



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

Motion 15958

Proposed No. 2021-0391.3

Sponsors Zahilay, Upthegrove, Kohl-
Welles, Balducci, Dembowski and
McDermott

1 A MOTION declaring that race- and gender-conscious
2 affirmative action practices in the county are urgently
3 needed to combat discrimination that race- and gender-
4 neutral measures have failed to eliminate in King County.

5 WHEREAS, from 1970 through 1977, Washington state Governor Daniel J.
6 Evans first enacted race- and gender-conscious affirmative action policies through a
7 series of executive orders which resulted in nearly thirty years of increased participation
8 of women and Black, Indigenous and People of Color ("BIPOC") communities in public
9 employment, public contracting and public education, and

10 WHEREAS, in 1985, the Washington state Legislature passed legislation
11 adopting Governor Evans' affirmative action executive orders into statutory law, now
12 codified as chapter 49.74 RCW, and

13 WHEREAS, in 1998, Washington state voters passed Initiative Measure 200 ("I-
14 200"), which stated in the November 3, 1998, Washington state voters' pamphlet, that I-
15 200 does not end all affirmative action programs, but only prohibits those programs that
16 use race and gender to select a lesser qualified applicant over a more deserving applicant
17 for a public job, contract or admission to a state college or university, and

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18 WHEREAS, before I-200's passage, the Washington state Attorney General at
19 that time, Christine Gregoire, established that I-200's effect would be determined, not just
20 by the words of the initiative, but by how its provisions are interpreted and applied, and

21 WHEREAS, in 2003, the Washington state Supreme Court in Parents Involved in
22 Community Schools v. Seattle School District No.1 held that RCW 49.60.400 did not
23 prohibit the consideration of race and gender in government actions or decisions but was
24 limited in its application to prohibiting the state's use of race or gender to select a less
25 qualified candidate over a more qualified candidate, and

26 WHEREAS, since 1998, Washington state has implemented Governor's Directive
27 Number 98-01, which for twenty-three years has misinterpreted I-200, now codified as
28 RCW 49.60.400, as a race- and gender-neutral affirmative action policy by erroneously
29 stating that neither race nor gender could ever be used as factors to select candidates for
30 public college or university admissions, public employment or a public contract, and

31 WHEREAS, in 2017, Washington state Attorney General Bob Ferguson issued
32 Opinion 2017 No. 2 which concluded that I-200 does not categorically prohibit all uses of
33 race- or gender-conscious measures in state contracting but allows the use of measures
34 that take race or gender into account in state contracting without elevating a less-qualified
35 contractor over a more-qualified contractor. The Attorney General also opined that under
36 narrow circumstances when evidence of race or gender discrimination exists and race-
37 and gender-neutral measures have been insufficient to remedy the discrimination, then
38 race- or gender-conscious measures may be allowed to remedy that disparity, and

39 WHEREAS, on January 26, 2018, the Director of the Washington state Office of
40 Minority and Women Business Enterprises ("OMWBE") reported to the Washington

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41 state Senate Committee on State Government, Tribal Relations & Elections Committee
42 that since the 1998 passage of I-200, Washington's small, minority- and women-owned
43 businesses had lost an estimated \$3.5 billion in state public contracting opportunities, and

44 WHEREAS, the 2019 state's Office of Minority and Women Business Enterprise
45 Disparity Study found that minorities and women continue to suffer discriminatory
46 barriers to full and fair access to contracts and associated subcontracts in the state's
47 market area and the lack of intervention in the wake of I-200 perpetuated these inequities
48 and some remedial action is warranted and necessary to ensure antidiscrimination in state
49 contracting activities, and

50 WHEREAS, in June 2021, the county auditor issued a report entitled Contracting
51 Inequities Persist in Race-Neutral Environment, which concluded that contracting
52 inequities persist in the county and provided fourteen recommendations to reduce racial
53 disparities in awarding county contracts, and

54 WHEREAS, in response to the county auditor report, the executive issued
55 Executive Order CON-7-28-EO entitled Pro-equity Contracting to direct the
56 implementation of most of the recommendations included in the county auditor report,
57 and

58 WHEREAS, action was already taken on one of the county auditor
59 recommendations by the enactment of Ordinance 19326 to implement a reciprocal
60 certification process to allow businesses that are certified through the OMWBE to be
61 automatically county small contract supplier certified to expand opportunities for
62 minority and women business enterprises to bid for county contracts;

63 NOW, THEREFORE, BE IT MOVED by the Council of King County:

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64 The council declares that race- and gender-conscious affirmative action practices
65 in the county are urgently needed to combat discrimination that race and gender neutral
66 measures have failed to eliminate. In furtherance of this policy, the council:

67 A. Urges Governor Jay Inslee to immediately sign an executive order rescinding
68 Governor's Directive 98-01 and restore race- and gender-conscious affirmative action
69 practices in the state of Washington, consistent with the Washington state Supreme
70 Court's ruling in *Parents Involved in Community Schools v. Seattle School District No.1*
71 and as used by the United States federal government and the vast majority of state
72 governments across the country;

73 B. Supports including an item in the council's 2022 legislative agenda to
74 advocate for any legislation necessary to timely and fully implement an executive order
75 that would rescind Governor's Directive 98-01 and implement race- and gender-
76 conscious affirmative action where appropriate;

77 C. Supports the recommendations included in the county auditor's June 2021
78 report, *Contracting Inequities Persist in Race-Neutral Environment*, to reduce racial
79 disparities and inequities in awarding county contracts;

80 D. Supports county Executive Order CON-7-28-EO entitled Pro-equity
81 Contracting that directs the implementation of most of the recommendations included in
82 the county auditor report;

83 E. Supports exploring the benefits of reestablishing a minority and women
84 business enterprises office or program in the county to ensure consistency in contracting
85 processes and criteria across county agencies and departments to eliminate ambiguities

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86 regarding the county's commitment to eliminating racial disparities and inequities in
87 awarding county contracts; and

88 F. Supports setting measurable countywide goals for spending with minority and
89 women's business enterprises to further the progress of eliminating racial disparities and
90 inequities in awarding county contracts.

Motion 15958 was introduced on 10/12/2021 and passed as amended by the
Metropolitan King County Council on 10/26/2021, by the following vote:

Yes: 9 - Ms. Balducci, Mr. Dembowski, Mr. Dunn, Ms. Kohl-Welles,
Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Mr. von Reichbauer
and Mr. Zahilay

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

DocuSigned by:

Claudia Balducci

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Claudia Balducci, Chair

ATTEST:

DocuSigned by:

Melani Pedroza

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Melani Pedroza, Clerk of the Council

Attachments: None