

SUBJECT: Limit on Top Ten Percent automatic admissions policy

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Branch, Berman, Cohen, D. Howard, McCall, Patrick, Rose
1 nay — Alonzo
1 absent — Castro

SENATE VOTE: On final passage, March 25 — 24-7 (Ellis, Gallegos, Shapleigh, Uresti, Van de Putte, West, Whitmire)

WITNESSES: (*On House companion bill, HB 52:*)
For — John Adkins; Jim Boon, Texas Exes; Dhananjay Jagannathan; Jodie Jiles; Harriet Murphy; Daniel Tisdale; (*Registered, but did not testify*): J.J. Baskin; Patricia Bobeck, UT Jackson School Friends and Alumni Network; Ben DeLeon; Martin Dies; Bill Hammond, Texas Association of Business; Robert Howden; Nelson Nease; Pamela Willeford; Justin Yancy, Governor’s Business Council)

Against — Miriam Arellano; Gonzalo Barrientos; Luis Figueroa, Mexican American Legal Defense and Educational Fund; Carla Leyva, League of United Latin American Citizen Council; William Liu, Asian Desi Pacific Islander American Collective; Cindy Quintanilla, Latino Leadership Council; Manuel Rendon; Jesse Romero; Howell Wright, Rockdale ISD and Texas Association of Community Schools; (*Registered, but did not testify*): Jeff Adams, Farmersville ISD; Yannis Banks, Texas NAACP; Rita Gonzales-Garcia, Lorena Tule, League of United Latin American Citizens; Ron Mayfield, Fort Stockton ISD; Anna Romero; Antonio Romero; Emiliano Romero; Chelsea Roser, Latino Leadership Council; Michael Smith, Texas Association of Community Schools; Jay Tullos

On — Kathryn Bonesteel; Francisco Cigarroa, The University of Texas System; Albert Cortez, Intercultural Development Research Association; Elsa Murano, Joseph Pettibon, Alice Reinartz, Texas A&M University; William Powers, The University of Texas at Austin; Lauren Ratliff, The U.T. Senate of College Councils; Bruce Walker, for President Powers;

(Registered, but did not testify): David Gardner, Raymund Paredes, The Texas Higher Education Coordinating Board; Mike King, Texas Association of Rural Schools; Gary Lavergne, for President Powers.

BACKGROUND: After the 5th U.S. Circuit Court of Appeals in *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 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 admission on the applicant's race or ethnicity. The Top Ten Percent law, HB 588 by Rangel, enacted in 1997 by the 75th Legislature, guarantees admission to any public college or university in the state for Texas students who graduate with a GPA in the top ten percent of their high school graduating class.

Education Code, sec. 51.803 requires each general academic institution to admit an applicant if the student graduated with a GPA in the top ten percent of the student's high school graduating class. Generally, applicants must:

- graduate from a Texas public or private high school after successfully completing the recommended or advanced high school curriculum program or its equivalent; or
- meet ACT's college readiness benchmarks or score at least 1,500 out of 2,400 on the SAT, and
- if the applicant graduated from a high school operated by the U.S. Department of Defense, be a Texas resident.

Education Code, sec. 51.805 outlines other criteria that institutions must consider when deciding to admit students who did not graduate in the top ten 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, 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.

In *Grutter v. Bollinger*, 539 U.S. 306 (2003), the U.S. Supreme Court upheld the affirmative action admissions policy of the University of Michigan Law School. The court held that diversity is a compelling

interest in higher education and that race is one of a number of factors that can be taken into account to achieve the educational benefits of a diverse student body. Public universities and other public institutions of higher education are now allowed to use race as a plus factor, along with other individualized factors, in determining whether a student should be admitted.

DIGEST:

(Rep. Branch intends to offer a complete floor substitute. The following analysis is of the floor substitute:)

SB 175, as substituted, would authorize general academic teaching institutions to cap at 60 percent the number of students each institution would be required to admit automatically in an academic year under the Top Ten Percent Law, beginning with admissions for the 2010-11 academic year. If the number of applicants who qualified for automatic admission exceeded 60 percent of an institution's slots for first-time resident undergraduates, an institution could elect to limit automatic admissions to no more than 60 percent of the enrollment capacity for first-time resident undergraduate students.

If an institution limited automatic admissions, it then would be required to offer admission to those top ten percent applicants according to their percentile ranking in their graduating class based on grade point average, beginning with the top percentile rank, until a sufficient number of applicants had been offered admission in the number estimated to be sufficient to fill 50 percent of the enrollment capacity designated for full-time resident undergraduate students. Institutions would have to offer admission to all applicants with the same percentile rank.

After offering admission to those applicants, an institution then would have to offer admission to top ten percent applicants in a number estimated to fill an additional 10 percent of the enrollment capacity, but in the same manner as generally admitted first-time freshman students. After offering admission to those applicants, an institution would consider any remaining applicants who qualified for automatic admission in the same manner as generally admitted first-time freshman students.

An institution that elected to use the cap would be required to provide information to school districts by April 15 of each year on which percentile ranks of students were anticipated to be offered admission the following year. The information would be disseminated to high school

junior-level and senior-level students who qualified for automatic admission.

The Texas Higher Education Coordinating Board (THECB) would be required to develop and implement a program for general academic institutions to increase and enhance outreach efforts to academically high-performing high school seniors that were likely to be eligible for automatic admission. The program would provide those students with information and counseling about automatic admission and financial aid.

The bill would require school districts to provide information on automatic admission to all students when they first registered for high school. The bill would require the commissioner to adopt rules to allow school districts to notify incoming students for the 2009-10 academic year about the state's automatic admission policy as amended by the bill.

A general academic teaching institution could cap the number of automatically admitted students only for eight consecutive academic years.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

SB 175 would maintain the benefits of the Top Ten Percent Law while giving universities the flexibility they need to carry out their duty to all students in 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 ten percent of their high school class, which has had significant negative consequences that the bill would address. Texas universities should address the needs of all Texans, including the other 90 percent. Many top-notch students whose GPA does not rank them in the top ten percent are being overlooked, even though they are extremely well-prepared and successful students. This is especially true for those in large urban high

schools where academic competition is fierce. Until additional tier one institutions are established in the state, the law is forcing many top-notch students who are not in the top ten percent to out-of-state universities, creating a brain-drain of excellent students that should be in Texas institutions.

Current law requires state universities to admit certain students based on a single criterion—class rank—that limits an institution’s flexibility and creates a one-dimensional, unhealthy academic environment. According to a report from the National Association for College Admission Counseling in 2006, the top four factors in admission decisions at all colleges and universities are: grades in college preparatory courses; the strength of curriculum; admission test scores; and overall grades. Class rank is listed 6th in the order of importance. Basing admission on this single criterion deprives a campus of a well-rounded freshman class that reflects the diversity and excellence of the state. Texas’ flagship campuses are losing control of enrollment through the number of slots they must dedicate to top ten percent admissions.

One of the state’s flagships schools, the University of Texas at Austin, is particularly burdened by the current law. According to university officials, among incoming freshman students from Texas high schools, 81 percent were automatically admitted in the fall of 2008. By 2009, that number is expected to be 86 percent. If the law is not amended, by 2013 UT-Austin would be forced to reject all high school applicants who were not top ten percent graduates. In 2008, about 26,000 high school students graduated in the top ten percent of their class, 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. Increasing the size of the freshman class would be an irresponsible decision because all undergraduates would suffer. It would not be academically responsible to increase the number of students at UT-Austin when its student-to-faculty ratio already is too high. Other peer institutions have a much lower student to faculty ratio than UT-Austin.

The Top Ten Percent law was enacted to respond to the *Hopwood* decision that said race could not be used as a factor in college admissions. The Legislature struggled for a solution that was merit-based and fair. Now that the U.S. Supreme Court has decided that race can be an element in a list of admissions criteria, universities no longer need such a rigid policy to help promote diversity. To ensure the economic viability of the state,

Texas universities must admit and retain more minority students, and SB 175 would give them greater flexibility to implement admissions policies that would promote greater student diversity. The current admissions policy is too rigid and is hampering the university's ability to admit an ethnically diverse student body. It is also choking the flow of other talented students into fields like engineering, computer science, architecture, music, and the arts. Most top ten percent freshmen are simply not choosing these programs, and the university needs top performing students to go into these critical fields.

Capping the number of automatic admissions would allow for more discretionary admissions. A more holistic review would allow institutions to recruit a rich array of students, including minority students. If allowed more discretion, institutions could use ethnicity as a factor in admissions decisions in a robust way. Even though minority enrollment percentage has increased under the top ten percent requirement, 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, African-American, Hispanic, and Asian populations have increased in Texas.

It is not clear that the top ten percent admission policy has played a significant role in increasing diversity. There are some indications that it has played a role in promoting socioeconomic diversity and geographic diversity, but admissions officials say that those factors are also influenced by aggressive recruiting and targeted scholarships. For example, Texas A&M has eight facilities around the state staffed with admissions and financial aid counselors who target specific areas and high schools. The institution also has a new campaign to promote college-going called the "Do You Wonder?" educational bus tour. It offers college preparation sessions to high school students at high school campuses throughout the state. It focuses on how to properly prepare for the opportunity to attend any university, trade school, or community college. With programs like this, universities would be able to target all areas of the state, including rural areas and those with a high percentage of low-income students.

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 there is not more flexibility, institutions will not be able to identify and admit non-top ten percent minority students who have been

successful. 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, scientists, and virtuosos.

The bill would go a long way toward enhancing communication to students early in their high school careers about the state's automatic admission policy. Better outreach, especially with student financial aid information, would highlight a clear path for well prepared students.

Allowing institutions to limit the number of those automatically admitted for eight years would give institutions time to develop a more diverse, well rounded student body. It would also give the Legislature an opportunity to reevaluate the program in the future. If minority enrollment declined, the Legislature would be able to address it at that time, if not sooner.

**OPPONENTS
SAY:**

The number of students allowed to be automatically admitted should not be capped because the Top Ten Percent Law is doing exactly what it was designed to do — provide a race-neutral, merit-based 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 Top Ten Percent plan was designed for students — not for institutions. It 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 rural areas. Before the

law, a relatively few, largely suburban high schools were the source of many of the students who were admitted to UT-Austin and Texas A&M.

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 has proven to be an important first step toward increasing higher education access for Hispanics and African Americans. Diversity has increased over the years since the law was enacted, both in numbers and percentages. That same broad diversity is missing in the numbers of non-top ten percent students. It would not make sense to cap the only program that is working.

With a more limited top 10 percent plan, Hispanic 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 out if the bill were enacted. Even if the freshman class were made up of 90 percent top 10 percent students, there still would be room to recruit additional minority students. Recruiting minorities without the admissions guarantee simply would not work as well.

Universities claim they do not have enough capacity to enroll all of the automatically admitted students. However, they do have the option of expanding the freshman class size or using classroom space more efficiently. From 1998 to 2008, the rate of applications at UT-Austin has risen. Applications have more than doubled for Hispanic students and more than tripled for African-American students. At the same time, however, UT-Austin has chosen to limit its enrollment, admitting fewer students in 2007 and 2008. Until the state establishes other tier-one universities that are attractive to a broad range of students, it would not be fair to change the rules for those who are qualified to be there.

Claims that automatically admitting students based on high school GPA is one-dimensional are misguided. Rather, a high school GPA is a collective indicator of a student's hard work and achievement. 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, with the necessary skills to succeed.

Because of the nature of selective universities, not everyone who applies is going to be admitted — the real issue is who should be admitted. 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:**

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 floor substitute for SB 175 is similar to the Senate-passed version in that it would allow automatic admissions to be capped at 60 percent of the incoming class, includes a “sunset” provision for institutions that use the cap for eight academic years, and would require outreach programs. The version of SB 175 approved by the House Higher Education Committee would have allowed automatic admissions to be capped at 50 percent of the incoming class and did not include a “sunset” provision or the required outreach programs to high-performing high school students.