

**WASHINGTON EQUITY NOW ALLIANCE
(WENA)
SUPPORTING DOCUMENTATION
FOR
PROPOSED GOVERNOR’S EXECUTIVE ORDER
CORRECTING THE IMPLEMENTATION
OF
INITIATIVE 200 (I-200) RCW 49.60.400
MARCH 31, 2021
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I.

Washington State Voters Pamphlet (Nov. 3, 1998)

STATE OF WASHINGTON

Voters Pamphlet

General Election, November 3, 1998



Edition 2

Published by the Office of the Secretary of State



INITIATIVE MEASURE 200

PROPOSED TO THE LEGISLATURE

Note: The ballot title and explanatory statement were written by the Attorney General as required by law. The complete text of Initiative Measure 200 begins on page 32.

Statement For

OUR LAWS SHOULD BE COLORBLIND

It's time for the government to stop using different rules for different races.

Civil rights laws are supposed to forbid discrimination on the basis of race and gender in employment and education. But instead of ignoring race, the government uses it through the use of racial quotas, preferences and set-asides. Take the case of Katuria Smith, a young woman from Marysville, who grew up in poverty and worked her way through community college and eventually the University of Washington before applying to the UW law school. Despite superb grades and test scores she was rejected. Award-winning columnist Nat Hentoff has reported, however, that the school's Dean told him she would have been admitted if she were black.* It's time for government to get out of the discrimination business.

EQUAL TREATMENT, REGARDLESS OF RACE

Initiative 200 is short, clear, and does exactly what its ballot title says it will do — prohibit discrimination or preferences based on race or gender in public employment and education.

WHAT INITIATIVE 200 WON'T DO

Initiative 200 does not end all affirmative action programs. It prohibits only those programs that use race or gender to select a less qualified applicant over a more deserving applicant for a public job, contract or admission to a state college or university. No scholarships or job training programs paid for by the private sector are affected by the initiative. It applies only to government.

Official Ballot Title:

Shall government be prohibited from discriminating or granting preferential treatment based on race, sex, color, ethnicity or national origin in public employment, education, and contracting?

The law as it now exists:

Washington currently has a Law Against Discrimination, codified as Chapter 49.60 RCW, which prohibits discrimination against any person because of race, creed, color, national origin (including ancestry), families with children, sex,

IT'S TIME TO MOVE AHEAD

More and more Americans want to move beyond race. Initiative 200 takes us in that direction. Please vote "Yes" on Initiative 200.

For more information, call (425) 450-1074.

Rebuttal of Statement Against

I-200 is clear: the government should not use race or gender to treat applicants for employment or education opportunities differently. Why? Because *all* Americans deserve protection from race or sex discrimination. That's the principle at stake in this election.

Our opponents, especially the ACLU, support preferences because they want to magnify race instead of minimizing it. They are out of touch and out of date. Yes on 200.

Voters Pamphlet Statement Prepared by:

JOHN CARLSON, Co-chair, Initiative 200; SCOTT SMITH, State Representative, Pierce County, Co-chair, Initiative 200; JEANNETTE HAYNER, Senate Majority Leader (ret.), Walla Walla.

Advisory Committee: ANN ANDERSON, State Senator (R) - Bellingham, Lynden; MICHAEL HEAVEY, State Senator (D) - West Seattle, Burien, Vashon; MARY A. RADCLIFFE, past Co-chair, Episcopal Diocese Committee on Racism; PATRICIA HERBOLD, Attorney, community volunteer, Bellevue; CLYDE BALLARD, Speaker, State Representative (R) - East Wenatchee.

*The Dean disputes this account.

marital status, age, or the presence of any sensory, mental, or physical disability. This law is enforced by the courts and also by a Human Rights Commission created for that purpose.

Existing state law also includes provisions requiring state agencies and institutions to take affirmative action to increase employment opportunities for women, racial minorities, persons in protected age categories, persons with disability, Vietnam-era veterans, and disabled veterans. State law directs the Personnel Resources Board to adopt affirmative action goals and procedures for hiring and promotion by state agencies, and provides that affirmative action "shall not mean any sort of quota system." There is a similar, specific affirmative action law for employment in the Washington State Patrol.

Another state law, Chapter 39.19 RCW, establishes the Office of Minority and Women's Business Enterprises and provides for a program to increase the participation of minority- and women-owned businesses in public works and procurement contracts. This agency is directed by the law to identify barriers to equal participation by qualified minority- and women-owned and controlled businesses, to establish annual overall participation goals for each agency, to develop and maintain a list of certified minority and women's

business enterprises, and to monitor compliance with the law.

The State's universities and four-year colleges have legal authority to establish their own entrance requirements for students. These requirements must be consistent with state and federal laws prohibiting discrimination. The universities and colleges have adopted a variety of admissions policies for undergraduate and graduate students, depending on the institution and the nature of the specific program. Some of the admissions policies state an objective of selecting students who have demonstrated capacity for high quality work and who will contribute to the diversity of the student body, based on such factors as racial or ethnic origin, gender, cultural background, activities or accomplishments, career goals, living experiences or special talents.

Political subdivisions and local governments determine their own ordinances and policies, consistent with state and federal law.

There are also a number of federal laws prohibiting discrimination or requiring affirmative action, and many state and local agencies are required to comply with these laws as a condition to receiving federal funds or participating in certain federal programs.

(continued on page 16)

Statement Against

Dear Washington Voter,

I have studied Initiative 200 and I am concerned about the consequences it could have on the people of Washington. At first glance it appears to promote equality, but in reality, it very likely will have the opposite effect.

Washington is a community that can take pride in our efforts to ensure equal opportunity for all. We can all be proud of the progress we've made, but we still have a long way to go. This is not the time to jeopardize the programs designed to give people a hand up, rather than a hand out.

Because of its vague and broadly written language, I-200 can and will be read many ways. It is confusing and will create a tangle of expensive lawsuits.

It could eliminate job training programs that help women and minorities make the transition from welfare to work.

Education is the great equalizer. I know this from personal experience. But this plan could end targeted educational opportunities, like tutoring, that can give children a helping hand early.

I-200 could set back our efforts to achieve equal pay for women. Women, on average, still make only 74 cents to every dollar earned by men for the same work. We need to change that.

I-200 takes our community in the wrong direction. I urge you to take a closer look, it's not worth the risk. Please join me in voting *no*!

Sincerely,

Governor Gary Locke

For more information, call (206) 441-9120 or visit www.no200.org

Rebuttal of Statement For

The proponents' statement is incomplete and misleading. Here's what they're not telling you:

I-200 will hurt women and pay equity.

It's already illegal to hire less qualified applicants.

When it passed in California, this same measure eliminated programs that opened doors for qualified women and minorities. *The San Francisco Chronicle* said it "went too far" because "discrimination, whether intentional or not, still exists."

Take a closer look. Check the facts. Vote *no* on I-200.

Voters Pamphlet Statement Prepared by:

GARY LOCKE, Governor; ELIZABETH PIERINI, President, League of Women Voters of Washington.

Advisory Committee: DAN EVANS, former Governor and U.S. Senator; MARI CLACK, Spokane business owner; RICK BENDER, President, Washington State Labor Council; HUBERT LOCKE, Professor; REV. JOHN BOONSTRA, Executive Minister, Washington Association of Churches.

**INITIATIVE MEASURE 692** (continued from page 9)**The effect of Initiative Measure 692, if approved into law (continued):**

medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for that patient. Qualifying patients and their primary caregivers would be authorized to acquire and possess marijuana if they possessed no more than a sixty day supply for the patient's personal, medical use and if they could present valid documentation of authorization by a physician. Parents or guardians could possess marijuana solely for the medical use of qualifying patients under eighteen years of age.

The measure would not authorize the acquisition, possession, or use of marijuana for any other purpose. Possession, sale, or use of marijuana for non-medical purposes would remain a crime. It would be a felony to fraudulently produce or to alter any documents relating to the medical use of marijuana. It would be a misdemeanor to use or display medical marijuana in public view. Health insurance providers would not be required to pay claims for the medical use of marijuana. No physician would be required to authorize the use of medical marijuana. The measure would not require the accommodation of any medical use of marijuana in any place of employment, school bus or school grounds, or youth center. No person would be authorized to engage in the medical use of marijuana in such a way as to endanger the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway. The state could not be held liable for any damaging effects from permitted marijuana use.

**INITIATIVE MEASURE 694** (continued from page 11)**The effect of Initiative Measure 694, if approved into law (continued):**

mother only if no other procedure, including the induction of labor or cesarean section, would suffice to prevent the death of the mother. The measure would not apply to "abortions" as redefined. The measure would provide that in the event of conflict between it and any other law, the provisions of this measure would govern.

**REFERENDUM BILL 49** (continued from page 13)**The effect of Referendum Bill 49, if approved into law (continued):**

would be increased from 5% to 43.605% through June 30, 1999, and then to 51.203%. The motor vehicle excise tax revenue allocated and distributed to other funds would be increased or decreased by varying amounts. The measure would require transfers from the general fund into two of these funds, the county criminal justice assistance account and the municipal criminal justice assistance account. Beginning with Fiscal Year 2000, the limits on distributions into these accounts would be removed. Part of the reallocated motor vehicle excise tax revenue would be distributed to economically distressed counties through a new account in the treasury.

The measure provides for the issuance and sale of up to \$1.9 billion of general obligation bonds to pay for the location, design, right of way, and construction of state and local highway improvements. No bonds could be offered for sale without additional legislative action. The measure provides that the bonds shall pledge the full faith and credit of the state for payment of the principal and interest when due. The proceeds from the sale of the bonds would be deposited in the motor vehicle fund, and the principal and interest on the bonds would be first payable from revenues from the motor vehicle fuel and special fuel excise taxes.

The measure would modify Initiative 601 (RCW 43.135.035) to provide that the transfer of moneys from the general fund to other funds or accounts as authorized in this measure would not reduce the state expenditure limit. The measure would also modify Initiative 601 (RCW 43.135.060) to allow the state to reimburse local governments for the costs of new programs or increased service levels through increases in state distributions of revenue to local governments.

The measure would authorize certain cities owning and operating municipal public transportation systems to use local public transportation sales tax revenues to match their local motor vehicle excise tax revenues. This authorization would be implemented over a four year period beginning July 1, 1999. After July 1, 2002, 100% of the revenues generated from the local motor vehicle excise tax could be matched by local public transportation sales tax revenues.

**INITIATIVE MEASURE 200** (continued from page 15)**The effect of Initiative Measure 200, if approved into law :**

Initiative Measure No. 200 would add new provisions to state law. It would prohibit state and local agencies from discriminating against, or granting 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. The measure does not define the term "preferential treatment," and does not specify how continued implementation or enforcement of existing laws would be affected if this measure were approved. The effect of the proposed measure would thus depend on how its provisions are interpreted and applied.

The measure would not affect any otherwise lawful classification that (a) is based on sex and is necessary for sexual privacy or medical or psychological treatment; or (b) is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or (c) provides separate athletic teams for each sex. The measure would not prohibit actions that must be taken to establish or maintain eligibility for federal programs, if ineligibility would result in a loss of federal funds to the state.

This measure would apply to state government, to all state agencies, and publicly supported colleges and universities, and to all counties, cities, school districts, special districts, and political subdivisions of the state. Remedies for violations would be the same as are available for violations of the existing law against discrimination.

II.

Governor's I-200 Directive #98-01 (Dec. 3, 1998)



**STATE OF WASHINGTON
OFFICE OF THE GOVERNOR**

P.O. Box 40002 · Olympia, Washington 98504-0002 · (360) 902-4111 · www.governor.wa.gov

GOVERNOR'S DIRECTIVE No. 98-01

TO: All Executive Agencies and Institutions of Higher Education
FROM: Gary Locke, Governor
DATE: December 3, 1998
SUBJECT: Implementation of Initiative Measure 200

Initiative Measure 200 (I-200) becomes effective today. When the voters of our state approved I-200, they were making a statement that they wanted to end preferences based on race or sex while leaving unchanged preferences for people with disabilities, for veterans, and for people over 40 years of age. I-200 is now the law of our state and I will uphold and implement the law as I am sworn to do. This directive is how I believe state agencies should implement I-200.

We must make sure that everyone is given fair and equal consideration in public employment, public contracting, and public education. Therefore, we must continue and intensify our outreach and recruitment efforts to encourage diversity. Diversity is what makes our state and country unique. And our diversity is a vital source of strength, creativity, and innovation.

I-200 is a new statute and does not repeal or supersede pre-existing statutes. Our task is to harmonize the new and existing laws to the greatest extent possible. In cases of a direct, irreconcilable conflict, I will read I-200 as implicitly repealing or overriding pre-existing law.

To aid in implementing I-200, I have identified several broad categories of laws, rules, policies and procedures that may be affected. Each of those categories is described below, together with my decision for addressing I-200's impact. All executive agencies are directed to review their rules, policies, procedures and goals and to make changes where necessary to be consistent with this directive. While I cannot direct the actions of our state's institutions of higher education, I encourage them to consider this directive to ensure consistency across state government in the application of I-200.

I. PUBLIC EMPLOYMENT:

A. Race, Sex, etc. Shall Not Be Considered in Hiring Decisions.

Race, sex, color, ethnicity and national origin may not be used in the final selection of an applicant for public employment, unless allowed under section 4 of I-200 (exempting an action that is "based on sex and is necessary for sexual privacy or medical or psychological treatment; or is necessary for undercover law enforcement...") or section 6 of I-200 (exempting actions "that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state").

B. Plus 3, Exception Testing, and Exam Screening Adjustment Shall Be Discontinued When Based on Race, Sex, etc.

Much debate has occurred over whether the "plus 3 system," "exception testing," and "exam screening adjustment" can be continued under I-200. The "plus 3 system" is a program where three additional names of applicants from an under-represented group may be considered for employment if the group of applicants originally referred to the employer lacked adequate representation of the group. "Exception testing" is a process that, under extenuating circumstances, allows people to submit job applications even when the application period has closed. One of those circumstances is when certain groups are under-represented in the eligible applicant pool. "Exam screening adjustment" allows applicants from an under-represented group to take an oral employment exam if the original group of oral exam applicants lacked adequate representation of the group.

The plus 3 system, exception testing, and exam screening adjustment, while clearly not part of the final selection of an applicant, are much closer to the final selection decision than outreach and recruitment programs. Accordingly, use of these tools based on race, sex, color, ethnicity or national origin shall be discontinued unless allowed under sections 4 or 6 of I-200. At the same time, use of the plus 3 system, exception testing, and exam screening adjustment shall continue for veterans, disabled veterans, people with disabilities, people over 40 years of age, and other groups of people not affected by I-200.

C. Plans and Goals Shall Remain, but Use of Plans and Goals Shall Not Be Binding.

Affirmative action plans and goals are themselves not in conflict with I-200 and shall be maintained, but shall not be binding unless allowed under sections 4 or 6 of I-200. Comparison of actual employment data with plans and goals may reveal barriers to equal opportunity or the need to

increase outreach and recruitment efforts. However, race, sex, color, ethnicity or national origin shall not be considered in the final selection of an applicant.

D. Outreach and Recruitment Efforts Shall Be Intensified.

Outreach and recruitment programs designed to generate the best pool of qualified applicants for employers are not in conflict with I-200. Efforts to increase the number of applications from underrepresented groups shall be intensified to make sure all qualified individuals are included and given fair consideration in public employment.

II. PUBLIC CONTRACTING:

A. Race, Sex, etc. Shall Not Be Considered in Awarding Construction Contracts or Contracts for the Purchase of Goods and Services.

Race, sex, color, ethnicity and national origin may not be used in the final selection of a bidder for a public contract, unless allowed under sections 4 or 6 of I-200. Adding preference points or price preferences for meeting Minority and Women Business Enterprises (MWBE) goals, requiring attainment of MWBE goals as a condition of responsiveness, or otherwise awarding a contract to a bidder who did not submit the lowest bid but who met MWBE goals, and similar programs shall be discontinued, unless allowed under sections 4 or 6 of I-200. **B. Laudatory Goals Shall Be Continued.**

MWBE purchasing and contracting goals are themselves not in conflict with I-200 and shall be maintained, but shall not be binding unless allowed under sections 4 or 6 of I-200. Otherwise, the goals shall be continued as laudatory goals. Agencies shall continue to establish laudatory goals for specific contracts to encourage participation of MWBE's in state contracting. However, the laudatory goals shall not be mandatory; meeting them shall not be a condition of responsiveness; and there shall be no sanctions for failure to meet them. The Office of MWBE shall also continue to establish annual overall goals that will guide agencies in establishing laudatory goals. Annual overall goals are intended to help eliminate improper discrimination by identifying disparities between the number of qualified contractors of a particular group able to perform a particular service and the number actually engaged in work under state contracts. Comparison of actual contracting data with goals may reveal barriers to equal opportunity or the need to increase outreach and recruitment efforts. However, race, sex, color, ethnicity or national origin shall not be considered in the final selection of a contractor. **C. Outreach and Recruitment Efforts Shall Be Intensified.**

Outreach and recruitment programs designed to broaden the pool of potential contractors and provide notice of public contracting opportunities are not in conflict with I-200. Efforts to increase the number of contractors from under-represented groups shall be intensified to make sure all qualified contractors are included and given fair consideration in public contracting.

III. PUBLIC EDUCATION:

A. Student Body Diversity is Encouraged.

Diversity of all kinds – racial, gender, ethnic, socio-economic, and geographic to name a few – are vitally important to the educational experience. It is thought-provoking interaction with people different from ourselves that opens our minds, broadens our perspectives and sets a top-quality education apart from a mediocre one. I encourage our state institutions of higher education to intensify recruitment and outreach programs to maintain diversity in our state's educational system. However, preferences in admissions based on race, sex, color, ethnicity and national origin should be discontinued.

B. Hiring and Contracting.

Institutions of higher education that do not use state agencies in employment or contracting are encouraged to consider this directive to ensure consistency across state government in the application of I-200.

IV. CONCLUSION:

The purpose of this directive is to give general guidance to ensure that the new law is applied uniformly across state government. If you have questions regarding specific programs, please contact Dennis Karras, Director of the Department of Personnel, for questions relating to public employment; Marsha Tadano Long, Director of the Department of General Administration, for questions relating to public contracting; Jim Medina, Director of the Office of MWBE, for questions relating to MWBE goals; and Everett Billingslea, my general counsel, for general assistance.

The section headings contained in this directive are for reference purposes only and do not affect in any way the meaning or interpretation of this directive.

III.

Washington Supreme Court Case Summary

Parents Involved in Community Schools v. Seattle School District #1 (June 23, 2003)



WASHINGTON STATE SUPREME COURT

PARENTS INVOLVED IN COMMUNITY SCHOOLS v. SEATTLE SCHOOL DISTRICT NO.1

Supreme Court of Washington, En Banc. June 23, 2003

Certified from the United States Court of Appeals for the Ninth Circuit in
PARENTS INVOLVED IN COMMUNITY SCHOOLS, a Washington nonprofit
corporation, Plaintiff-counter-defendant-Appellant, v. SEATTLE SCHOOL
DISTRICT, NO. 1, a political subdivision of the State of Washington;
Defendants-counter-claimants-Appellees.

No. 72712-1.

We are asked by the Ninth Circuit Court of Appeals to interpret RCW 49.60.400 to determine whether it prohibits all race-cognizant state government action or whether the act allows some race-cognizant state action, while limiting others.

HIGHLIGHTED SUMMARY OF WA SUPREME COURT'S RULING

"After examining Washington history, our constitution, and RCW 49.60.400, we conclude that the act prohibits some, but not all, race-cognizant government action. Affirmative action programs which advance a less qualified applicant over a more qualified applicant are now impermissible under Washington law. Programs which are racially neutral, such as the Seattle School District No. 1's open choice plan, are lawful."

The Meaning of RCW 49.60.400: Preference and Discrimination

First, subsection (3) strongly evidences that some race conscious decisions are acceptable:

RCW 49.60.400 (3): "This section does not affect any law or governmental action that does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin."

1

This clause strongly implies that RCW 49.60.400 does not ban all government action that is cognizant of race as it would be surplusage otherwise.

Subsection (3) unequivocally states that some government action within the subject area of the initiative would not be affected, and thus strongly suggests to the average voter that some race conscious action by the government is permissible.

We agree with the School District that the average informed voter would have believed that I-200 only prohibited reverse discrimination where a less qualified person or applicant is given an advantage over a more qualified applicant.

The proponents of the initiative's own ballot statements provide strong support for our conclusion. The proponents included prominently a statement limiting the reach of I200:

"WHAT INITIATIVE 200 WON'T DO"

"Initiative 200 does not end all affirmative action programs. It prohibits only those programs that use race or gender to select a less qualified applicant over a more deserving applicant for a public job, contract or admission to a state college or university."

State of Washington Voters Pamphlet, General Election 14 (Nov. 3, 1998) (Statement For I-200) (emphasis added). Given this language, an average voter would have understood that **I-200 does not ban all affirmative action programs, and would only prohibit the type of affirmative action we have described as "reverse discrimination" or "stacked deck" programs.**

Other ballot statements bolster our interpretation. The official ballot explanatory statement said in part: "The measure does not define the term 'preferential treatment,' and does not specify how continued implementation or enforcement of existing laws would be affected if this measure were approved. **The effect of the proposed**

measure would thus depend on how its provisions was interpreted and applied.”

Conclusion

We conclude that RCW 49.60.400 prohibits reverse discrimination where race or gender is used by government to select a less qualified applicant over a more qualified applicant. It does not prohibit the Seattle School District's open choice plan tie breaker based upon race so long as it remains neutral on race and ethnicity and does not promote a less qualified minority applicant over a more qualified applicant.

IV.

Washington Atty. General Opinion on I-200 (Mar 20, 2017)

**LAW AGAINST DISCRIMINATION—AFFIRMATIVE ACTION—DISCRIMINATION
—CONTRACTS—CONTRACTORS AND SUBCONTRACTORS—Use Of Race- Or Sex-
Conscious Measures Or Preferences To Remedy Discrimination In State Contracting**

1. Initiative 200 does not categorically prohibit all uses of race- or sex-conscious measures in state contracting. The measure allows the use of measures that take race or gender into account in state contracting without elevating a less qualified contractor over a more qualified contractor. In narrow circumstances, an agency may be allowed to use a narrowly tailored preference based on race or sex when no other means is available to remedy demonstrated discrimination in state contracting. State agencies may also employ race- or sex-based preferences when necessary to do so in order to avoid losing eligibility for programs providing federal funds.
2. The conclusions summarized above do not solely depend on whether an agency receives federal funds. The conclusion that Initiative 200 allows race- or sex-conscious measures that do not amount to preferences applies without regard to whether the agency receives federal funds. The conclusion that agencies may use preferences based on race or sex in order to remedy sufficiently documented discrimination in state contracting also applies without regard to whether the agency receives federal funds. The conclusion that an agency may employ a preference when necessary to do so in order to avoid the loss of eligibility for federal funds necessarily depends upon the agency's receipt of federal funds in that program or some other program.

March 20, 2017

Chris Liu
Director, Department of Enterprise Services
1500 Jefferson Street SE
Olympia, WA 98501

Cite As:
AGO 2017 No. 2

Dear Director Liu:

By letter previously acknowledged, you have requested our opinion on the following questions:

1. Does Initiative 200 prohibit the State from implementing race- or sex-conscious measures to address significant disparities in the public contracting sector that are documented in a disparity study if it is first determined that race- and sex-neutral measures will be insufficient to address those disparities?

V.

HB 1783: Office of Equity-Legislature Enacted (Mar 9, 2020)

CERTIFICATION OF ENROLLMENT **ENGROSSED**

SECOND SUBSTITUTE HOUSE BILL 1783

66th Legislature

2020 Regular Session

Passed by the House March 9, 2020

Yeas 57 Nays 39

**Speaker of the House of
Representatives**

Passed by the Senate March 5, 2020

Yeas 28 Nays 21

President of the Senate

Approved

Secretary of State

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1783** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

State of Washington

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1783

AS AMENDED BY THE SENATE

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2019 Regular Session

By House Appropriations (originally sponsored by Representatives Gregerson, Morgan, Ryu, Lovick, Valdez, Ramos, Thai, Reeves, Slatter, Lekanoff, Peterson, Macri, Entenman, Pettigrew, Bergquist, Callan, Stonier, Orwall, Hudgins, Riccelli, Mead, Senn, Santos, Chapman, Walen, Kloba, Doglio, Tarleton, Pollet, Dolan, Davis, Jenkins, Wylie, Shewmake, Pellicciotti, Fey, Stanford, Sells, Morris, Kilduff, Leavitt, Appleton, Tharinger, Ormsby, Frame, and Robinson) READ

FIRST TIME 03/01/19.

1 AN ACT Relating to creating the Washington state office of 2 equity;
adding a new chapter to Title 43 RCW; and providing an 3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the population 6 of
Washington state has become increasingly diverse over the last 7 several
decades. The legislature also finds that as the demographics 8 of our
state change, historically and currently marginalized
9 communities still do not have the same opportunities to meet parity 10
as their nonmarginalized counterparts across nearly every measure 11
including education, poverty, employment, health, and more. 12 Inequities
based on race, ethnicity, gender, and other 13 characteristics continue to
be deep, pervasive, and persistent, and 14 they come at a great economic and
social cost. When individuals face 15 barriers to achieving their full
potential, the impact is felt by the 16 individual, their communities,
businesses, governments, and the 17 economy as a whole in the form of lost
wages, avoidable public 18 expenditures, and more. This includes social
ramifications that

1
19 emerging technology, such as artificial intelligence and facial 20
recognition technology, may have on historically and currently 21
marginalized communities. It is the intent of the legislature to review
these emerging technologies either already in use by agencies 2 or before
their launch by agencies if not already in use and make 3 recommendations
regarding agency use to ensure that the technology is 4 used in a manner
that benefits society and does not have disparate 5 negative impacts on
historically and currently marginalized 6 communities or violate their civil
rights. It is further intended 7 that the office should collaborate with
other state efforts in this 8 regard.

9 The legislature finds that a more inclusive Washington is
10 possible if agencies identify and implement effective strategies to
11 eliminate systemic inequities. The legislature recognizes that
12 different forms of discrimination and oppression are related to
13 each other, and these relationships need to be taken into account.
14 The legislature finds that over the years, significant strides 15 have
been made within agencies to address the disparate outcomes 16 faced by
historically and currently marginalized communities. While 17 these efforts
have yielded positive work, the legislature finds that 18 the work happening
in agencies is fragmented across state government. 19 Additionally, smaller
agencies may not have the resources necessary 20 to identify and implement
policies to address systemic inequities. 21 Furthermore, the legislature
finds that the commission on African 22 American affairs, the commission on
Asian Pacific American affairs, 23 the commission on Hispanic affairs, the
governor's office of Indian 24 affairs, the LGBTQ commission, the women's
commission, and the human 25 rights commission each play an important and
integral role by serving 26 as a voice for their respective communities and
linking state 27 government to these communities. The office is distinct
from the 28 commissions because it will serve as the state's subject matter
29 expert on diversity, equity, and inclusion to state agencies and will 30
provide technical assistance and support to agencies while each 31 agency
implements its individual equity plan. The office is not 32 duplicative of
the commissions, rather it is the intent of the 33 legislature that the
office will work in collaboration with the 34 commissions. It is not the

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legislature's intent to eliminate the 35 commissions or to reduce funding
to the commissions by creating the 36 office. Instead, it is the intent of
the legislature that the office 37 and the commissions shall work in a
complementary manner with each 38 other, support each other's work,
jurisdictions, and missions, and 39 adequately fund the commissions and the
office as they take on their 40 new complementary roles.

The legislature finds that state government must identify and
coordinate effective strategies that focus on eliminating systemic 3
barriers for historically and currently marginalized groups. To 4 support
this objective, an office of equity will provide a unified 5 vision around
equity for all state agencies. The office will assist 6 government agencies
to promote diversity, equity, and inclusion in 7 all aspects of their
decision making, including but not limited to 8 services, programming, policy
development, budgeting, and staffing. 9 Doing so will foster a culture of
accountability within state 10 government that promotes opportunity for
marginalized communities and 11 will help normalize language and concepts
around diversity, equity, 12 and inclusion.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply 14 throughout
this chapter unless the context clearly requires 15 otherwise.

16 (1) "Agency" means every state executive office, agency, 17 department,
or commission.

18 (2) "Director" means the director of the Washington state office 19 of
equity.

20 (3) "Disaggregated data" means data that has been broken down by 21
appropriate subcategories.

22 (4) "Equity lens" means providing consideration to the 23 characteristics
listed in RCW 49.60.030, as well as immigration 24 status and language
access, to evaluate the equitable impacts of an 25 agency's policy or
program.

26 (5) "Office" means the Washington state office of equity.

27 NEW SECTION. **Sec. 3.** (1) The Washington state office of equity
28 is established within the office of the governor for the purpose

1 of 29 promoting access to equitable opportunities and resources
that reduce 30 disparities, and improve outcomes statewide across
state government.

31 (2) The office envisions everyone in Washington having full 32 access to
the opportunities and resources they need to flourish and 33 achieve their
full potential.

34 (3) The work of the office must:

35 (a) Be guided by the following principles of equity:

36 (i) Equity requires developing, strengthening, and supporting 37
policies and procedures that distribute and prioritize resources
to those who have been historically and currently marginalized, 2
including tribes;

3 (ii) Equity requires the elimination of systemic barriers that 4 have
been deeply entrenched in systems of inequality and oppression;

5 and

6 (iii) Equity achieves procedural and outcome fairness, promoting 7
dignity, honor, and respect for all people;

8 (b) Complement and not supplant the work of the statutory 9 commissions.

10 NEW SECTION. **Sec. 4.** (1) The office is administered by a 11 director,
who is appointed by the governor with advice and consent of 12 the senate.
The director shall report to the governor. The director 13 must receive a
salary as fixed by the governor in accordance with RCW 14 43.03.040.

15 (2) The director shall:

16 (a) Employ and supervise staff as necessary to carry out the 17
purpose of this chapter and the duties of the office; and

18 (b) Oversee the administration, programs, and policies of the 19 office
in accordance with the principles in section 3 of this act.

20 NEW SECTION. **Sec. 5.** (1) The office shall work to facilitate 21 policy
and systems change to promote equitable policies, practices, 22 and outcomes
through:

23 (a) **Agency decision making.** The office shall assist agencies in 24
applying an equity lens in all aspects of agency decision making, 25

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including service delivery, program development, policy development, 26 and
budgeting. The office shall provide assistance by:

27 (i) Facilitating information sharing between agencies around
28 diversity, equity, and inclusion issues;
29 (ii) Convening work groups as needed;
30 (iii) Developing and providing assessment tools for agencies to 31
use in the development and evaluation of agency programs, services,
32 policies, and budgets;

33 (iv) Training agency staff on how to effectively use the 34 assessment
tools developed under (a)(iii) of this subsection, 35 including developing
guidance for agencies on how to apply an equity 36 lens to the agency's work
when carrying out the agency's duties under
37 this chapter;

(v) Developing a form that will serve as each agency's diversity,
equity, and inclusion plan, required to be submitted by all agencies 3
under section 7 of this act, for each agency to report on its work in 4 the
area of diversity, equity, and inclusion. The office must develop 5 the
format and content of the plan and determine the frequency of 6 reporting.
The office must post each agency plan on the dashboard 7 referenced in (d)
of this subsection;

8 (vi) Maintaining an inventory of agency work in the area of 9 diversity,
equity, and inclusion; and

10 (vii) Compiling and creating resources for agencies to use as 11 guidance
when carrying out the requirements under section 7 of this
12 act.

13 (b) **Community outreach and engagement.** The office shall staff the 14
community advisory board created under section 6 of this act and may
15 contract with commissions or other entities with expertise in order
16 to identify policy and system barriers, including language access,
to 17 meaningful engagement with communities in all aspects of agency
18 decision making.

19 (c) **Training on maintaining a diverse, inclusive, and culturally 20**
sensitive workforce. The office shall collaborate with the office of 21
financial management and the department of enterprise services to 22 develop

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policies and provide technical assistance and training to 23 agencies on
maintaining a diverse, inclusive, and culturally 24 sensitive workforce that
delivers culturally sensitive services. 25 (d) **Data maintenance and
establishing performance metrics.** The 26 office shall:

27 (i) Collaborate with the office of financial management and 28 agencies
to:

29 (A) Establish standards for the collection, analysis, and 30 reporting
of disaggregated data as it pertains to tracking population 31 level outcomes
of communities, except as provided under (d)(i)(D) of 32 this subsection;

33 (B) Create statewide and agency-specific process and outcome 34 measures
to show performance:

35 (I) Using outcome-based methodology to determine the 36 effectiveness of
agency programs and services on reducing 37 disparities; and

38 (II) Taking into consideration community feedback from the 39 community
advisory board on whether the performance measures established accurately
measure the effectiveness of agency programs 2 and services in the
communities served;

3 (C) Create an online performance dashboard to publish state and 4 agency
performance measures and outcomes; and

5 (D) Identify additional subcategories in workforce data for 6
disaggregation in order to track disparities in public employment;

7 and

8 (ii) Coordinate with the office of privacy and data protection to
9 address cybersecurity and data protection for all data collected by 10
the office.

11 (e) **Accountability.** The office shall:

12 (i) Publish a report for each agency detailing whether the agency
13 has met the performance measures established pursuant to (d)(i)
of 14 this subsection and the effectiveness of agency programs and
services 15 on reducing disparities. The report must include the
agency's 16 strengths and accomplishments, areas for continued
improvement, and 17 areas for corrective action. The office must
post each report on the 18 dashboard referenced in (d) of this
subsection;

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19 (ii) Establish a process for the office to report on agency 20 performance
in accordance with (e) (i) of this subsection and a 21 process for agencies
to respond to the report. The agency's response 22 must include the agency's
progress on performance, the agency's 23 action plan to address areas for
improvement and corrective action, 24 and a timeline for the action plan;
and
25 (iii) Establish procedures to hold agencies accountable, which 26 may
include conducting performance reviews related to agency 27 compliance with
office performance measures.
28 (2) By October 31, 2022, and every year thereafter, the office 29 shall
report to the governor and the legislature. The report must 30 include a
summary of the office's work, including strengths and 31 accomplishments,
an overview of agency compliance with office 32 standards and performance
measures, and an equity analysis of the 33 makeup of the community advisory
board established in section 6 of 34 this act to ensure that it accurately
reflects historically and 35 currently marginalized groups.
36 (3) The director and the office shall review the final
37 recommendations submitted pursuant to section 221, chapter 415,
Laws 38 of 2019, by the task force established under section 221,
chapter 39 415, Laws of 2019, and report back to the governor and
the legislature with any additional recommendations necessary for
the office to carry out the duties prescribed under this chapter.

3 NEW SECTION. **Sec. 6.** (1) A community advisory board is created 4 within
the office to advise the office on its priorities and 5 timelines.

6 (2) The director must appoint members to the community advisory 7 board
to support diverse representation by geography and identity. 8 The director
may collaborate with the commission on African American 9 affairs, the
commission on Asian Pacific American affairs, the 10 commission on Hispanic
affairs, the governor's office of Indian
11 affairs, the human rights commission, the LGBTQ commission, the 12 women's
commission, and any other agency the office deems necessary, 13 to find

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individuals with diverse representation by geography and 14 identity for the
community advisory board.

15 (3) The community advisory board shall, among other duties 16 determined
by the director, provide guidance to the office on 17 standards and
performance measures.

18 (4) The community advisory board is staffed by the office.

19 (5) Board members shall be entitled to compensation of fifty 20
dollars per day for each day spent conducting official business and
21 to reimbursement for travel expenses as provided by RCW 43.03.050
and 22 43.03.060.

23 (6) The community advisory board may adopt bylaws for the 24 operation
of its business for the purposes of this chapter.

25 NEW SECTION. **Sec. 7.** Each agency shall:

26 (1) Designate an agency diversity, equity, and inclusion liaison
27 within existing resources to serve as the liaison between the
agency 28 and the office;

29 (2) Apply an equity lens, as developed by the office in 30 accordance
with section 5 of this act, to assess existing and 31 proposed agency
policies, services and service delivery, practices, 32 programs, and budget
decisions using the assessment tools developed 33 by the office pursuant to
section 5 of this act;

34 (3) Develop and submit a diversity, equity, and inclusion plan to 35 the
office, in accordance with section 5 of this act;

36 (4) Develop and maintain written language access policies and
37 plans;

(5) Collaborate with the office to establish performance measures
2 in accordance with section 5 of this act;

3 (6) Provide data and information requested by the office in 4 accordance
with standards established under section 5 of this act;

5 and

6 (7) Submit a response to the office's report on agency
7 performance under section 5 of this act.

8 NEW SECTION. **Sec. 8.** The office may:

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9 (1) Provide technical assistance to agencies;
10 (2) Conduct research projects, as needed, provided that no 11
research project is proposed or authorizes funding without 12
consideration of the business case for the project including a
review 13 of the total cost of the project, similar projects
conducted in the 14 state, and alternatives analyzed;
15 (3) Conduct policy analyses and provide a forum where ideas and 16 issues
related to diversity, equity, and inclusion plans, policies,
17 and standards can be reviewed;
18 (4) Develop policy positions and legislative proposals;
19 (5) Consider, on an ongoing basis, ways to promote investments in
20 enterprise-level diversity, equity, and inclusion projects that
will
21 result in service improvements and cost efficiency;
22 (6) Fulfill external data requests, as resources allow; and
23 (7) Receive and solicit gifts, grants, and endowments from public
24 or private sources that are made for the use or benefit of the
office 25 and to expend the same or any income therefrom according
to their 26 terms and this chapter. The director must report funds
received from
27 private sources to the office of financial management on a regular 28
basis. Funds received from private sources may not be applied to 29 reduce
or substitute the office's budget as appropriated by the 30 legislature, but
must be applied and expended toward projects and 31 functions authorized by
this chapter that were not funded by the 32 legislature.

33 NEW SECTION. **Sec. 9.** Nothing in this act creates any right or 34 cause
of action, nor may it be relied upon to compel the 35 establishment of any
program or special entitlement.

36 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act 37 constitute a
new chapter in Title 43 RCW.

NEW SECTION. **Sec. 11.** Section 3 of this act takes effect July 1,
2020.

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