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CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 105

**Introduced by Assembly Member Holden
(Coauthors: Assembly Members Chiu and Cooper)**

December 14, 2020

An act to amend Sections 11140, 18502, 18931, 18933, 18936, 19402, and 19574 of, and to add Sections 8310.6, 18553, and 18930.1 to, 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 *Native*; who self-identifies as gay, lesbian, bisexual, or transgender; *transgender*; who is a veteran, as defined; or who has a disability, as defined. 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, 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 with 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, 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 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, 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 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~~ *LGBTQ, veteran status, or physical or mental disability* 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 Department of Human Resources 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.

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, the following definitions apply:
- 13 (1) “Board member or commissioner from an underrepresented
- 14 community” means ~~an~~ *all of the following:*

1 (A) An individual who self-identifies as Black, African
2 American, Hispanic, Latino, Asian, Pacific Islander, Native
3 American, Native Hawaiian, or Alaska Native, ~~or who~~ *Native*.

4 (B) An individual who self-identifies as gay, lesbian, bisexual,
5 or transgender.

6 (C) An individual who has served in and has been discharged
7 under other than dishonorable conditions from service in the
8 United States Army, Navy, Air Force, Marine Corps, or Coast
9 Guard.

10 (D) An individual who has a “physical disability” or a “mental
11 disability” as defined in Section 12926.

12 (2) “Volunteer member or commissioner” means an
13 “administrative volunteer” as defined in subdivision (b) of Section
14 3111, who is selected to serve on a board or commission by the
15 appropriate nominating authority and who does not receive any
16 compensation or financial gain from any state agency, as defined
17 in Section 11000. A volunteer may receive per diem and remain
18 a volunteer within the meaning of this section, and that volunteer
19 shall not be considered to be an employee solely on the basis of
20 receiving the per diem.

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

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

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

31 18502. (a) There is hereby created in state government the
32 Department of Human Resources. The department succeeds to and
33 is vested with the following:

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

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

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

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

14 (3) The department, at the direction of and in conjunction with
15 the State Personnel Board, may conduct audits and investigations
16 of personnel practices of other departments and appointing
17 authorities to ensure compliance with civil service policies,
18 procedures, and statutes.

19 (4) Pursuant to a process established by the State Personnel
20 Board, 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. 4. Section 8310.6 is added to the Government Code, to
36 read:

37 8310.6. (a) A state agency, board, or commission that directly
38 or by contract collects demographic data as to the ancestry or ethnic
39 origin of Californians shall use separate collection categories and
40 tabulations for the following:

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

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

6 (b) The data collected pursuant to the different collection
7 categories and tabulations described in subdivision (a) shall be
8 included in every demographic report on ancestry or ethnic origins
9 of Californians by the state agency, board, or commission published
10 or released on or after January 1, 2022. The data shall be made
11 available to the public in accordance with state and federal law,
12 except for personal identifying information, which shall be deemed
13 confidential.

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

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

19 (2) “African Blacks” means individuals with origins from the
20 continent of Africa, including, but not limited to, one or more of
21 the following countries: Algeria, Angola, Benin, Botswana,
22 Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African
23 Republic, Chad, Comoros, Côte d’Ivoire, Democratic Republic of
24 Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Eswatini,
25 Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya,
26 Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania,
27 Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria,
28 Republic of the Congo, Rwanda, São Tomé and Príncipe, Senegal,
29 Seychelles, Sierra Leone, Somalia, South Africa, South Sudan,
30 Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia, or Zimbabwe.

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

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

39 SEC. 5. Section 18553 is added to the Government Code, to
40 read:

1 18553. “Core competencies” mean the particular education,
2 experience, knowledge, and abilities that each applicant is required
3 to have in order to be considered eligible for a particular group of
4 classifications.

5 SEC. 6. Section 18930.1 is added to the Government Code, to
6 read:

7 18930.1. The board shall establish a process that includes
8 diversity and best practices in each aspect of the design,
9 announcement, and administration of examinations for the
10 establishment of employment lists.

11 SEC. 7. Section 18931 of the Government Code is amended
12 to read:

13 18931. (a) The board shall establish minimum qualifications
14 for determining the fitness and qualifications of employees for
15 each class of position. The department may require applicants for
16 examination or appointment to provide documentation as it deems
17 necessary to establish the applicants’ qualifications.

18 (b) The board, in developing the qualifications referenced in
19 subdivision (a), shall also incorporate standards for statements of
20 qualifications used as examination criteria for the State of
21 California in determining the fitness and qualifications of
22 employees for each class of position. The department may require
23 applicants for examination or appointment to provide
24 documentation as it deems necessary to establish the applicants’
25 qualifications.

26 (c) Whenever the law requires that an applicant for a position
27 as a peace officer be screened to ensure that the applicant is free
28 from emotional and mental impairment, the department or the
29 designated appointing authority shall undertake that screening
30 subject to the applicant’s right to appeal to the board.

31 SEC. 8. Section 18933 of the Government Code is amended
32 to read:

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

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

38 (2) The nature of the minimum qualifications and the functional
39 core competencies.

40 (3) The general scope of the examination.

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

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

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

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

11 SEC. 9. Section 18936 of the Government Code is amended
12 to read:

13 18936. (a) All examination materials, including examination
14 questions and any written material, shall be maintained for each
15 examination for three years, after which they shall be disposed of
16 pursuant to a policy adopted by the board.

17 (b) Examinations that have an oral examination component shall
18 be video or otherwise electronically recorded. Examinees shall be
19 informed that they are being recorded. The recordings shall be
20 maintained for each examination for three years, after which they
21 shall be disposed of pursuant to a policy adopted by the board.

22 (c) The final earned rating of each person competing in any
23 examination shall be determined by the weighted average of the
24 earned ratings on all phases of the examination, according to the
25 weights for each phase established by the department or a
26 designated appointing power in advance of the giving of the
27 examination and published as a part of the announcement of the
28 examination.

29 (d) The department or a designated appointing power may set
30 minimum qualifying ratings for each phase of an examination and
31 may provide that competitors failing to achieve those ratings in
32 any phase shall be disqualified from any further participation in
33 the examination.

34 SEC. 10. Section 19402 of the Government Code is amended
35 to read:

36 19402. (a) All upward mobility programs shall include annual
37 goals that include the number of employees expected to progress
38 from positions in low-paying occupational groups to entry-level
39 technical, professional, and administrative positions, and the
40 timeframe within which this progress shall occur. The Department

1 of Human Resources shall be responsible for approving each
2 department's annual upward mobility goals and timetables.

3 (b) (1) By July 1, 2022, the Department of Human Resources
4 shall develop model upward mobility goals based on department
5 workforce analysis and shall post the model goals on its internet
6 website.

7 (2) The model upward mobility goals may include race, gender,
8 ~~and LGBTQ~~ *LGBTQ, veteran status, and physical or mental*
9 *disability* as factors to the extent permissible under state and federal
10 equal protection laws.

11 (3) On or before July 1, 2022, the Department of Human
12 Resources shall provide a copy of the model upward mobility goals
13 and a corresponding report outlining the workforce analysis used
14 to develop the model upward mobility goals to each member of
15 the Legislature. The report shall be submitted in compliance with
16 Section 9795.

17 (c) If the appointing authority is unable to meet its annual
18 upward mobility goals and timetables for two consecutive fiscal
19 years, the appointing authority shall submit a report explaining
20 why it failed to achieve its goals and what requirements are
21 necessary to facilitate achieving its goals in the subsequent two
22 fiscal years. The appointing authority shall submit the report to
23 the department, the Director of the Department of Finance, and
24 the Legislative Analyst.

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

27 19574. (a) The appointing power, or its authorized
28 representative, may take adverse action against an employee for
29 one or more of the causes for discipline specified in this article.
30 Adverse action is valid only if a written notice is served on the
31 employee prior to the effective date of the action, as defined by
32 board rule. The notice shall be served upon the employee either
33 personally or by mail and shall include: (1) a statement of the
34 nature of the adverse action; (2) the effective date of the action;
35 (3) a statement of the reasons therefor in ordinary language; (4) a
36 statement advising the employee of the right to answer the notice
37 orally or in writing; and (5) a statement advising the employee of
38 the time within which an appeal must be filed. The notice shall be
39 filed with the board not later than 15 calendar days after the
40 effective date of the adverse action.

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

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

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

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

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

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

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

18 (F) The type of discipline imposed in each adverse action,
19 including, but not limited to, outright termination, the nature of
20 any demotion, the length of any suspension, or any other type of
21 discipline.

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

26 (3) This report shall be submitted in compliance with Section
27 9795.

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

32 SEC. 12. The provisions of this act are severable. If any
33 provision of this act or its application is held invalid, that invalidity
34 shall not affect other provisions or applications that can be given
35 effect without the invalid provision or application.