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## Civil Rights & Judiciary Committee

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### HI 1000

**Brief Description:** Concerning diversity, equity, and inclusion.

**Sponsors:** People of the State of Washington.

#### 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.

**Hearing Date:** 4/18/19

**Staff:** Edie Adams (786-7180).

#### **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.

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*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.*

### 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 (Commission) is responsible for administering and enforcing the WLAD. If the Commission 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 Commission 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:

- twenty-five 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.