

REFERENDUM MEASURE NO. 88

# Referendum Measure No. 88

Filed April 29, 2019

**RECEIVED**  
APR 29 2019  
**SECRETARY OF STATE**  
**STATE OF WASHINGTON**

*8:00 AM*  
*[Signature]*

1 AN ACT Relating to diversity, equity, and inclusion; amending RCW  
2 49.60.400 and 43.43.015; adding a new section to chapter 43.06 RCW;  
3 and creating new sections.

4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

5 **PART I**  
6 **TITLE AND INTENT**

7 NEW SECTION. **Sec. 1.** This act may be known and cited as the  
8 Washington state diversity, equity, and inclusion act.

9 NEW SECTION. **Sec. 2.** The intent of the people in enacting this  
10 act is to guarantee every resident of Washington state equal  
11 opportunity and access to public education, public employment, and  
12 public contracting without discrimination based on their race, sex,  
13 color, ethnicity, national origin, age, sexual orientation, the  
14 presence of any sensory, mental, or physical disability, or honorably  
15 discharged veteran or military status. This is accomplished by:  
16 Restoring affirmative action into state law without the use of quotas  
17 or preferential treatment; defining the meaning of preferential  
18 treatment and its exceptions; and establishing a governor's  
19 commission on diversity, equity, and inclusion.

PART II

PROHIBITION OF DISCRIMINATION AND PREFERENTIAL TREATMENT

1  
2  
3       **Sec. 3.** RCW 49.60.400 and 2013 c 242 s 7 are each amended to  
4 read as follows:

5       (1) The state shall not discriminate against, or grant  
6 preferential treatment to, any individual or group on the basis of  
7 race, sex, color, ethnicity, ~~((or))~~ national origin, age, sexual  
8 orientation, the presence of any sensory, mental, or physical  
9 disability, or honorably discharged veteran or military status in the  
10 operation of ~~public employment,~~ public education, or public  
11 contracting.

12       (2) This section applies only to action taken after December 3,  
13 1998.

14       (3) This section does not affect any law or governmental action  
15 that does not discriminate against, or grant preferential treatment  
16 to, any individual or group on the basis of race, sex, color,  
17 ethnicity, ~~((or))~~ national origin, age, sexual orientation, the  
18 presence of any sensory, mental, or physical disability, or honorably  
19 discharged veteran or military status.

20       (4) This section does not affect any otherwise lawful  
21 classification that:

22       (a) Is based on sex and is necessary for sexual privacy or  
23 medical or psychological treatment; or

24       (b) Is necessary for undercover law enforcement or for film,  
25 video, audio, or theatrical casting; or

26       (c) Provides for separate athletic teams for each sex.

27       (5) This section does not invalidate any court order or consent  
28 decree that is in force as of December 3, 1998.

29       (6) This section does not prohibit action that must be taken to  
30 establish or maintain eligibility for any federal program, if the  
31 director of the office of financial management, in consultation with  
32 the attorney general and the governor's commission on diversity,  
33 equity, and inclusion, determines that ineligibility ~~((would))~~ will  
34 result in a material loss of federal funds to the state.

35       (7) Nothing in this section prohibits schools established under  
36 chapter 28A.715 RCW from:

37       (a) Implementing a policy of Indian preference in employment; or

38       (b) Prioritizing the admission of tribal members where capacity  
39 of the school's programs or facilities is not as large as demand.

1       (8) Nothing in this section prohibits the state from remedying  
2 discrimination against, or underrepresentation of, disadvantaged  
3 groups as documented in a valid disparity study or proven in a court  
4 of law.

5       (9) Nothing in this section prohibits the state from implementing  
6 affirmative action laws, regulations, policies, or procedures such as  
7 participation goals or outreach efforts that do not utilize quotas  
8 and that do not constitute preferential treatment as defined in this  
9 section.

10       (10) Nothing in this section prohibits the state from  
11 implementing affirmative action laws, regulations, policies, or  
12 procedures which are not in violation of a state or federal statute,  
13 final regulation, or court order.

14       11 For the purposes of this section((7)):

15       (a) "State" includes, but is not necessarily limited to, the  
16 state itself, any city, county, public college or university,  
17 community college, school district, special district, or other  
18 political subdivision or governmental instrumentality of or within  
19 the state;

20       (b) "State agency" means the same as defined in RCW 42.56.010;

21       (c) "Affirmative action" means a policy in which an individual's  
22 race, sex, ethnicity, national origin, age, the presence of any  
23 sensory, mental, or physical disability, and honorably discharged  
24 veteran or military status are factors considered in the selection of  
25 qualified women, honorably discharged military veterans, persons in  
26 protected age categories, persons with disabilities, and minorities  
27 for opportunities in public education, public employment, and public  
28 contracting. Affirmative action includes, but shall not be limited  
29 to, recruitment, hiring, training, promotion, outreach, setting and  
30 achieving goals and timetables, and other measures designed to  
31 increase Washington's diversity in public education, public  
32 employment, and public contracting; and

33       (d) "Preferential treatment" means the act of using race, sex,  
34 color, ethnicity, national origin, age, sexual orientation, the  
35 presence of any sensory, mental, or physical disability, and  
36 honorably discharged veteran or military status as the sole  
37 qualifying factor to select a lesser qualified candidate over a more  
38 qualified candidate for a public education, public employment, or  
39 public contracting opportunity.

1 ((+9)) (12) The remedies available for violations of this  
2 section shall be the same, regardless of the injured party's race,  
3 sex, color, ethnicity, or national origin, as are otherwise available  
4 for violations of Washington antidiscrimination law.

5 ((+10)) (13) This section shall be self-executing. If any part  
6 or parts of this section are found to be in conflict with federal  
7 law, the United States Constitution, or the Washington state  
8 Constitution, the section shall be implemented to the maximum extent  
9 that federal law, the United States Constitution, and the Washington  
10 state Constitution permit. Any provision held invalid shall be  
11 severable from the remaining portions of this section.

12 **Sec. 4.** RCW 43.43.015 and 1985 c 365 s 4 are each amended to  
13 read as follows:

14 For the purposes of this chapter, "affirmative action" means, in  
15 addition to and consistent with the definition in section 3 of this  
16 act, a policy or procedure by which racial minorities, women, persons  
17 in the protected age category, persons with disabilities, Vietnam-era  
18 veterans, honorably discharged military veterans, and ((disabled))  
19 veterans with disabilities are provided with increased employment  
20 opportunities. It shall not mean any ((set)) form of quota system.

21 **PART III**

22 **CREATION OF THE GOVERNOR'S COMMISSION ON DIVERSITY, EQUITY, AND**  
23 **INCLUSION**

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.06  
25 RCW to read as follows:

26 (1) There is created the governor's commission on diversity,  
27 equity, and inclusion. The commission is responsible for planning,  
28 directing, monitoring, and enforcing each state agency's compliance  
29 with this act. The commission may propose and oppose legislation and  
30 shall publish an annual report on the progress of all state agencies  
31 in achieving diversity, equity, and inclusion in public education,  
32 public employment, and public contracting.

33 (2) The governor's commission on diversity, equity, and inclusion  
34 shall be staffed and funded within the governor's biennial budget.  
35 The executive commission members shall be appointed by the governor  
36 and serve four-year terms:

37 (a) Lieutenant governor;

- 1 (b) Attorney general;
- 2 (c) Superintendent of public instruction;
- 3 (d) Commissioner of the department of employment security;
- 4 (e) Secretary of the department of transportation;
- 5 (f) Director of the department of enterprise services;
- 6 (g) Director of the office of minority and women's business  
7 enterprises;
- 8 (h) Director of the department of commerce;
- 9 (i) Director of the department of veterans affairs;
- 10 (j) Executive director of the human rights commission;
- 11 (k) Director of the office of financial management;
- 12 (l) Director of the department of labor and industries;
- 13 (m) Executive director of the governor's office of Indian  
14 affairs;
- 15 (n) Executive director of the Washington state women's  
16 commission;
- 17 (o) Executive director of the commission on African-American  
18 affairs;
- 19 (p) Executive director of the commission on Asian Pacific  
20 American affairs;
- 21 (q) Executive director of the commission on Hispanic affairs;
- 22 (r) Chair of the governor's committee on disability issues and  
23 employment;
- 24 (s) Chair of the council of presidents;
- 25 (t) Chair of the board for community and technical colleges;
- 26 (u) Chair of the workforce training and education coordinating  
27 board;
- 28 (v) Executive director of the board of education;
- 29 (w) Chair of the board of Washington STEM;
- 30 (x) Chair, officer, or director of a state agency or nonprofit  
31 organization representing the legal immigrant and refugee community;
- 32 (y) Chair, officer, or director of a state agency or nonprofit  
33 organization representing the lesbian, gay, bisexual, transgender,  
34 and queer community;
- 35 (z) Any other agencies or community representatives the governor  
36 deems necessary to carry out the objectives of the commission.
- 37 (3)(a) The commission shall also consist of the following  
38 legislatively appointed members:
- 39 (i) Two state senators, one from each of the two largest  
40 caucuses, appointed by the president of the senate;

1 (ii) Two members of the state house of representatives, one from  
2 each of the two largest caucuses, appointed by the speaker of the  
3 house of representatives.

4 (b) Legislative members shall serve two-year terms, from the date  
5 of their appointment.

6 (4) Each commission member shall serve for the term of his or her  
7 appointment and until his or her successor is appointed. Any  
8 commission member listed in subsection (2) of this section, who  
9 serves by virtue of his or her office, shall be immediately replaced  
10 by his or her duly elected or appointed successor.

11 (5) A vacancy on the commission shall be filled within thirty  
12 days of the vacancy in the same manner as the original appointment.

13 **PART IV**  
14 **MISCELLANEOUS**

15 NEW SECTION. **Sec. 6.** Within three months following the  
16 effective date of this section, the office of program research and  
17 senate committee services shall prepare a joint memorandum and draft  
18 legislation to present to the appropriate committees of the  
19 legislature regarding any necessary changes to the Revised Code of  
20 Washington to bring nomenclature and processes in line with this act  
21 so as to fully effectuate and not interfere in any way with its  
22 intent. In preparing the memorandum and draft legislation, the office  
23 of program research and senate committee services shall consult with  
24 the sponsors of this initiative, the governor's committee on  
25 diversity, equity, and inclusion and the state human rights  
26 commission.

27 NEW SECTION. **Sec. 7.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 8.** For constitutional purposes, the subject  
32 of this act is "Diversity, Equity, and Inclusion."