

SENATE BILL REPORT

SB 6406

As Reported by Senate Committee On:
State Government, Tribal Relations & Elections, January 31, 2018

Title: An act relating to restoring the fair treatment of underserved groups in public employment, education, and contracting.

Brief Description: Restoring the fair treatment of underserved groups in public employment, education, and contracting.

Sponsors: Senators Chase, Hasegawa, Saldaña, McCoy, Wellman, Keiser and Kuderer.

Brief History:

Committee Activity: State Government, Tribal Relations & Elections: 1/26/18, 1/31/18 [DP, DNP].

Brief Summary of Bill

- Repeals the 1998 Initiative 200 (I-200) language regarding discrimination and preferential treatment in the operation of public employment, education, or contracting.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Saldaña.

Minority Report: Do not pass.

Signed by Senators Miloscia, Ranking Member; Zeiger.

Staff: Melissa Van Gorkom (786-7491)

Background: The Law Against Discrimination (LAD), chapter 49.60 RCW, 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. In 1998, the voters approved I-200, titled the Washington State Civil Rights Act, which was codified in the LAD chapter. I-200 prohibits the state from discriminating

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against or granting preferential treatment to an individual or a group based on race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. 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. If any parts of Initiative 200 conflict with federal law, the United States Constitution, or the Washington Constitution, I-200 is to be implemented to the maximum extent permitted by those laws.

Initiative 200 does not prohibit any law and governmental action which does not discriminate against or grant preferential treatment to an individual or group based on these factors:

- actions required to establish or maintain federal program eligibility, if ineligibility would result in a loss of federal funds;
- classification based on sex that is necessary for privacy or medical or psychological treatment;
- classification that is 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.

Summary of Bill: Initiative 200, including the 2013 amendment, is repealed. Conforming changes to reflect the repeal are made to the statutes on University of Washington alternative contracting, job order contracting, and apprenticeship programs.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: People thought they were voting for civil rights when they voted for I-200, but it is time to revisit this Initiative to determine if it is doing what it was supposed to do. Legislators hopefully use a set of principles to justify actions and when it is found that enacted policies are not fair or just it must be revisited using the empirical evidence.

There have been three national studies done on disparity by WSDOT, Sound Transit, and Port of Seattle, all proving that racial discrimination does exist under I-200. The data does not lie. When I-200 passed in 1998, 50 percent of Native Americans were on track for college, but that dropped after the passage of I-200 to 38 percent. The total spent on government contracting for minority contractors was 13.3 percent in 1998, in 2004 this dropped to 1.66 percent. The data show the effect of passing I-200 and indicates that African Americans have a lower median income than whites and are doing less business in Washington.

A 2016 report showed achievement gaps by race in all school ratings which are present early and persist all the way through secondary education data. If someone comes from a tough starting position they will need more support to get equity. This bill would provide the opportunity for institutions to address the gaps and provide clarity to school districts which have not been able to create these additional resources due to the interpretation of preferential treatment under I-200. People need to get a basic education so that they can gain access to get a credential or a job. If someone cannot compete they cannot get to a position that is fair and equal.

The reality is that race is still a major predictor of graduation, jobs, and owning a business. There are people being driven out of historically diverse communities in Washington because they cannot afford to live in them. Seattle and the Port of Seattle spend billions on goods and services, but only a small amount gets spent on minority and women's businesses. I-200 unnecessarily limits the tools available to help minority and women's businesses be a part of the process. King County has a growing diverse population and must change with that, but the current state law stunts the ability for King County to employ the best people. Under this bill King County can improve contracting and ensure equitable contracts throughout the community.

Affirmative action is a just and necessary tool with a goal to provide resources. Employment selection should occur from the individuals qualified for a position and hiring should be based on the need to fulfill the position to meet the representation needs of the agency. The U.S. Supreme Court has been given repeated opportunities to strike down race as a factor in hiring, contracting, and admissions and has repeatedly said that a strict scrutiny test must be applied and if it shows that there is a compelling state interest to continue to use race, then it may. I-200 is what stops the state from doing that. This issue will probably never go away, but change does not happen without some strong guidance and removing of barriers like I-200.

The WSDOT disparity study identified a big spread in the outcome of the use of minority and women's businesses when you compare federal spending, which is exempt from I-200, with state spending. There is 92 percent utilization of available disadvantaged businesses under a federal project compared to 32 percent when there is no mandatory Disadvantaged Business Enterprise Program goal for a contract. African Americans are getting 1.3 percent utilization on our state programs and 22 percent utilization on federal programs. These numbers show that there is a 60 percent spread between the state and federal programs.

CON: Seattle Indivisible endorsed I-200 to restore the equity in public contracts. When I-200 passed in 1998, the initiative was outspent 5 to 1, opposed by big labor and won with almost 59 percent of the vote. It won a majority of men and women. The support was because voters believed that all Americans should be protected from race and sex discrimination when applying for a college education, government job, or public contract. That is the principle that drove I-200 to victory.

Regardless of what party controls government, it is wrong when that government uses different rules for different races. When it comes to state colleges and public employment, racial differences, like religious differences, should be minimized, not magnified. During the I-200 campaign, people said that it would end college diversity on campuses, but there is

more diversity today than there was years ago. You do not need racial preferences and set asides to have diversity in our society. Hiring by quota is divisive, toxic, and unfair and there is no need to go back to those days. The more diverse the society, the more essential it is to treat people the same. I-200 stands for a single standard of fairness.

OTHER: The number of businesses registered with the Office of Minority and Women's Business Enterprises has gone down by half. In the five years prior to passage of I-200 state agencies and higher education spent about 10 percent of their contracting dollars with certified minority and women businesses. Since the passage of I-200 that number has dropped to an average of 3 percent. If the numbers had stayed at the same levels, an additional \$3.5 billion would have gone to minority women businesses.

Persons Testifying: PRO: Senator Maralyn Chase, Prime Sponsor; Kaaren Heikes, Director of Policy and Partnerships, State Board of Education; Herbie Martin, A. Philip Randolph Institute and Coalition of Black Trade Unionists; Kevin Allen, Washington Federation of State Employees; Sandy Hanks, King County; Edson Zavala, Mayor's Office, City of Seattle; Stephanie Bowman, Commissioner, Port of Seattle; Steve Clagett, citizen; Joey Gray, citizen; Eddie Rye Jr., Washington State Civil Rights Coalition; Leslie Cushman, UCC Moderator, The United Churches of Olympia; Hayward Evans, Afro-Pac; Maria Flores, Office of the Superintendent of Public Instruction; John Yasutake, Washington State Civil Rights Coalition; Abdul Yusuf, citizen; Senator Bob Hasegawa; Jessie Wineberry, Democrats for Diversity and Inclusion.

CON: John Carlson, citizen.

OTHER: Roger Millar, Secretary of Transportation, Department of Transportation; Teresa Berntsen, Office of Minority & Women's Business Enterprises.

Persons Signed In To Testify But Not Testifying: No one.