



Summary of Referendum Measure No. 88

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Referendum Measure No. 88. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

BRIEF SUMMARY

- 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 referendum measure 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 referendum measure.

BACKGROUND

Referendum Measure No. 88

Laws passed by the Legislature are subject to the referendum process (except for emergency legislation). The sponsor of a referendum measure must collect a sufficient number of signatures on a petition to have a law become a referendum measure. If enough signatures are collected, the Secretary of State certifies the referendum measure, and the law is placed on the ballot. The voters are asked to approve or reject the law passed by the Legislature.

Referendum Measure No. 88 was certified for the ballot on August 7, 2019. The ballot title and ballot measure summary prepared by the Attorney General, and amended by court order on May 29, 2019, are as follows:

Ballot Title

The legislature passed Initiative Measure No. 1000 concerning affirmative action and remedying discrimination, and voters have filed a sufficient referendum petition on this act.

Initiative 1000 would allow the state to remedy discrimination for certain groups and to implement affirmative action, without the use of quotas or preferential treatment (as defined), in public education, employment, and contracting.

Should Initiative 1000 be: Approved [] Rejected []

Ballot Measure Summary

Initiative 1000 would allow the state to remedy documented or proven discrimination against, or underrepresentation of, certain disadvantaged groups. It would allow the state to implement affirmative action in public education, employment, and contracting if the action does not use quotas or preferential treatment. It would define affirmative action and preferential treatment. It would establish a Governor's commission on diversity, equity, and inclusion to ensure state agency compliance, comment on legislation, and publish annual reports.

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. In addition, the WLAD prohibits discrimination in employment on the basis of age. The Washington State Human Rights Commission is responsible for administering and enforcing the WLAD. 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; counties; public colleges or universities; community colleges; school districts; special districts; or other political subdivisions or governmental entities within Washington.

The provisions of I-200 do not prohibit:

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- 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).

Washington State Patrol Promotional Examinations

The Washington State Patrol (WSP) conducts examinations for the promotion of patrol officers to the rank of sergeant and lieutenant. Promotions must be made from the officers who received the five top scores on the examination. However, if needed to comply with affirmative action goals, three additional names of protected group members may be added for consideration, drawn in rank order from the remaining names on the eligibility list. For this purpose, "affirmative action" means a procedure by which racial minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, and veterans with disabilities are provided with increased employment opportunities. "Affirmative action" does not mean any sort of quota system.

SUMMARY

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

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- are not in violation of a state or federal statute, final regulation, or court order.

"Affirmative action" is defined as a policy in which race, sex, ethnicity, national origin, age, the presence of any sensory, mental, or physical disability, and honorably discharged veteran or military status 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.

Washington State Patrol Promotional Examinations

The 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.

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 referendum measure, 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:

- 25 members appointed by the Governor from specified state agencies or nonprofit groups;

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- 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

Within three months following the effective date of the referendum measure, 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 referendum measure so as to fully effectuate and not interfere with its intent. The OPR and SCS must consult with the sponsors of Initiative 1000, the Governor's Commission on Diversity, Equity, and Inclusion, and the Washington 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.

Effective Date: The referendum measure takes effect 30 days after the election at which it is approved.

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