

SB 6406, to repeal the Washington State Civil Rights Act

Bill would repeal voter-approved law and re-introduce the use of race, gender and ethnicity in state hiring, public contracting and public college admissions.

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Key Findings

1. SB 6406 would repeal the Washington Civil Rights Act and re-introduce the use of race, ethnicity and sex in the award of public benefits.
2. The Washington State Civil Rights Act was passed as I-200 in 1998. The measure passed by 58% to 42%, and received a majority vote in 38 of the state's 39 counties.
3. In the past officials could use race and other forms of discrimination in making decisions about public hiring, awarding contracts, and admissions to the UW, WSU and other state colleges and universities.
4. Civil rights opponents said I-200 would end girls' math and science programs, eliminate job training for minorities and women, and lead to expensive lawsuits. None of these predictions came true.
5. Repeal of the Washington State Civil Rights Act would work against the public interest by again allowing officials to discriminate against citizens based on race, ethnicity or gender.
6. SB 6406 would also work against the public interest by undermining confidence in the fair administration of government programs.

Introduction

SB 6406 would repeal Initiative 200, the Washington State Civil Rights Act, and permit public officials to again use race, ethnicity and gender in making decisions about who benefits from state employment, contract work, and admissions to the University of Washington, Washington State University, and other public universities and colleges.¹ The bill was introduced by Sen. Maralyn Chase (D-Edmonds) and has six co-sponsors.

Background

The Washington State Civil Rights Act was passed as Initiative 200 in 1998.² The measure passed by 58.2% to 41.8% and received a majority vote in 38 of the state's 39 counties. Polling indicates a majority of men, women, independents and union members supported the initiative.³

Previously, public officials had used the race, ethnicity, national origin and gender of citizens as a factor in making decisions about hiring, contracting and college admissions. Passage of Initiative 200 ended this practice. The initiative states:

“The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national

1 SB 6406, 65th Legislature, 2018 Regular Session, Washington State Legislature, introduced January 16, 2018 by Senators Chase, Hasegawa, Saldana, McCoy, Wellman, Keiser, and Kuderer.

2 Initiative 200, The Washington Civil Rights Initiative, passed November 3, 1998, Initiatives to the Legislature, Elections and Voting, Washington Secretary of State, at www.sos.wa.gov/elections/initiatives/legislature.aspx?y=1997.

3 “Poll: I-200 passage was call for reform,” by Tom Brune, *The Seattle Times*, November 4, 1998, at www.community.seattletimes.nwsourc.com/archive/?date=19981104&slug=2781558.

origin in the operation of public employment, public education, or public contracting.”⁴

The prohibition on discrimination applies to officials at all levels of government; the state, cities, counties, colleges and universities, school districts and other local jurisdictions. It bars officials from using their perception of a person’s race, gender or ethnicity in a way that harms or benefits any resident of the state.

The initiative includes exceptions for public bathrooms, medical privacy, psychological treatment, athletic teams, undercover law enforcement, and casting for film, video, radio and live performances.

The measure did not affect any court order or consent decree that was in force on the date of enactment.

Predictions of civil rights opponents

Opponents of the Washington State Civil Rights Act made a number of predictions of what would happen if the measure passed. They said passage of Initiative 200 would:⁵

- End opportunities for women in higher education;
- End girls’ math and science programs at elementary and secondary school levels;
- Close Women’s Resource centers on college campuses;
- Close the doors of equal opportunity to women and minorities;
- Eliminate job training programs that help women and minorities transition from welfare to work;
- End targeted educational opportunities, like tutoring, for children;

4 Revised Code of Washington 49.60.400.

5 What is Initiative 200?, No!Initiative 200 Campaign flier (copy available on request), 1998, and “Statement against I-200,” Governor Gary Locke, State of Washington Voters Pamphlet, General Election, November 3, 1998, at www.sos.wa.gov/_assets/elections/voters%20pamphlet%201998.pdf.

- Create a tangle of expensive lawsuits;
- Promote inequality among citizens.

None of these predictions happened. Nearly 20 years of experience as state law indicates that passage of the Washington State Civil Rights Act has not led to the dire predictions of its opponents to come true.⁶

Testimony on SB 6406

On January 26, 2018, the Senate State Government, Tribal Relations and Elections Committee held a public hearing on SB 6406 and whether the Initiative 200 law should be repealed.

Opponents of the Washington State Civil Rights Act said it should be repealed because people may not have understood the measure when it passed, and that the legislature should determine whether the law is doing what it is supposed to do.

They said national studies of the Washington State Department of Transportation (WSDOT), Sound Transit, and the Port of Seattle show that racial discrimination exists within these agencies. They report government officials reduced contracting for minority contractors from 13.3% in 1998 to 1.66% in 2004. They said the data show these agencies devote a smaller share of their budgets to identified minority-owned businesses than in the past.⁷

They also note that racial disparity remains a problem among administrators at public colleges and universities, and that the percentage of Native Americans viewed as on track for college has fallen from 50% to 38%.⁸

6 See “Toward a more equal society, making Initiative 200 work,” by Robert Holland, Policy Brief, Washington Policy Center, May 1999, at www.washingtonpolicy.org/publications/detail/toward-an-equal-society-making-initiative-200-work.

7 Senate Bill Report, SB 6406, Staff Summary of Public Testimony, as of January 31, 2018, at www.lawfilesex.leg.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/Senate/6406%20SBA%20SGTE%2018.pdf.

8 Ibid.

Support for the Washington State Civil Rights Act

Supporters of the Washington State Civil Rights Act spoke against SB 6404, saying the law should not be repealed and that it is wrong when officials in government use different rules for different races.

Initiative 200 sponsor John Carlson testified that when government officials “...emphasize race and hire by quota it is divisive and toxic and unfair. We don’t need to go back to those days.” He closed by saying government officials “should treat people the same, with a single standard of fairness.”⁹

Civil rights leader Ward Connerly testified that fairness is the centerpiece of the nation’s philosophy about race. He cited President Kennedy that, “Race has no place in American life or law,” that the state should protect equal rights for every person and that “rescinding I-200 would be a colossal step backward.”¹⁰

Conclusion

Supporters of SB 6406 argue that state officials should be allowed to use racial, ethnic and color divisions among citizens in the management of public programs, and that members of some identified groups should receive certain public benefits and opportunities, while denying equal access to those benefits to members of other groups.

Opponents of SB 6406 say that the Initiative 200 law is working and that state officials should not be permitted to consider factors such as race, gender or ethnicity. They say decisions about public hiring, contracting and university admissions should be made based on

the individual talents and merits of the applicants, not on group identity.

The Washington Civil Rights Act serves the public interest because it bars public officials from discriminating against citizens based on race, ethnicity or gender. Nearly 20 years of experience shows that SB 6406 would work against the public interest by undermining public trust in the fair and impartial administration of government programs.

The Initiative 200 law has been successful as public policy, and its purpose in promoting fairness in official administration is working as voters intended. It has also helped ensure that public officials do not use their personal perceptions about race and color to make decisions that affect the lives of people living in Washington state.

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Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

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⁹ Statement by John Carlson on SB 6404, Initiative 200 repeal, public hearing, State Government, Tribal Relations and Elections Committee, Washington state Senate, January 26, 2018.

¹⁰ Written statement by Ward Connerly on SB 6404, Initiative 200 repeal, State Government, Tribal Relations and Elections Committee, Washington state Senate, January 26, 2018.