
29 policies, procedures, and statutes.

30 (4) ~~The~~ *Pursuant to a process established by the State Personnel*  
31 *Board, the* department shall investigate complaints filed by  
32 employees in a state department's equal employment opportunity  
33 program and personnel office, other civil service employees,  
34 applicants, and members of the public alleging violations of civil  
35 service laws and report findings to the State Personnel Board for  
36 adjudication.

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

1 (d) The rules and regulations of the State Personnel Board and  
2 of the Department of Personnel Administration shall remain in  
3 effect unless and until contradicted by the terms of this chapter or  
4 amended or repealed by the board or the Department of Human  
5 Resources.

6 SEC. 4. Section 8310.6 is added to the Government Code, to  
7 read:

8 8310.6. (a) A state agency, board, or commission that directly  
9 or by contract collects demographic data as to the ancestry or ethnic  
10 origin of Californians shall use separate collection categories and  
11 tabulations for the following:

12 (1) African Americans who are descendants of persons enslaved  
13 in the United States.

14 (2) African Americans who are not descendants of persons  
15 enslaved in the United States, including, but not limited to, African  
16 Blacks, Caribbean Blacks, and other African Americans or Blacks.

17 (b) The data collected pursuant to the different collection  
18 categories and tabulations described in subdivision (a) shall be  
19 included in every demographic report on ancestry or ethnic origins  
20 of Californians by the state agency, board, or commission published  
21 or released on or after January 1, 2022. The data shall be made  
22 available to the public in accordance with state and federal law,  
23 except for personal identifying information, which shall be deemed  
24 confidential.

25 (c) As used in this section, the following definitions apply:

26 (1) “African Americans who are descendants of persons enslaved  
27 in the United States” means individuals who self-identify as Black  
28 or African American with at least one ancestor who was enslaved  
29 or subject to chattelization in the United States.

30 (2) “African Blacks” means individuals with origins from the  
31 continent of Africa, including, but not limited to, one or more of  
32 the following countries: Algeria, Angola, Benin, Botswana,  
33 Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African  
34 Republic, Chad, Comoros, Côte d’Ivoire, Democratic Republic of  
35 Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Eswatini,  
36 Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya,  
37 Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania,  
38 Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria,  
39 Republic of the Congo, Rwanda, São Tomé and Príncipe, Senegal,

1 Seychelles, Sierra Leone, Somalia, South Africa, South Sudan,  
2 Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia, or Zimbabwe.

3 (3) “Caribbean Blacks” means individuals with origins from  
4 Caribbean countries, including, but not limited to, one or more of  
5 the following countries: Belize, Puerto Rico, Cuba, Jamaica, Haiti,  
6 Trinidad and Tobago, Guyana, Barbados, Grenada, St. Croix, St.  
7 Kitts, the Bahamas, and the Dominican Republic.

8 (4) “Other African Americans or Blacks” means individuals  
9 with African ancestry originating from any country not included  
10 in paragraph (2) or (3).

11 SEC. 5. Section 18553 is added to the Government Code, to  
12 read:

13 18553. “Core competencies” mean the particular education,  
14 experience, knowledge, and abilities that each applicant is required  
15 to have in order to be considered eligible for a particular group of  
16 classifications.

17 ~~SEC. 6. Section 18930.5 of the Government Code is repealed.~~

18 ~~SEC. 7. Section 18930.5 is added to the Government Code, to  
19 read:~~

20 ~~18930.5.—~~

21 *SEC. 6. Section 18930.1 is added to the Government Code, to  
22 read:*

23 *18930.1. The board shall establish a process that includes  
24 diversity and best practices in each aspect of the design,  
25 announcement, and administration of examinations for the  
26 establishment of employment lists.*

27 ~~SEC. 8.~~

28 *SEC. 7. Section 18931 of the Government Code is amended  
29 to read:*

30 *18931. (a) The board shall establish minimum qualifications  
31 for determining the fitness and qualifications of employees for  
32 each class of position. The department may require applicants for  
33 examination or appointment to provide documentation as it deems  
34 necessary to establish the applicants’ qualifications.*

35 *(b) The board, in conjunction with the department, shall create  
36 developing the qualifications referenced in subdivision (a), shall  
37 also incorporate standards for statements of qualifications used  
38 as examination criteria for the State of California in determining  
39 the fitness and qualifications of employees for each class of  
40 position. The department may require applicants for examination*

1 or appointment to provide documentation as it deems necessary  
2 to establish the applicants' qualifications.

3 ~~(b)~~

4 (c) Whenever the law requires that an applicant for a position  
5 as a peace officer be screened to ensure that the applicant is free  
6 from emotional and mental impairment, the department or the  
7 designated appointing authority shall undertake that screening  
8 subject to the applicant's right to appeal to the board.

9 ~~SEC. 9.~~

10 SEC. 8. Section 18933 of the Government Code is amended  
11 to read:

12 18933. (a) Within a reasonable time before the scheduled date,  
13 the department or a designated appointing power shall announce  
14 or advertise examinations for the establishment of eligible lists.  
15 The announcement shall include the following:

16 (1) The date and place of the examination.

17 (2) The *nature of the minimum qualifications and the functional*  
18 *core competencies.*

19 (3) The general scope of the examination.

20 (4) The relative weight of its several parts if more than one type  
21 of test is to be utilized.

22 (5) Any other information the department deems proper.

23 (6) The standard statement of qualifications, if applicable.

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

30 ~~SEC. 10.~~

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

33 18936. (a) Examinations that have an oral examination  
34 component shall be video and otherwise electronically recorded  
35 and all other examination materials, including examination  
36 questions and any written material shall be maintained for each  
37 ~~examination.~~ *examination for three years, after which they shall*  
38 *be disposed of pursuant to a policy adopted by the board.*  
39 *Examinees shall be informed that they are being recorded.*

1 (b) The final earned rating of each person competing in any  
2 examination shall be determined by the weighted average of the  
3 earned ratings on all phases of the examination, according to the  
4 weights for each phase established by the department or a  
5 designated appointing power in advance of the giving of the  
6 examination and published as a part of the announcement of the  
7 examination.

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

13 ~~SEC. 11.~~

14 *SEC. 10.* Section 19402 of the Government Code is amended  
15 to read:

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

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

27 (2) The model upward mobility goals may include race, gender,  
28 and LGBTQ as factors to the extent permissible under state and  
29 federal equal protection laws.

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

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

1 shall reimburse the Department of Human Resources for costs  
2 associated with overseeing the hiring process. *the appointing*  
3 *authority shall submit a report explaining why it failed to achieve*  
4 *its goals and what requirements are necessary to facilitate*  
5 *achieving its goals in the subsequent two fiscal years. The*  
6 *appointing authority shall submit the report to the department,*  
7 *the Director of the Department of Finance, and the Legislative*  
8 *Analyst.*

9 ~~SEC. 12.~~

10 SEC. 11. Section 19574 of the Government Code is amended  
11 to read:

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

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

29 (c) (1) No later than April 1 of each year, each appointing power  
30 shall provide to the Department of Human Resources a report  
31 detailing all of the following information:

32 (A) The total number of adverse actions served on state  
33 employees in the preceding calendar year.

34 (B) The ethnicity or race of each employee served with an  
35 adverse action in the preceding calendar year, if available.

36 (C) The gender identity or sexual orientation of each employee  
37 served with an adverse action in the preceding calendar year, if  
38 available.

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

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

3 (F) The type of discipline imposed in each adverse action,  
4 including, but not limited to, outright termination, the nature of  
5 any demotion, the length of any suspension, or any other type of  
6 discipline.

7 (2) No later than June 1 of each year, the department shall  
8 include in its annual workforce analysis and census report the items  
9 as reported by each appointing authority pursuant to this  
10 subdivision and submit this report to the Legislature.

11 (3) This report shall be submitted in compliance with Section  
12 9795.

13 (4) The information required pursuant to subparagraphs (B) and  
14 (C) of paragraph (1) may be provided at the discretion of the  
15 employee, and an appointing power shall not require an employee  
16 to disclose this information.

17 ~~SEC. 13. Section 19818.6 of the Government Code is amended~~  
18 ~~to read:~~

19 ~~19818.6. The department shall administer the Personnel~~  
20 ~~Classification Plan of the State of California, including the~~  
21 ~~allocation of every position to the appropriate class in the~~  
22 ~~classification plan. The allocation of a position to a class shall~~  
23 ~~derive from and be determined by the ascertainment of the type~~  
24 ~~of work, level of difficulty and responsibility, and qualifications~~  
25 ~~requirements, and shall be based on the principle that all positions~~  
26 ~~shall be included in the same class if:~~

27 ~~(a) The positions share a similar objective, scope of job~~  
28 ~~responsibility, and work conditions.~~

29 ~~(b) Substantially the same core competencies are demanded of~~  
30 ~~incumbents.~~

31 ~~(c) Substantially the same tests of fitness may be used in~~  
32 ~~choosing qualified appointees.~~

33 ~~(d) The same schedule of compensation can be made to apply~~  
34 ~~with equity.~~