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**SENATE BILL 5935**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senator Ericksen

1 AN ACT Relating to complete equity in Washington state; amending  
2 RCW 28B.20.744, 39.10.430, 39.10.450, and 49.04.100; adding a new  
3 section to chapter 49.60 RCW; creating new sections; repealing RCW  
4 49.60.400 and 49.60.401; providing for submission of this act to a  
5 vote of the people; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** This act may be known and cited as the  
8 complete equity act.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.60  
10 RCW to read as follows:

11 (1) The state shall not discriminate against, or grant  
12 preferential treatment to, any individual, group, or tribal  
13 government on the basis of race, gender, religion, national origin,  
14 sexual preference, tribal status, federal mandate, or treaty status  
15 with the federal government in the operation of public employment,  
16 public education, public contracting, business opportunity, tax  
17 status, or special preferences awarded by the federal, state, or  
18 local government. This shall include but is not limited to government  
19 preferences, education admittance standards, regulations, permitting,

1 hunting, fishing, land access, casino operations, or gas tax  
2 receipts.

3 (2) For the purposes of this section, "state" includes, but is  
4 not necessarily limited to, the state itself, any city, county,  
5 public college or university, community college, school district,  
6 special district, or other political subdivision or governmental  
7 instrumentality of or within the state.

8 (3) The remedies available for violations of this section are the  
9 same, regardless of the injured party's race, gender, religion,  
10 national origin, sexual preference, tribal status, federal mandate,  
11 or treaty status with the federal government, as are otherwise  
12 available for violations of Washington antidiscrimination law.

13 (4) This section shall be self-executing. If any part or parts of  
14 this section are found to be in conflict with federal law, the United  
15 States Constitution, or the Washington state Constitution, the  
16 section shall be implemented to the maximum extent that federal law,  
17 the United States Constitution, and the Washington state Constitution  
18 permit. Any provision held invalid shall be severable from the  
19 remaining portions of this section.

20 NEW SECTION. **Sec. 3.** The following acts or parts of acts are  
21 each repealed:

22 (1) RCW 49.60.400 (Discrimination, preferential treatment  
23 prohibited) and 2013 c 242 s 7 & 1999 c 3 s 1; and

24 (2) RCW 49.60.401 (Short title—1999 c 3) and 1999 c 3 s 2.

25 **Sec. 4.** RCW 28B.20.744 and 2017 c 124 s 1 are each amended to  
26 read as follows:

27 (1) This section provides an alternative process for awarding  
28 contracts for construction, building, renovation, remodeling,  
29 alteration, repair, or improvement of university buildings and  
30 facilities in which critical patient care or highly specialized  
31 medical research is located. These provisions may be used, in lieu of  
32 other procedures to award contracts for such work, when the estimated  
33 cost of the work is equal to or less than five million dollars and  
34 the project involves construction, renovation, remodeling, or  
35 alteration of improvements within a building that is used directly  
36 for critical patient care or highly specialized medical research.

37 (2) The university may create a single critical patient care or  
38 specialized medical research facilities roster or may create multiple

1 critical patient care or specialized medical research facilities  
2 rosters for different trade specialties or categories of anticipated  
3 work. At least once a year, the university shall publish in a  
4 newspaper of general circulation and with the office of minority and  
5 women's business enterprises, a notice of the existence of the roster  
6 or rosters and solicit a statement of qualifications from contractors  
7 who wish to be on the roster or rosters of prime contractors. In  
8 addition, qualified contractors shall be added to the roster or  
9 rosters at any time they submit a written request, necessary records,  
10 and meet the qualifications established by the university. The  
11 university may require eligible contractors desiring to be placed on  
12 a roster to keep current records of any applicable licenses,  
13 certifications, registrations, bonding, insurance, or other  
14 appropriate matters on file with the university with input from the  
15 women-owned and minority-owned business community as a condition of  
16 being placed on a roster or rosters. Placement on a roster shall be  
17 on the basis of qualifications.

18 (3) The public solicitation of qualifications shall include but  
19 not be limited to:

20 (a) A description of the types of projects to be completed and  
21 where possible may include programmatic, performance, and technical  
22 requirements and specifications;

23 (b) The reasons for using the critical patient care and  
24 specialized medical research roster process;

25 (c) A description of the qualifications to be required of a  
26 contractor, including submission of an accident prevention program;

27 (d) A description of the process the university will use to  
28 evaluate qualifications, including evaluation factors and the  
29 relative weight of factors;

30 (e) The form of the contract to be awarded;

31 (f) A description of the administrative process by which the  
32 required qualifications, evaluation process, and project types may be  
33 appealed; and

34 (g) A description of the administrative process by which  
35 decisions of the university may be appealed.

36 (4) The university shall establish a committee that includes one  
37 representative from the minority-owned business community and one  
38 representative from the women-owned business community to evaluate  
39 the contractors submitting qualifications. Evaluation criteria for

1 selection of the contractor or contractors to be included on a roster  
2 shall include, but not be limited to:

3 (a) Ability of a contractor's professional personnel;

4 (b) A contractor's past performance on similar projects,  
5 including but not limited to medical facilities, and involving either  
6 negotiated work or other public works contracts;

7 (c) The contractor's ability to meet time and budget  
8 requirements;

9 (d) The contractor's ability to provide preconstruction services,  
10 as appropriate;

11 (e) The contractor's capacity to successfully complete the  
12 project;

13 (f) The contractor's approach to executing projects;

14 (g) The contractor's approach to safety and the contractor's  
15 safety history;

16 (h) The contractor's record of performance, integrity, judgment,  
17 and skills;

18 (i) The contractor's record of including office of minority and  
19 women's business enterprises-certified, minority, women, veteran, and  
20 small businesses; and

21 (j) The contractor's past history of use of small business  
22 entities, disadvantaged business enterprises, minority business  
23 enterprises, women business enterprises, and minority women business  
24 enterprises over the last five years on projects of five million  
25 dollars or less and the contractor's proposed outreach plan and  
26 commitment to include such firms.

27 (5) Contractors meeting the evaluation committee's criteria for  
28 selection must be placed on the applicable roster or rosters.

29 (6) When a project is selected for delivery through this roster  
30 process, the university must establish a procedure for securing  
31 written quotations from all contractors on a roster to assure that a  
32 competitive price is established. Invitations for quotations shall  
33 include an estimate of the scope and nature of the work to be  
34 performed as well as materials and equipment to be furnished. Plans  
35 and specifications must be included in the invitation but may not be  
36 detailed. Award of a project must be made to the responsible bidder  
37 submitting the lowest responsive bid.

38 (7) The university shall make an effort to solicit proposals from  
39 certified minority or certified woman-owned contractors. The  
40 university business diversity program shall establish aspirational

1 goals for small business entities, disadvantaged business  
2 enterprises, minority business enterprises, women business  
3 enterprises, and minority women business enterprises for each roster  
4 based on the projected subcontracting opportunities and to the extent  
5 permitted by the (~~Washington state civil rights~~) complete equity  
6 act, (~~RCW 49.60.400~~) section 2 of this act.

7 (8) Beginning in September 2010 and every other September  
8 thereafter, the university shall provide a report to the capital  
9 projects advisory review board which must, at a minimum, include a  
10 list of rosters used, contracts awarded, office of minority and  
11 women's business enterprises-certified small business entities,  
12 disadvantaged business enterprises, veterans, and women and minority-  
13 owned business use rates on the projects.

14 (9) Beginning in September 2015 and every September thereafter,  
15 the university shall report to the office of minority and women's  
16 business enterprises and to the appropriate legislative fiscal  
17 committees the number of qualified women and minority-owned business  
18 contractors on the roster or rosters and the number of contracts  
19 awarded to women and minority-owned businesses.

20 (10) The university shall require contractors to solicit  
21 proposals from office of minority and women's business enterprises-  
22 certified firms.

23 **Sec. 5.** RCW 39.10.430 and 2007 c 494 s 402 are each amended to  
24 read as follows:

25 (1) Job order contracts shall be awarded through a competitive  
26 process using public requests for proposals.

27 (2) The public body shall make an effort to solicit proposals  
28 from certified minority or certified woman-owned contractors to the  
29 extent permitted by the (~~Washington state civil rights~~) complete  
30 equity act, (~~RCW 49.60.400~~) section 2 of this act.

31 (3) The public body shall publish, at least once in a statewide  
32 publication and legal newspaper of general circulation published in  
33 every county in which the public works project is anticipated, a  
34 request for proposals for job order contracts and the availability  
35 and location of the request for proposal documents. The public body  
36 shall ensure that the request for proposal documents at a minimum  
37 includes:

38 (a) A detailed description of the scope of the job order contract  
39 including performance, technical requirements and specifications,

1 functional and operational elements, minimum and maximum work order  
2 amounts, duration of the contract, and options to extend the job  
3 order contract;

4 (b) The reasons for using job order contracts;

5 (c) A description of the qualifications required of the proposer;

6 (d) The identity of the specific unit price book to be used;

7 (e) The minimum contracted amount committed to the selected job  
8 order contractor;

9 (f) A description of the process the public body will use to  
10 evaluate qualifications and proposals, including evaluation factors  
11 and the relative weight of factors. The public body shall ensure that  
12 evaluation factors include, but are not limited to, proposal price  
13 and the ability of the proposer to perform the job order contract. In  
14 evaluating the ability of the proposer to perform the job order  
15 contract, the public body may consider: The ability of the  
16 professional personnel who will work on the job order contract; past  
17 performance on similar contracts; ability to meet time and budget  
18 requirements; ability to provide a performance and payment bond for  
19 the job order contract; recent, current, and projected workloads of  
20 the proposer; location; and the concept of the proposal;

21 (g) The form of the contract to be awarded;

22 (h) The method for pricing renewals of or extensions to the job  
23 order contract;

24 (i) A notice that the proposals are subject to RCW 39.10.470; and

25 (j) Other information relevant to the project.

26 (4) A public body shall establish a committee to evaluate the  
27 proposals. After the committee has selected the most qualified  
28 finalists, the finalists shall submit final proposals, including  
29 sealed bids based upon the identified unit price book. Such bids may  
30 be in the form of coefficient markups from listed price book costs.  
31 The public body shall award the contract to the firm submitting the  
32 highest scored final proposal using the evaluation factors and the  
33 relative weight of factors published in the public request for  
34 proposals and will notify the board of the award of the contract.

35 (5) The public body shall provide a protest period of at least  
36 ten business days following the day of the announcement of the  
37 apparent successful proposal to allow a protester to file a detailed  
38 statement of the grounds of the protest. The public body shall  
39 promptly make a determination on the merits of the protest and  
40 provide to all proposers a written decision of denial or acceptance

1 of the protest. The public body shall not execute the contract until  
2 two business days following the public body's decision on the  
3 protest.

4 (6) The requirements of RCW 39.30.060 do not apply to requests  
5 for proposals for job order contracts.

6 **Sec. 6.** RCW 39.10.450 and 2012 c 102 s 2 are each amended to  
7 read as follows:

8 (1) The maximum dollar amount for a work order is three hundred  
9 fifty thousand dollars.

10 (2) All work orders issued for the same project shall be treated  
11 as a single work order for purposes of the dollar limit on work  
12 orders.

13 (3) No more than twenty percent of the dollar value of a work  
14 order may consist of items of work not contained in the unit price  
15 book.

16 (4) Any new permanent, enclosed building space constructed under  
17 a work order shall not exceed two thousand gross square feet.

18 (5) A public body may issue no work orders under a job order  
19 contract until it has approved, in consultation with the office of  
20 minority and women's business enterprises or the equivalent local  
21 agency, a plan prepared by the job order contractor that equitably  
22 spreads certified women and minority business enterprise  
23 subcontracting opportunities, to the extent permitted by the  
24 (~~Washington state civil rights~~) complete equity act, ((RCW  
25 ~~49.60.400~~) section 2 of this act, among the various subcontract  
26 disciplines.

27 (6) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,  
28 each work order issued shall be treated as a separate contract. The  
29 alternate filing provisions of RCW 39.12.040(2) apply to each work  
30 order that otherwise meets the eligibility requirements of RCW  
31 39.12.040(2).

32 (7) The job order contract shall not be used for the procurement  
33 of architectural or engineering services not associated with specific  
34 work orders. Architectural and engineering services shall be procured  
35 in accordance with RCW 39.80.040.

36 **Sec. 7.** RCW 49.04.100 and 2001 c 204 s 7 are each amended to  
37 read as follows:

1 As provided by the rules adopted by the apprenticeship council,  
2 apprenticeship programs entered into under authority of this chapter  
3 with five or more apprentices shall conform with 29 C.F.R. Part 30 to  
4 the extent required by federal law while advancing the  
5 nondiscriminatory principles of the ((~~Washington state civil rights~~))  
6 complete equity act, ((~~RCW 49.60.400~~)) section 2 of this act.

7 NEW SECTION. **Sec. 8.** This act is necessary for the immediate  
8 preservation of the public peace, health, or safety, or support of  
9 the state government and its existing public institutions, and takes  
10 effect immediately.

11 NEW SECTION. **Sec. 9.** This act constitutes an alternative to  
12 Initiative 1000. The secretary of state is directed to place this act  
13 on the ballot in conjunction with Initiative 1000 at the next general  
14 election.

15 This act shall continue in force and effect until the secretary  
16 of state certifies the election results on this act. If affirmatively  
17 approved at the general election, this act shall continue in effect  
18 thereafter.

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