

SENATE BILL REPORT

I 1000

As Passed Senate, 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: State Government, Tribal Relations & Elections: 4/25/19 [DP, w/oRec, DNP].

Floor Activity:

Passed Senate: 4/28/19, 26-22.

Brief Summary of Bill

- Amends Initiative 200 which prohibits the state from discriminating against, or granting preferential treatment to certain individuals or groups in public education, public employment, and public contracting.
- Amends the definition of affirmative action for the purpose of Washington State Patrol promotional examinations.
- Establishes the Governor's Commission on Diversity, Equity, and Inclusion responsible for planning, directing, monitoring, and enforcing each state agency's compliance with Initiative 1000 (I-1000).
- Requires certain reports regarding I-1000.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Hasegawa and Takko.

Minority Report: That it be referred without recommendation.

Signed by Senator Zeiger, Ranking Member.

Minority Report: Do not pass.

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.

Signed by Senators Bailey and Hawkins.

Staff: Melissa Van Gorkom (786-7491)

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, the Legislature must take one of the following three 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, under either case it automatically will appear on the ballot in the next general election;
- propose an alternative measure, in which case the initiative and alternative will both appear on the ballot as competing measures at the next state general election.

The Law Against Discrimination. The Law Against Discrimination (LAD) generally prohibits discrimination in employment and public accommodation based on specified factors and subject to certain exclusions. Similar provisions prohibit discrimination in K-12 public schools. The Human Rights Commission is the state agency responsible for administering and enforcing the LAD.

In 1998, the voters approved Initiative 200 (I-200), titled the Washington State Civil Rights Act. I-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. For the purpose of I-200, state includes but is not limited to the state; any city or county; public college, university, or community college; school district; special district; or other political subdivision or governmental entity within Washington.

The state is not prohibited from:

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

In 2013, I-200 was amended to state that nothing in it prohibits tribal schools from implementing a policy of Indian preference in employment or prioritizing the admission of tribal members if demand is greater than program or facility capacity.

Washington State Patrol Affirmative Action. The Washington State Patrol (WSP) conducts examinations for the promotion of commissioned patrol officers to the rank of sergeant and lieutenant. Promotions must be made from officers receiving the five top scores on the examination. However, three additional names of protected group members may be added

for consideration, drawn in rank order from the remaining eligible names, if needed to comply with affirmative action goals.

For the purpose of this statute, affirmative action means a procedure by which racial minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, and disabled veterans are provided with increased employment opportunities. It does not mean any sort of quota system.

Summary of Bill: The Law Against Discrimination. I-200 is amended to also prohibit state discrimination or preferential treatment based on:

- age;
- sexual orientation;
- the presence of any sensory, mental, or physical disability; or
- honorably discharged veteran or military status.

The state is not prohibited from:

- actions required to establish or maintain federal program eligibility, if the Office of Financial Management determines that ineligibility will result in a material loss of federal funds to the state;
- remedying discrimination against, or underrepresentation of, disadvantaged groups as documented in a valid disparity study, or proven in a court of law.

Affirmative action laws, regulations, policies, or procedure may be implemented provided they do not:

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

Affirmative action is defined as a policy in which the specified characteristics—except color and sexual orientation—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.

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.

Washington State Patrol Affirmative Action. The definition of affirmative action for the purpose of WSP promotional examinations is amended to:

- incorporate the new definition of affirmative action;
- include a policy, in addition to a procedure, by which increased employment opportunities are provided to specified groups; and
- add honorably discharged military veterans to the list of specified groups.

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

- twenty-five members appointed by the Governor from specified state agencies or nonprofit groups;
- four legislative members, one from each of the two largest caucuses of the House 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 will serve four-year terms. Legislative members of the Commission will serve two-year terms. Commission members serve for the term of their appointment and until their successor is appointed. Commission members who serve by virtue of their office must be immediately replaced by their duly elected or appointed successor. A vacancy on the Commission must be filled within 30 days.

The Commission is responsible for planning, directing, monitoring, and enforcing each state agency's compliance with I-1000; and publishing an annual report on state agency progress in achieving diversity, equity, and inclusion in public education, public employment, and public contracting. The Commission may also propose and oppose legislation.

Other. Within three months of the effective date, the Office of Program Research and Senate Committee Services must prepare a joint memorandum and draft legislation, in consultation with the sponsors of I-1000, the Governor's Committee on Diversity, Equity and Inclusion, and the Human Rights Commission, to present to the appropriate legislative committees regarding any necessary statutory changes to bring nomenclature and processes in line with I-1000 to fully effectuate its intent.

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

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Staff Summary of Public Testimony: PRO: In 1965, Governor Evans created by executive order, a commission on civil rights which began the task of opening opportunities for all individuals in Washington. The state has made progress, but can do better. As long as our society discriminates based on race, we must use race to counter those actions. Fair opportunity for all will correct injustices. Decades of racism have created barriers and disproportionately impacted people in the community. There is so much implicit and unconscious bias, and government will only change if they are made aware of how they are doing business. I-1000 would significantly expand opportunities to marginalized communities. The act provides every person fair and equal opportunities in public education, employment, and contracting. There is a myth that hard work is all you need to get ahead,

but that fails to take into account the legacy of generations of institutional racism occurring in this country and this state. Systemic racism is real and there is another way to fight it and build a society that allows all to prosper together. It is a desirable public policy to allow underrepresented populations to have fair access.

When I-200 passed there was a lot of confusion and ambiguity. I-200 was cloaked as a civil rights issue, but it repealed affirmative action. This will restore affirmative action in the state of Washington. Affirmative action was different in the past and included quotas and set asides. I-1000 strengthens the ban on quotas and denies the use of preferential treatment. The end result is that everyone gets a clear shot at opportunity. Good law is better than good intentions and I-1000 is a good law that will move us towards removing discrimination. Historic racial discrimination has improved since passage of the Civil Rights Act in 1964, but the same has not occurred in Washington. Washington is one of only eight states that has banned affirmative action. Voting yes on I-1000 would bring back affirmative action and provide opportunities for students.

To be competitive we need to have a diverse workforce and the current law prohibits that. The unemployment rate is 3 percent in the state, but 7 percent for African Americans and more than double for Hispanic people. I-200 led to a lot of state agencies and institutions not performing outreach to certain groups, whereas recruitment and outreach is expressly permitted under I-1000. People want a chance, and I-1000 opens the door to qualified candidates and expands the pool. People still have to meet the qualifications and make the cut on their own merit. There is a real financial benefit to diversity and inclusion in the private sector and it is time for this to be available to the public sector.

There continue to be substantial gaps in education which is not the fault of the students. There is a need to reduce this achievement gap. Reducing barriers in education will give everyone a fair opportunity for success. Students are inspired and moved by those they respect. Growing research shows that when students experience a teacher of their color they are more likely to go to college. The state needs to find this talent to make a difference in the lives of students.

Current law has clearly led to a decline in a diverse college population. Black male enrollment at the University of Washington is 1.3 percent, on a steady decline since the enactment of I-200. Latino students make up 8 percent of the student body while the community is 13 percent. The playing field is getting more uneven as time goes on. As a student of color who worked hard to get to college and was denied enrollment, this initiative would help others who are qualified not to have to go through what I went through. Tough lessons have been learned since I-200. It has had a chilling effect on institutions. Race and gender identity will never be the only factors, but they are imperative in providing a diverse population at universities.

The state has 84 years of statehood and a perfect record of discrimination with no record of doing business with black and Hispanic firms and only one Japanese garden company. There was a drop from 10 percent to 3 percent use of minority and women businesses since I-200, resulting in a loss of \$3.5 billion leaving the community hurting and forcing some businesses to close. The number of certified minority and women owned businesses also dropped by

half. I-200 is cited as the cause for this. The state must maintain the integrity of this process so that communities of color and businesses do not die.

For the Port, only .3 percent of contracts went to African Americans and only .5 percent went to Hispanics. The Port is doing everything in its legal power to increase diversity, but none of those things are making enough difference; equality is getting worse, not better. I-1000 is one of the most pro-business things that can be done to give businesses a shot at participation. A bigger pie for everyone is great for our economy.

CON: I-200 is the state manifestation of the Civil Rights Act of 1964; the state shall not discriminate against or grant preferential treatment to anyone based on race, sex, color, ethnicity, or national origin. It is civil rights that we are dealing with and it is frightening that our society would be going back to eliminating civil rights. Washington is an enlightened state, always moving forward as one of the most diverse societies in the world. I-1000 is not enlightening and would be a nightmare to implement. If there are imperfections in the implementation of I-200 then work on that, but race has no place in American life or law and certainly not in Washington.

I-1000 is deceptive and opens up the opportunity for discrimination. I-1000 would abolish the standard of equality for all, regardless of race—as required by I-200—and replace it with a system that uses different rules for people of different races. It is inherently divisive. It is nothing but diversity by discrimination. I-1000 does not modify an existing initiative, it overturns it and replaces it with a radical and outrageously deceptive statewide measure. This directly affects my civil rights and my children's civil rights. I should be able to vote on it.

Initiatives are about letting the people decide and it is presumptuous for the Legislature to vote on their behalf. The people should have their opportunity to vote on this just like they did when they voted on I-200. If you vote for this you are not allowing the people of the state of Washington to vote on it. The people should have a say and will work to ensure that that happens by filing a referendum if necessary.

I-1000 brings back a quota system and preferential treatment because it opens the door to discrimination based on identity and delivers the wrong message to people about equal opportunities. This would bring back discrimination of some people by discriminating and giving preference to another group of people. Please, do not create new barriers. All people are created equal and deserve an equal chance. It was the dream of Martin Luther King that we should not be judged by the color of our skin. Unfortunately I must repeat these words today to encourage these facts, do not use race to solve a racial problem. When you draw racial lines through this country, that line runs through families and no one has the right to do that.

People come to America to have opportunities. I-200 benefited Asian Americans. I-1000 is racist and targets Asian Americans. It is dangerous when government thinks it is necessary to have a solution to a problem—Nazi Germany had a solution to a problem; China had a solution creating a one child policy that it is regretting now; Cambodia had a solution to its perceived problem of having too many of a certain people; and in the 1880s America had a solution with the Chinese Exclusion Act that went on for more than six decades before it was

stopped. I-1000 is yet another solution to a problem of having too many hard working Asian American students. A vote for I-1000 is a vote for the twenty-first century version of the Chinese Exclusion Act.

This initiative would expand hiring practices to require the government to check specific boxes to ensure they are in compliance with I-1000. Policies are not needed to get people jobs. This will be detrimental to anyone in government contracting. People need to be hired on merit, not based on what they look like. If I-1000 passes people will forever be judged by their race rather than their hard work.

Under this, students applying for higher education are treated not as individual Americans, but as representatives of different races. Even though some Chinese children are more qualified, they are rejected from universities. The country should value hard work over race and color. All children should be treated equally, not based on the color of their skin. I-1000 will legalize our government to use race in college admissions.

It is unthinkable that if I-1000 passes, someone's race—something they cannot control—would determine their eligibility. Children should not view the world through a racially colored lens, and neither should our government. Effort and hard work is worth something. If the first place trophy is not given to the fastest runner, but to a runner based on their skin color, then that trophy is meaningless. If someone says to my child that they did a great job as a black person, that is not a compliment. The merit of each individual should be considered. We should not succumb to the latest divisive fad of intersectionality. We must maintain equal justice for all and not slide into the dangerous and subversive practice of social justice.

OTHER: In 2017, the Washington State Department of Transportation (DOT) did a disparity study to determine whether or not disadvantaged businesses were being used in transportation construction and found that they made up about 19 percent of the industry. In the federal program, DOT was using 92 percent, but the state program utilization was 35 percent under I-200. With aspirational goals, the state use of these disadvantaged businesses drops.

Persons Testifying: PRO: former Governor Dan Evans, former Governor Christine Gregoire, former Governor Gary Locke, former State Representative Jesse Wineberry; Emily Tasaka, Asian Pacific Americans for Civic Empowerment (APACE); Nathaniel Jackson, Yes on I-1000; Brian Sims, Tabor 100; Louise Chernin, Greater Seattle Business Association; Eileen Sullivan, Amazon; Barb Wilson, Vulcan Inc.; Lisa van der Lugt, Office of Minority and Women's Business Enterprises; Marilyn Strickland, Seattle Metropolitan Chamber of Commerce; Fernando Martinez, Northwest Mountain Minority Supplier Development Council; Bruce Harrell, Seattle City Council; Commissioner Stephanie Bowman, Port of Seattle; Councilman Larry Gossett, King County Council; Ben Henry, APACE; Chris Reykdal, Superintendent of Public Instruction; Rogelio Riojas, Sea Mar Community Health Centers, University of Washington Regent; Bill Kallappa, Washington State Board of Education; Irene Plenefisch, Microsoft Corporation; Jamie Jones, citizen; Saniah Simpson, Initiative 1000; Nadine Gibson, citizen; Michael Byun, Asian Pacific Islander Coalition of Washington.

CON: John Carlson, citizen; Linda Yang, Washington Asians For Equality; Kan Qiu, American Coalition for Equality; Ward Connerly, citizen; Nora Chan, Seniors in Action Foundation; Jing Zhou, citizen; Caifeng Wu, citizen; Feng Yang, citizen; Zhigang Li, citizen; Anwen Li, citizen; Yang Li, citizen; Zhen Zhang, citizen; Sharon Hanek, citizen; Tim Eyman, citizen; Dawn Land, citizen; Janice Camarena, citizen; Jie Xie, citizen; Ellie Yun, citizen; Hoi Hung Ho, citizen; Jingdong Yu, citizen.

OTHER: Roger Millar, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: PRO: Jerry Fugich, Veterans Legislative Coalition; Sean Bagsby, International Brotherhood of Electrical Workers Local 77; Ricardo Sanchez, citizen; Jennifer Ferguson, Yes on I-1000; Jared Houston, Freedom Socialist Party; Jerry Garcia, Sea Mar Community Health Centers; Alexandra Auguste-Lewis, citizen; Lynn French, citizen; R. Peggy Smith, League of Women Voters; Miriam Padilla, Freedom Socialist Party; Herbie Martin, citizen; Girmay Zahilay, Rising Leaders; Kevin Allen, Washington Federation of State Employees; Alaa Alshaibani, citizen; Hayward Evans, Washington State Civil Rights.

CON: Zhiming Yu, citizen; Jiewen Zheng, citizen; Zhuoli Liang, citizen; Ruiwen Yao, citizen; Li Meng Lowry, citizen; Lin Chan, citizen; Shifan Wu, citizen; Yi Zhang, citizen; Bo Yang, citizen; Qiang Fu, citizen; Xia Zhao, citizen; James Zhou, citizen; Hao Sun, citizen; Qi Chen, citizen; Dandan Chen, citizen; Liping Xu, citizen; Yi Qu, citizen; Ruoyun Huang, citizen; Heming Xiao, citizen; Timothy Lee, citizen; Wenlang Zhang, citizen; Xiaokang Shen, citizen; Owen Zhang, citizen; Annika Lin, citizen; Ruizhe Zhang, citizen; Geng Tan, citizen; Meng Yang, citizen; Yun Duan, citizen; Mary Sutherlin, citizen; William Sutherlin, citizen; Xuewei Han, citizen; Xue Ji, citizen; Chang Zhou, citizen; Yongsheng Miao, citizen; Xin Tian, citizen; Yongkang Zhu, citizen; James Cnou, citizen; Ruizhe Zhang, citizen; Zhong Zhou, citizen; Errol Archibald, citizen; Doug White, citizen; Beth Daranciang, citizen; Zhan Wang, citizen; Xuejian Pan, citizen.

OTHER: Caitlin Lang-Perez, State Board of Health; Kai Xu, citizen.