

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: May 14, 2019

TO: Honorable Members of the Rules, Elections & Intergovernmental Relations Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No: 19-0002-S55
Assignment No: 19-04-0403

SUBJECT: Resolution to SUPPORT SB 218 (Bradford), which would remove State Fair Employment and Housing Act (FEHA) preemption for enforcement of employment-related discrimination laws.

CLA RECOMMENDATION: Adopt Resolution (Cedillo – Martinez) to include in the City’s 2019-2020 State Legislative Program, SUPPORT for SB 218 (Bradford) which would remove State FEHA preemption for enforcement of employment-related discrimination laws.

SUMMARY

The Resolution (Cedillo – Martinez), introduced April 17, 2019, advises that the preemption clause of the FEHA limits local jurisdictions from enforcing anti-discrimination laws relating to housing and employment. The City of Los Angeles has taken action to protect its residents from discrimination by enacting programs that encourage equity and has also taken steps to establish a Civil and Human Rights Commission and Ordinance. UCLA/RAND and the California Senate Rules Committee have release reports which identify resource allocation and increasing complaint volume as significant issues at the Department of Fair Employment and Housing (DFEH). Discrimination in employment reinforces economic conditions created over centuries of exclusionary practices creating substantial hurdles for hard working families.

The Resolution further advises that pending before the California State Senate is SB 218 (Bradford) which would remove FEHA preemption for enforcement of employment related discrimination laws and would allow local jurisdictions to establish their own employment related anti-discrimination laws. The bill would also provide localities with the authority to create their own anti-discrimination agencies that can be designated as Fair Employment Practice Agencies (FEPAs) to enforce federal employment laws.

Providing localities with the flexibility to create and enforce their own anti-discrimination laws would also provide complainants with a more accessible and responsive process. The City should be empowered to enforce anti-discrimination laws to help address the large volume of discrimination complaints and help prevent further discrimination.

The Resolution recommends that the City support SB 218 (Bradford) which would remove State FEHA preemption for enforcement of employment-related discrimination laws.

BACKGROUND

FEHA is the State of California’s anti-discrimination law covering housing and employment discrimination for sixteen protected classes. FEHA is enforced by the DFEH which accepts complaints, mediates cases, and provides remedies for complainants who have experienced discrimination. Due to a preemption clause in FEHA, only the State may enforce the provisions of the law. All employment discrimination cases must be processed by the DFEH. Those who wish to proceed directly to private civil action must submit a request for a “right-to-sue” letter. Employment discrimination complaints consistently comprise the largest portion

of annual complaints received by DFEH. Reports released by UCLA/RAND and the California Senate Rules Committee identified issues with complaint processing and backlog issues at the DFEH. Due to the increasing number of employment complaints and reduced budget for the DFEH, local enforcement of FEHA has become a legislative option to help address the complaint volume issues.

In 2017, the California State Legislature passed SB 491 (Bradford), which would have directed the DFEH to create an advisory committee to determine the feasibility of authorizing local government entities to enforce antidiscrimination laws, including FEHA. Although the bill was vetoed, Governor Jerry Brown directed the DFEH to form the advisory committee and prepare the report as requested by the bill. In 2018, the working group released their report which presented four options for the enforcement of anti-discrimination laws in the case that FEHA preemption is lifted but made no recommendations as to which option would be most beneficial or feasible.

SB 218 would allow local governments to create employment-related antidiscrimination laws and establish remedies and penalties for violations. The bill would also allow the creation of agencies to enforce anti-discrimination laws. An agency created by a local government would be able to accept and investigate complaints, mediate cases, and provide remedies. A local anti-discrimination agency would also be able to act as a Fair Employment Practice Agency (FEPA) and enforce federal discrimination laws by entering into a workshare agreement with the Equal Employment Opportunity Commission (EEOC).

The City Council recently adopted the Civil and Human Rights Ordinance and approved the creation of the Civil and Human Rights Commission which would be tasked with accepting, investigating, and providing remedies for discrimination complaints in housing, employment, education, and private commerce.

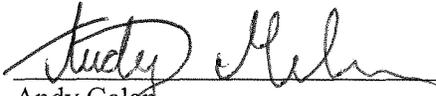
Support for SB 218 would be consistent with City policy to provide equal opportunities for all City residents and provide relief for victims of discrimination.

DEPARTMENTS NOTIFIED

Bureau of Contract Administration

BILL STATUS:

02/06/19	Introduced in the California State Senate
02/13/19	Referred to Judiciary Committee
04/09/19	Amended by author and re-referred to Judiciary Committee
04/24/19	Approved by Judiciary Committee and referred to Appropriations Committee
04/25/19	Amended and re-referred to Appropriation Committee


Andy Galan
Analyst

Attachments: 1. Resolution (Cedillo – Martinez)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state, or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the preemption clause of the Fair Employment and Housing Act (FEHA), California's anti-discrimination law, limits local jurisdictions from enforcing anti-discrimination laws relating to housing and employment; and

WHEREAS, the City of Los Angeles has taken action to protect its residents from discrimination by enacting programs that encourage equity such as the Ban the Box policy and has also taken steps to create a Civil and Human Rights Commission and Ordinance to allow the City to take an active role in defending residents from discrimination; and

WHEREAS, reports by UCLA/RAND and the California Senate Rules Committee have identified issues with resource allocation and increasing demand at the Department of Fair Employment and Housing (DFEH), largely resulting from a consistently large volume of employment discrimination complaints throughout the State; and

WHEREAS, discrimination in employment reinforces economic conditions created over centuries of exclusionary practices, creating substantial hurdles for families attempting to earn a better future through honest work; and

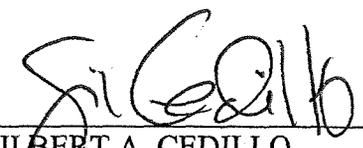
WHEREAS, currently pending before the California State Senate is SB 218 (Bradford) which would remove the State FEHA preemption for enforcement of employment-related discrimination laws, allowing local jurisdictions to enforce their own enforcement-related anti-discrimination laws; and

WHEREAS, the bill would provide localities with the authority to create their own anti-discrimination laws relating to employment and create agencies responsible for enforcement of those anti-discrimination laws that can be designated as Fair Employment Practice Agencies (FEPA) to enforce federal fair employment laws; and

WHEREAS, providing localities with the flexibility to enforce employment anti-discrimination laws would also provide complainants with a more accessible and responsive process; and

WHEREAS, in order to address the large volume of employment discrimination complaints and prevent further discrimination violations, the City should be empowered to enforce anti-discrimination laws;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2019-2020 State Legislative Program SUPPORT for SB 218 (Bradford) which would remove the State FEHA preemption for enforcement of employment-related discrimination laws, allowing local jurisdictions to enforce their own enforcement-related anti-discrimination laws.

PRESENTED BY: 
 GILBERT A. CEDILLO
 Councilmember, 1st District

APR 17 2019

SECONDED BY: _____