

HOUSE BILL REPORT

HI 1000

As Passed House:
April 28, 2019

Title: An act relating to diversity, equity, and inclusion.

Brief Description: Concerning diversity, equity, and inclusion.

Sponsors: People of the State of Washington.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 4/18/19, 4/25/19 [DP].

Floor Activity:

Passed House: 4/28/19, 56-42.

Brief Summary of Bill

- Amends the provision of law that prohibits the state from discriminating against or granting preferential treatment to an individual or group based on certain characteristics in public employment, public education, and public contracting.
- Creates the Governor's Commission on Diversity, Equity, and Inclusion responsible for directing, monitoring, and enforcing state agency compliance with the initiative and reporting on state agency progress in achieving diversity, equity, and inclusion.
- Requires a memorandum and draft legislation regarding necessary statutory changes to bring nomenclature and processes in line with the initiative.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Jinkins, Chair; Thai, Vice Chair; Goodman, Hansen, Kilduff, Kirby, Orwall, Valdez and Walen.

Minority Report: Do not pass. Signed by 6 members: Representatives Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Graham, Klippert, Shea and Ybarra.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Cece Clynch (786-7195).

Background:

Initiative Process.

Article II, section 1 of the Washington State Constitution authorizes the initiative process, allowing the people to place a proposition on the ballot or to submit the proposed law to the Legislature. If an initiative to the Legislature is certified by the Secretary of State, the Legislature must take one of the following actions:

- adopt the initiative as proposed, in which case it becomes law without a vote of the people;
- reject or take no action on the measure, in which case it will appear on the ballot at the next general election; or
- propose an alternative measure, in which case the initiative and alternative will both appear on the ballot as competing measures at the next general election.

The Washington Law Against Discrimination.

The Washington Law Against Discrimination (WLAD) generally prohibits discrimination in employment and public accommodation based on: race; creed; color; national origin; sex; marital status; honorably discharged veteran or military status; sexual orientation; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a disability.

The Washington State Human Rights Commission (HRC) is responsible for administering and enforcing the WLAD. If the HRC finds reasonable cause to believe discrimination has occurred, it must first try to eliminate the unfair practice via conference and conciliation. If this process fails, the HRC must refer the matter to an administrative law judge who, after a hearing, may issue an order providing relief to the complainant. In addition, any person injured by an unfair practice or act in violation of the WLAD may bring a civil lawsuit to enjoin further violations and recover actual damages and reasonable attorneys' fees.

In 1998 the voters approved Initiative 200 (I-200), titled the Washington State Civil Rights Act, which is codified in the WLAD. Initiative 200 prohibits the state from discriminating against or granting preferential treatment to an individual or group based on: race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. The "state" includes, but is not limited to: the state itself; cities or counties; public colleges, universities, or community colleges; school districts; special districts; or other political subdivisions or governmental entities within Washington.

The provisions of I-200 do not prohibit:

- any law or governmental action that does not discriminate against or grant preferential treatment to an individual or group based on the listed characteristics;
- actions required to establish or maintain federal program eligibility, if ineligibility would result in a loss of federal funds;
- classifications based on sex that are necessary for privacy or medical or psychological treatment;
- classifications that are necessary for undercover law enforcement, or for film, video, audio, or theatrical casting;

- classifications providing separate athletic teams based on sex; or
- tribal school policies providing an Indian preference in employment or prioritizing the admission of tribal members if demand is greater than capacity (added in 2013).

Summary of Bill:

The Washington Law Against Discrimination.

The provision of Initiative 200 that prohibits the state from discriminating against or granting preferential treatment in public education, public employment, and public contracting on the basis of race, sex, color, ethnicity, or national origin is amended in several respects.

The prohibition on discrimination and preferential treatment is expanded to also cover: age; sexual orientation; the presence of any sensory, mental, or physical disability; and honorably discharged veteran or military status.

The state is not prohibited from remedying discrimination against or underrepresentation of disadvantaged groups as documented in a valid disparity study or proven in a court of law.

The state is not prohibited from implementing affirmative action laws, regulations, policies, or procedures provided that they:

- do not utilize quotas and do not constitute preferential treatment; or
- are not in violation of a state or federal statute, final regulation, or court order.

"Affirmative action" is defined as a policy in which certain characteristics are factors considered in the selection of qualified women, honorably discharged military veterans, persons in protected age categories, persons with disabilities, and minorities for opportunities in public education, public employment, and public contracting. Affirmative action includes recruitment, hiring, training, promotion, outreach, setting and achieving goals and timetables, and other measures designed to increase Washington's diversity in public education, public employment, and public contracting.

"Preferential treatment" is defined as using race, sex, color, ethnicity, national origin, age, sexual orientation, the presence of any sensory, mental, or physical disability, and honorably discharged veteran or military status as the sole qualifying factor to select a lesser qualified candidate over a more qualified candidate for a public education, public employment, or public contracting opportunity.

The exemption for actions required to establish or maintain federal program eligibility is modified to require the Office of Financial Management to determine that ineligibility will result in a material loss of federal funds to the state.

Commission on Diversity, Equity, and Inclusion.

The Governor's Commission on Diversity, Equity, and Inclusion (Commission) is created and must be staffed and funded within the Governor's biennial budget.

The Commission is responsible for planning, directing, monitoring, and enforcing each state agency's compliance with the initiative, and publishing an annual report on the progress of all

state agencies in achieving diversity, equity, and inclusion in public education, public employment, and public contracting. The Commission may propose and oppose legislation.

The Commission includes:

- 25 members appointed by the Governor from specified state agencies or nonprofit groups;
- four legislative members, two from each of the two largest caucuses of the House of Representatives and Senate appointed by the Speaker of the House of Representatives and the President of the Senate; and
- any other agencies or community representatives the Governor deems necessary to carry out the objectives of the Commission.

Governor-appointed members of the Commission serve four-year terms. Legislative members of the Commission serve two-year terms. Commission members serve for the term of their appointment and until their successors are appointed. Commission members who serve by the virtue of their offices must be immediately replaced by their duly elected or appointed successors. A vacancy on the Commission must be filled within 30 days.

Other.

A definition of affirmative action for the purpose of the Washington State Patrol promotional examination process is amended to incorporate the above definition of affirmative action and to include honorably discharged veterans in the list of persons who may be provided with increased employment opportunities.

Within three months following the effective date of the initiative, the Office of Program Research (OPR) and Senate Committee Services (SCS) must prepare a joint memorandum and draft legislation for the appropriate legislative committees to make necessary changes to the Revised Code of Washington to bring nomenclature and processes in line with the initiative so as to fully effectuate and not interfere with its intent. The OPR and SCS must consult with the initiative sponsors, the Governor's Committee on Diversity, Equity, and Inclusion, and the State Human Rights Commission in drafting the memorandum and legislation.

The act may be known and cited as the Washington State Diversity, Equity, and Inclusion Act.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Staff Summary of Public Testimony:

(In support) There is a record of discrimination in our history that has existed for a significant period of time. The Commission on Civil Rights was created in 1965 to begin the task of opening opportunities to all citizens. Significant progress has been made, but more needs to be done. Initiative 1000 (I-1000) is a responsible measure that will help increase opportunity. The measure strengthens the current ban on quotas and denies the use of preferential treatment to select a lesser qualified candidate in public education, employment, and

contracting. The focus is on recruitment, hiring, training, and promotion and outreach. The end result is not preferential treatment, but an equal, fair, and level playing field for all.

Initiative 200 (I-200) created confusion and ambiguity. When adopted, many agencies and institutions stopped outreach and recruitment efforts. Initiative 1000 does not overturn I-200, but clarifies the law to say that outreach and recruitment are not prohibited. Actively recruiting people to diversify ranks increases the pool for selection. People still have to meet qualifications and be chosen on merit, but the measure gives people a chance to know about available programs and opportunities.

Washington is a state of inclusion and equal opportunity, but current law hinders the state's competitiveness in the global marketplace. Good law is better than good intentions. Employers need to be able to take race and historical racism into consideration in hiring decisions. Consumer demographics are changing, and businesses need to reflect this diversity without being hamstrung by state law when creating efforts and organizational policies to maintain a competitive edge. Diversity helps build better teams. Employees from underrepresented groups have made companies stronger and better able to serve customers and business organizations. The public and the private sectors can push each other to better address systemic inequalities.

The current unemployment rate in Washington is 3 percent. The Hispanic unemployment rate is double that, and the African-American unemployment rate is 7 percent. Since the adoption of I-200, public contracts awarded to women- and minority-owned businesses has dropped from 10 percent to 3 percent, and the number of these businesses has decreased by nearly half. Communities lost businesses, employees, and economic vitality. Three and one-half billion dollars has been lost to communities facing discrimination and a widening wage gap. Women of color are underrepresented in education and business sectors. State buyers, contractors, and other public agencies use I-200 as a reason why minority businesses cannot be utilized. There is prosperity, but small businesses are being left behind. Initiative 1000 is pro-business, because it allows small businesses a shot at procurement and contracting. These businesses develop economic power and equity for minorities.

The broader Asian-American/Pacific Islander community supports fair opportunity and stands behind policies that correct past racial discrimination. There is a myth that it only takes hard work to succeed, but that does not take into account the legacy of generations of institutional racism. Communities thrive when everyone has the ability to fully participate. Initiative 200 created barriers that impact women, minorities, the LGBTQ community, and others. As long as society discriminates based on race, race must be used to remedy that discrimination.

The state budget spends an extraordinary amount of money on disadvantaged students. Research shows that when students of color have exposure to diverse teachers, it increases students' chances of graduating and continuing on to higher educational opportunities. Improving educational outcomes and reducing the size and scope of the achievement and opportunity gaps is the priority of the public education system. In order to attract faculty and staff to universities, there must be diversity in the workforce. Initiative 1000 will help create campuses thriving with diversity through a holistic approach. Washington is one of eight

states that has banned affirmative action. The state must join the majority of the country in celebrating diversity, equity, and inclusion for everybody.

(Opposed) Initiative 1000 would abolish the standard of equality for all persons regardless of race, as required by I-200, and replace it with a system of different rules for people of different races. Initiative 1000 treats people not as Americans, but as people of different races. It is inherently divisive; diversity by discrimination. If the Legislature passes I-1000, it would be deciding not to allow the people of Washington to vote on the initiative. Voters voted nearly 60 percent in the affirmative for I-200. Voters should have the same opportunity to vote on this initiative. Initiative 1000 does not amend or modify I-200—it replaces it. The people should be given the chance to vote on whether to change I-200. If the people are not so allowed, strong consideration will be given to filing a referendum measure to bring it to the ballot.

This initiative would legalize racial discrimination, penalize hard-working Asians, and allow those less qualified to be selected based on race. Initiative 200 is this state's manifestation of the federal Civil Rights Act of 1964. It provides that the state shall not discriminate against or grant preferential treatment based on race, sex, or other characteristics. It is frightening that the state is heading back in the direction of eliminating civil rights. As John F. Kennedy said, race has no place in American life or law. Washington is an enlightened state, a multi-racial and multi-ethnic state. Initiative 1000 is not enlightened and will be a nightmare to implement. If there are imperfections in the implementation of I-200, work should be done on those issues, but a system of government discrimination should not be reinstated.

The mouthpiece of the initiative, the Seattle Times, conveniently lumped Asian Americans in with international students in order to make its claim that there are too many Asians at the University of Washington. The initiative is targeted at fixing the perception that there are too many hardworking Asian Americans. A vote for I-1000 is a vote for a twenty-first century version of the Chinese Exclusion Act. The state should not create new barriers for Asians just because they are hardworking and successful in some fields. For over 250 years, Chinese Americans have worked hard to make America better. Do not take equality out of their hands.

A woman who grew up in China, living in one room with her parents in an office building until middle school, knew that she had to study hard to get ahead. She ultimately earned her PhD and now lives in a nice house. If I-1000 passes, she wonders whether she will have to tell her children that it is no longer enough to study hard, but that they will have to change the color of their skin. It is claimed that I-1000 helps minorities, but it actually hurts other minorities. Initiative 1000 will make it impossible to differentiate students who made their way on merit and hard work from diversity students. Some politicians live on politics instead of for politics.

Many Chinese immigrants face a language barrier in this country, which makes it hard to communicate. Even though young Chinese people may have more qualifications than young people from other races, they find themselves rejected. This happened to one woman's daughter who worked hard and did better but was rejected only because she was Chinese. Opportunities must be merit-based, not race-based and not national origin-based.

Rosa Parks fought against discrimination not just for black people but for all people. Martin Luther King, Jr. had a dream that people should not be judged by the color of their skin but by the content of character. Initiative 1000 will bring back discrimination against one group of people by giving preference to another group of people. It will mean that the color of one's skin will determine opportunity for employment and contracts. Everyone should have an equal chance. This land belongs to all the people of Washington. People and society should not think about color. All people are created equal. Initiative 200 passed with landslide support, and this is why we see more diversity in Washington now compared to other states. Initiative 1000 is deceptive and plays word games, and it will bring back racism and discrimination.

There has been no greater discrimination in recent history than the internment of Japanese people. People must work hard, be the best, and love America. People do not need policies or government programs to get ahead, but must do it on their own with hard work and merit. Under the initiative, small business owners will have to spend more time and resources to do specific outreach to certain groups in order to apply for government contracts. Children must be taught that effort and hard work are worth something. A world viewed through a racially colored lens is not wanted. The merit of each individual should be considered. Equal justice for all should be maintained. When racial lines are drawn in this country, that line runs right through many multi-racial families.

The proponents of I-200 have suffered abuse and retaliation for their different point of view. When a movement has to use fear and intimidation to get what it wants, the worthiness of that movement must be questioned. The only winners will be those with power who can manipulate the law.

Initiative 1000 will take away the opportunity to have a fair chance at education and employment. It is unthinkable that the race of children today, over which they have no control, may one day be an obstacle to prevent them from achieving their dreams. While I-1000 might provide one boy a better chance at achieving his dream of being a Seahawk football player, he does not want that advantage. He prefers to work hard to earn something on his own merit.

(Other) Inclusion is one of the three pillars of the Washington State Department of Transportation's (WSDOT's) strategic plan. In 2017 the WSDOT did a disparity study to determine whether it was making use of the available disadvantaged business enterprises in transportation, which make up about 19 percent of the available contracting and consulting community. The study showed that in WSDOT's federal program, where there are conditionable work goals, the utilization of disadvantaged businesses is at 92 percent, but in the state program under I-200, which only allows the use of aspirational goals, utilization has dropped from 95 percent to 35 percent.

Persons Testifying: (In support) Former Governor Dan Evans; Former Governor Gary Locke; Former Governor Christine Gregoire; Nat Jackson; Jesse Wineberry; Emily Tasaka, National Asian Pacific American Women's Forum; Eileen Sullivan, Amazon; Barb Wilson, Vulcan, Incorporated; Lisa Van Der Lugt, Office of Minority and Women's Business Enterprises; Marilyn Strickland, Greater Seattle Chamber of Commerce; Brian Sims, Tabor 100; Fernando Martinez, Northwest Mountain Minority Suppliers Development Council;

Louise Chernin, Greater Seattle Business Association; Larry Gossett, King County Council; Stephanie Bowman, Port of Seattle Commission; Bruce Harrell, Seattle City Council; Ben Henry, Asian Pacific Islander American for Civic Empowerment; Chris Reykdal, Office of the Superintendent of Public Instruction; Bill Kallappa, State Board of Education; Rogelio Riojas, University of Washington Board of Regents; Irene Plenefisch, Microsoft; Jamie Jones; Nadine Gibson; Michael Byun, Asian Pacific Islander Coalition of Washington and Asian Counseling and Referral Service; and Saniah Simpson.

(Opposed) John Carlson; Linda Yang; Kan Qui; Ward Connerly; Nora Chan, Seniors in Action Foundation; Jing Zhou; Caifeng Wu; Feng Yang; Zhigang Li; Anwen Li; Yang Li; Zhen Zhang; Sharon Hanek; Tim Eyman; Dawn Land; Janice Camarena; Jie Xie; Ellie Yun; Hoi Hung Ho; and Jingdong Yu.

(Other) Roger Millar, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: Zhiming Yu; Jiewen Zheng; Zhuoli Liang; Ruiwen Yao; Li Meng Lowry; Lin Chan; Shifan Wu; Yi Zhang; Bo Yang; Qiang Fu; Xia Zhao; James Zhou; Hao Sun; Qi Chen; Dandan Chen; Liping Xu; Yi Qu; Ruoyun Huang; Heming Xiao; Timothy Lee; Wenlang Zhang; Xiaokang Shen; Owen Zhang; Annika Lin; Ruizhe Zhang; Geng Tan; Meng Yang; Jerry Fugich; Yun Duan; Mary Sutherlin; William Sutherlin; Sean Bagsby; Xuewei Han; Xue Ji; Chang Zhou; Yongsheng Miao; Xin Tian; Yongkang Zhu; James Cnou; Ricardo Sanchez; Ruizhe Zhang; Zhong Zhou; Jennifer Ferguson; Errol Archibald; Jared Houston; Jerry Garcia; Alexandra Auguste-Lewis; Caitlin Lang-Perez; Lynn French; Miriam Padilla; R. Peggy Smith; Herbie Martin; Girmay Zahilay; Kevin Allen; Doug White; Beth Daranciang; Alaa Alshaibani; Hayward Evans; Zhan Wang; Xuejian Pan; and Kai Xu.