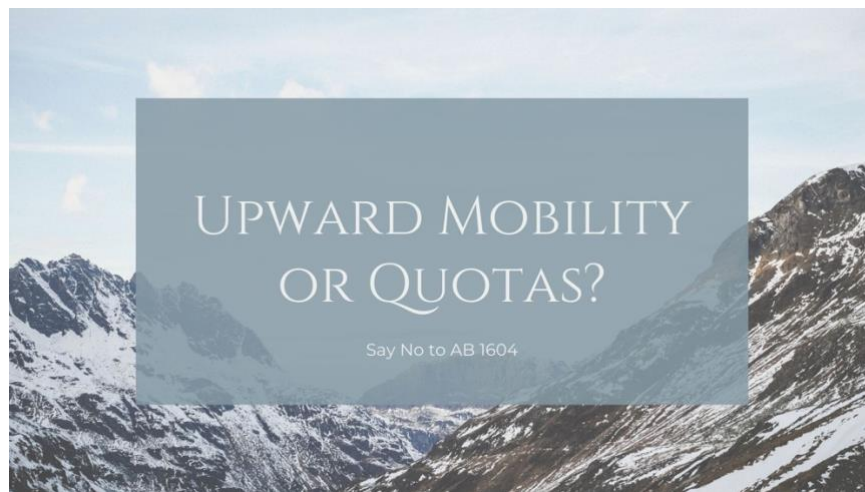


Equal Opportunity or Preferential Treatment? CFER 2022 Legislative Digest (Issue 3)

In California, the state constitution guarantees equal employment and contracting opportunities: “The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” (Article I, Sec. 31. (a)). Unfortunately, this constitutional principle has been often sacrificed for the expediency of identarian politics. In the area of state lawmaking, the California Legislature, occupied by a Democratic supermajority, has considered some bills intended to skirt California’s ban on preferential treatment. In 2022, we have identified seven problematic bills that would amend both labor and government codes. If passed, these bills would weaken the constitutional protection of equal protection or stymie freedom.

AB 1604: The Upward Mobility Act of 2022

Assemblyman Chris Holden (AD 41) introduced [AB 1604](#) on January 4th, 2022, as a replica of the previously [vetoed AB 105](#), in an attempt to boost upward mobility in California’s civil service sector. The bill would require that “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 State Personnel Board would be established to enforce the law and collect “demographic data as to the ancestry or ethnic origin of Californians.” Once again, the term “board member or commissioner from an underrepresented community” is defined as “an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native; who self-identifies as gay, lesbian, bisexual, or transgender; who is a veteran, as defined; or who has a disability, as defined.”



CFER Analysis: AB 1604, if passed, would violate California’s constitutional principle of equal treatment for all and also contravene the U.S. Constitution and federal legislation. Under the veneer of addressing barriers to upward mobility and inclusion for people of color working in California’s civil services system, AB 1604 proposes setting up annual goals and timetables for civil service positions “that include race, gender, LGBTQ, veteran status, or physical or mental disability as factors.” The quota on underrepresented community members is tantamount to instituting government handouts and racial preferences, thereby violating the state constitution, stoking racial

divisions, and legalizing racial discrimination in public employment. In 2021, CFER was the principal organized opposition to AB 1604’s precedent – AB 105. This year, we will continue to work with the state government and other stakeholders to expose the issue of unconstitutionality in AB 1604. **[CFER Position: Oppose]**

SB 1115: Women (& Nonbinary Individuals) in Construction Priority Unit

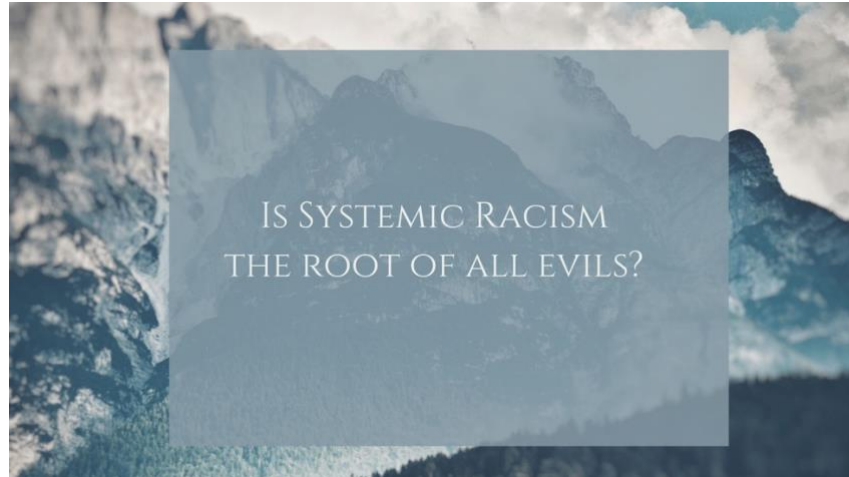
Introduced by Senator Nancy Skinner (SD 9) in co-authorship with Senator Toni Atkins (SD 39), [SB 1115](#) would require the Department of Industrial Relations to conduct annual surveys that include the “ethnic derivation and gender” of individuals working in the construction industry. Furthermore, the bill would establish a “Women in Construction Priority Unit” to “maximize state and federal funding to support women and nonbinary individuals in the construction workforce.” For the purpose of increasing “the upward mobility of women and nonbinary individuals in construction careers,” the “Women in Construction Priority Unit” will be assisted with an advisory committee composed of labor union representatives, construction industry employers, nonprofit organizations and state government representatives.



CFER Analysis: SB 1115 perpetuates AB 1604’s theme of “upward mobility” and wraps in the woke gender ideology by looping in women and nonbinary individuals. Without specifying how the state expects to promote recruitment and retention of its target categories, SB 1115 could potentially violate California’s constitutional prohibition on preferential treatment in both public employment and public contracting on the basis of sex. **[CFER Position: Oppose]**

SB 1351: California Youth Apprenticeship Program

[SB 1351](#) was introduced by Senator Maria Elena Durazo (SD 24) on February 18, 2022 for the purpose of creating a state-wide job training program called “the California Youth Apprenticeship Program.” The program will award grant funds to “eligible applicants to develop new apprenticeship programs or expand existing apprenticeship programs to serve a specified target population.” Eligible applicants, including county offices of education, regional consortia of community college districts and local intermediaries, would be identified by the Office of the California Youth Apprenticeship Program within the Division of Apprenticeship Standards.



CFER Analysis: SB 1351 is presented with good intentions to afford young Californians “multiple pathways toward economic self-sufficiency and fulfillment.” But instead of diagnosing complex socioeconomic and cultural factors behind youth unemployment, lack of education and criminality, the bill author crudely attributes problems facing underprivileged California youth as a result of “systemic racism which limits opportunities for youth, especially youth from Black and Indigenous families.” The opportunity gaps that the apprenticeship program seeks to narrow down are anchored in perceived “historic inequities.” Such a prognosis is rooted in an ideological framework of critical race theory, rather than informed by science and data. **[CFER Position: Oppose Until Amended]**

AB 630: Online Jobs and Economic Support Resource Grant Program

[AB 630](#) was introduced by Assembly Member Joaquin Arambula (SD 31) on February 12, 2022 to create a state-wide grant program with Go-Biz “for the purpose of supporting inclusive, cross-jurisdictional, and innovative online platforms that support job and earning opportunities and economic recovery with a strong focus on underserved and economically challenged communities.” Nonprofits, cooperatives, public benefit corporations, and local governments can apply to the program to develop online platforms that connect “users with economic opportunities, training programs, and services.” One criterion for eligibility is that the applicant must show “experience serving underrepresented and underserved populations.”

“

AB 630

NO MATTER WHEN A DECLARATION
OF RECOVERY IS MADE, THE REALTY
REALITY IS THAT IT WILL BE A
RECOVERY FOR THE MOST PRIVILEGED
TWO-THIRDS OF PEOPLE IN THE
UNITED STATES

CFER Analysis: AB 630 is another glaring example of public policies for equal opportunity being hijacked by race-based ideologies. Instead of being anchored in a practical focus on creating job opportunities after the pandemic for the jobless whose needs for public assistance is determined on an individual basis, the intended program crudely dictates that those serving underrepresented minorities deserve the grant exclusively. Moreover, the bill’s written rationale that economic recovery is only for “the most privileged two-thirds” and not for “people of color” is inflammatory and blatantly race baiting. [**CFER Position: Oppose**]

AB 2019: Small and Disadvantaged Business Enterprises

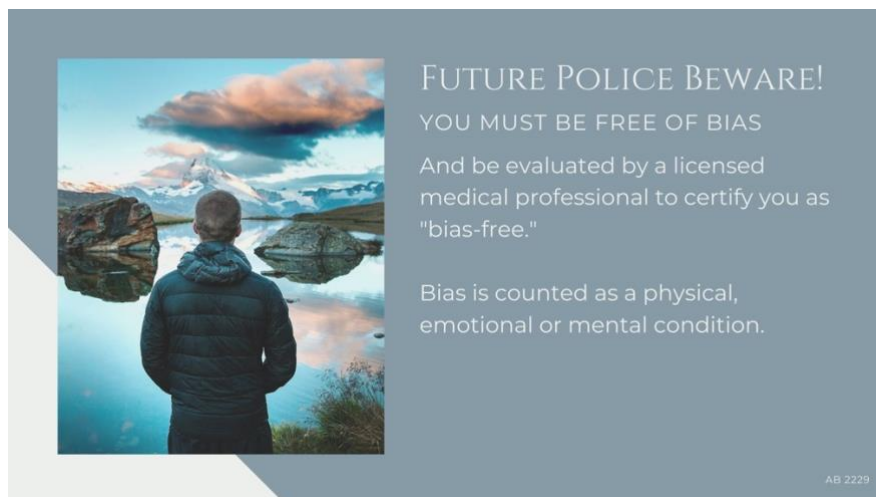
Assembly Members Cottie Petrie-Norris (AD 74) and Chris Holden (AD 41) introduced [AB 2019](#) to update the mission and scope of the state Office of Small Business Advocate. The agency would “develop an ‘economic equity first’ action plan and policy... to support procurement participation by small businesses, microbusinesses, disadvantaged business enterprises, and disabled veteran business enterprises.” With respect to public works contracts, this bill would require a 5% preference for disadvantaged business enterprises.



CFER Analysis: Extending government support for small businesses to so-called socially and economically disadvantaged enterprises is a controversial concept that has been litigated against in federal courts. In existing cases, social and economic disadvantage has been proven as a proxy for race. Yet, AB 2019 embraces this contested concept and even proposes a numeric quota to diversify the small business world. It even contains this provision: “The State of California must carefully consider and provide guidance to all state departments, agencies, bureaus, and other state entities as to reflect small and minority-owned businesses as a priority when determining procurement decisions.” [CFER Position: Oppose]

AB 2229: Peace Officers Bias Evaluation

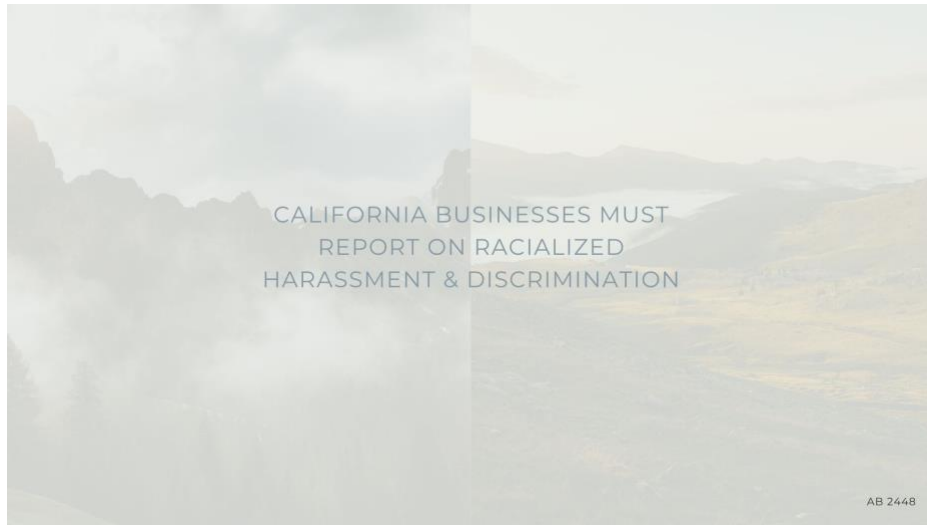
AB 2229 was [introduced](#) by Assemblywoman Luz Rivas (AD 39) on February 15, 2022 to add bias evaluation as a minimum requirement for peace officers in California. Specifically, a licensed physician and surgeon or psychologist must evaluate peace officer applicants to ensure that they are free from “bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation that might adversely affect the exercise of the powers of a peace officer.”



CFER Analysis: How would any licensed medical professional determine whether or not an individual is free of bias? AB 2229 is nothing short of a political instrument of thought policing. Future peace officers must prove ideological loyalty and pass this political litmus test in order to serve and protect. The bill even astoundingly categorizes bias as a “physical, emotional or mental condition.” [CFER Position: Oppose]

AB 2448: Civil Rights, Businesses, Discrimination and Harassment

[AB 2448](#) was introduced by Assemblyman Phil Ting (AD 19) on February 17, 2022 to require “a business to address the harassment, defined as words, gestures, or actions directed at a specific person without the consent of the person.” The bill would also require the Department of Fair Employment and Housing to establish a pilot program to “recognize businesses that create environments free from bias-based discrimination and harassment.”



CFER Analysis: AB 2448 is proposed on a racialized, inflammatory assumption that “Asian Americans and Pacific Islanders (AAPIs) experiencing racism are more stressed by hate than the pandemic... and Black customers have long reported unfair treatment while shopping, according to more than two decades of Gallup polling.” The bill would shift the burden from local law enforcement to small businesses to protect customers from perceived “racialized harassment.” Not only would California businesses need to “address the harassment of customers on its premises, including harassment by a third party who is not affiliated with the business,” they but also have to provide pertinent training to employees and collect data related to incidents of harassment. This would create unnecessary racial and ethnic divisions among community members who would be mandated by law to turn on each other. **[CFER Position: Oppose]**