

**SUBJECT:** Amending the Top Ten Percent automatic admissions policy

**COMMITTEE:** Higher Education — committee substitute recommended

**VOTE:** 7 ayes — Morrison, McCall, F. Brown, Aycock, D. Howard, Patrick, Rose

1 nay — Giddings

1 absent — Alonzo

**SENATE VOTE:** On final passage, May 4 — 28-2 (Brimer, Shapleigh)

**WITNESSES:** For — (*Registered, but did not testify:* Mary Miksa, Texas Association of Business)

Against — Luis Figueroa, Mexican American Legal Defense & Educational Fund; (*Registered, but did not testify:* Yannis Banks, Texas State Conference of NAACP Branches; Stephen Brown, Urban Leagues of Texas; Patty Quinzi, Texas Federation of Teachers)

On — Michael O’Quinn, Alice Reinartz, Texas A&M University; William Powers, Bruce Walker, UT-Austin; Anna Alicia Romero, Intercultural Development Research Association; (*Registered, but did not testify:* Chris Alvarado, David Gardner, Raymund Paredes, Texas Higher Education Coordinating Board; Gary Lavergne, for President Powers)

**BACKGROUND:** After a federal court in 1996 struck down the use of race-based affirmative-action policies in higher education, Texas lawmakers established new admissions criteria for policies designed to increase diversity in state colleges and universities without directly basing admissions on the applicant’s race or ethnicity. The Top Ten Percent Law, HB 588 by Rangel, et al., enacted the following year by the 75th Legislature, guarantees admission to any public college or university in the state for Texas students who graduate in the top 10 percent of their high school graduating class.

Education Code, 51.804 authorizes institutions, if they choose, to adopt additional automatic admissions policies that would admit students who graduate in the top 25 percent of their high school graduating class.

Education Code, 51.805 outlines other criteria that institutions must consider when deciding to admit students who did not graduate in the top 10 percent of their high school class. It states that because of the changing demographic trends, diversity, and population increases, each general academic teaching institution shall also consider all of, any of, or a combination of 18 different socioeconomic factors, including the applicant's academic record, socioeconomic background, financial status, the applicant's performance on standardized tests, extracurricular activities and responsibilities, region of residence, field of study, and whether the student would be a first-generation college student.

**DIGEST:**

CSSB 101 would amend Education Code, sec. 51.803 to cap at 50 percent the number of students each general academic teaching institution would be required to admit automatically in an academic year under the Top 10 Percent Law. If the number of applicants who qualified for automatic admission exceeded the percentage of an institution's slots for first-time resident undergraduates, those applicants who completed the recommended or advanced high school program or its equivalent would be admitted first.

After offering admission to applicants who graduated under the recommended or advanced high school program, institutions would offer admission to the remaining applicants based on percentile rank according to a student's graduating class standing based on GPA, beginning with the top percentile rank, until a sufficient number of applicants had accepted admission offers to fill that percentage of the institution's enrollment capacity for first-time Texas undergraduates. An institution would have to offer admission to all applicants with the same percentile rank.

After offering admission to those applicants, an institution would consider any remaining applicants who qualified for automatic admission, but in the same manner as generally admitted first-time freshman students.

If the number of qualified applicants who had taken the recommended or advanced high school curriculum, or the equivalent, exceeded the number of spaces reserved for automatic admission, an institution would have to offer admission to applicants by percentile rank according to graduating

class standing based on GPA, beginning with the top percentile rank, until a sufficient number of applicants had accepted admission offers to fill that percentage. Institutions would have to offer admissions to all applicants with the same percentile rank.

Remaining applicants who qualified for automatic admission, including remaining applicants who had taken the recommended or advanced high school curriculum or the equivalent, would be considered for admission in the same manner as generally admitted first-time freshman students.

After consulting with the Texas Education Agency, the Texas Higher Education Coordinating Board would, by rule, establish standards for determining whether a student completed a high school curriculum that was equivalent to the recommended or advanced high school curriculum.

The provisions of the bill would apply beginning with admissions for the 2008-09 academic year, and admissions before then would be governed by current law.

The bill would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

CSHB 101 would maintain the benefits of the Top 10 Percent Law while giving universities the flexibility they need to carry out their duty to all the people of Texas. The admissions process of any university is an exercise both in selecting qualified students with a high probability of achieving success and in crafting an entering class that serves the university's mission. Higher education experts and administrators are well aware of the urgent need in Texas to expand higher education opportunities to all citizens, especially those who have historically suffered from discrimination. Since the enactment of the Top Ten Percent Law, however, universities have been required to admit all applicants who graduated in the top 10 percent of their high school classes, which has had significant negative consequences that the bill would address. Texas universities need to address the needs of all Texans, not just a certain population. Many top-notch students who are not in the top 10 percent are being overlooked, especially those in large urban high schools.

Current law requires state universities to admit certain students based on a single criterion – graduation rank – that limits an institution's flexibility and creates an unhealthy academic environment. Texas' flagship

institutions are losing control of enrollment through the number of slots they must dedicate to top 10 percent graduates.

One of the state's flagship schools, the University of Texas at Austin, is particularly burdened by the current law. For example, according to the university, among incoming students from Texas high schools, about 71 percent were admitted under the top 10 percent plan in the fall of 2006, compared to 69 percent in the fall of 2005. That means that only 28 percent of an entering freshman class is made up of students admitted under a holistic review process, about 8 percent of whom are out-of-state students. In 2006, 24,000 high school students graduated under the top 10 percent plan, and UT Austin simply could not handle all of them if they applied. An entering freshman class at UT-Austin is from 7,000 to 7,200 students – a number that university officials do not want to increase.

Such a rigid admissions policy is hampering the university's ability to admit an ethnically diverse student body and choking the flow of other talented students into fields such as music and the arts. Only one in four top 10 percent students is African-American or Hispanic. Capping the number of automatic admissions would allow for more discretionary admissions, and a more holistic admissions approach would allow an institution to recruit a rich array of students, including minority students. Since 2005 at UT-Austin, race and ethnicity have been included in the list of circumstances that may be considered in admissions. If allowed more discretion in admissions, institutions could use ethnicity as a factor in admissions in a robust way. Even though the minority enrollment percentage has increased under the top 10 percent plan, the actual numbers are not that significant. Besides, the increased minority enrollment in higher education simply reflects the high school population trends because since 1996, the African-American and Hispanic populations have increased in Texas.

Without a cap, it would be difficult to increase the number of minority students. Under the current law, the percentage of students being admitted under a holistic review is so small that the remaining slots are very competitive. If institutions could use other factors, such as test scores, special talents, leadership ability, personal achievements, or other relevant aspects of a student's application, while continuing the use of targeted scholarships and outreach, they could admit a more well rounded class of students that could include more minorities, student leaders, and individual virtuosos. Texas A&M currently admits about 50 percent of its

freshman class under the top ten percent rule – a figure that has remained fairly constant. Admissions offices claim they have had more success increasing minority enrollment using aggressive outreach and targeted scholarships.

Capping the number of automatic admissions would not negatively affect the geographic diversity gains or the rural school participation achieved under the top 10 percent plan. It just means that more students from both rural and urban high schools who were not in the top 10 percent would gain admission to the state's flagship institutions. Before the enactment of the plan, only 29 rural high schools had students admitted to the state's flagships and in 2006, there were 68 schools. However, even though the number of schools has increased, the percentage of students admitted from these schools has remained steady over the last 10 years. Initially, top 10 percent graduates outperformed their non-top 10 percent peers, but this is changing. Top ten percent students are still outperforming their peers, but their GPAs and SAT scores have been declining, while the scores for the non-top 10 percent graduates have been increasing.

**OPPONENTS  
SAY:**

The number of students allowed to be automatically admitted should not be capped because the Top 10 Percent Law is doing exactly what it was designed to do – provide a race-neutral method of admitting a diverse class of highly qualified students. The system is fair because basing admissions on class rank levels the playing field for students across the state and compares them to their peers based on how well they have taken advantage of available resources. The plan is simple to understand and sends a “play by the rules” message to students across Texas. Capping the number of automatically admitted students would undermine the college aspirations of students from all racial, ethnic, geographic, and economic backgrounds and would diminish the duty and accountability of flagship institutions to all Texans.

The existing law has helped Texas' flagship universities fulfill their mission to serve students across the state by granting broader opportunities to the very best students from every high school. Not only has it helped create more diverse freshman classes – racially, economically, and geographically – at UT-Austin and Texas A&M, but it has done so in a way that benefits all regions of the state, especially poorer rural and urban areas. Before the law, a handful of largely suburban high schools sent many of the students admitted to UT-Austin and Texas A&M.

Historically, increasing ethnic diversity has been more successful, especially for Hispanic students, under the Top 10 Percent plan than under holistic review admissions that included race-conscious affirmative action policies in place before 1996. It would not make sense to cap the only program that is working. With a more limited top 10 percent plan, Latino and African-American students in rural and urban areas would find it more difficult to be admitted to the state's flagship schools. Schools with a high percentage of low-income students, especially border area schools, would lose if the bill were enacted. Even if the freshman class were made up of 71 percent top 10 percent students, there still would be room to recruit minority students. Recruiting minorities without the guarantee simply would not work as well.

Data from UT-Austin's admissions office indicate that since 1996, among all racial and ethnic groups, top 10 percent students have outperformed students who scored significantly higher on standardized college entrance exams. In addition, class rank appears to be a good predictor of student performance. The law has enabled Texas universities to enroll highly qualified, superior, motivated students.

Other state schools with similar rankings that have automatic admissions policies have many more top 10 percent students than UT-Austin and are still able to build strong academic classes. Capping the number would be akin to taking only the top 5 or 6 percent, and those students likely would gain admission anyway, with or without an automatic admissions policy.

Because of the nature of selective universities, someone is going to be left out, and the real question is who that is going to be. Under the current plan, there is a better reflection of the population of Texas in the classes of students being admitted to the state's universities.

**OTHER  
OPPONENTS  
SAY:**

If the current law is amended, it should be to give priority in admissions to under-represented schools, which has never been given serious consideration before now. In addition, instead of limiting the size of admitted classes, the number of transfer students could be limited.

If other state universities would aggressively recruit students, it would relieve some of the burden on UT-Austin, but the Legislature also should create more attractive flagship institutions. Rather than amending the existing admissions policy, adopting a return to a statewide policy of race-conscious university admissions would be the surest way to ensure true

diversity in freshman admissions. U.S. Supreme Court decisions permit the use of race-sensitive admissions criteria, and UT-Austin has been using race and ethnicity as criteria in discretionary admissions since 2005. Such policies should be adopted at all public universities in the state, including Texas A&M, which contemplates no changes in this regard to its admissions policy.

**NOTES:**

The Senate-passed version of the bill would allow institutions to cap the number of automatic admissions at 60 percent and require students to complete the recommended or advanced high school curriculum in order to qualify for automatic admission. The House committee substitute would allow institutions to cap automatic admissions at 50 percent.

The Senate version also would exempt students admitted under the top ten percent plan from payment of certain statutory tuition, course fees, and lab fees, but not designated tuition, at institutions capping automatic admissions at 60 percent. The House committee substitute deleted that section, which the fiscal note estimated would cost \$6.2 million in fiscal 2009, \$12.0 million in fiscal 2010, and \$16.8 million in fiscal 2011.