

SENATE BILL REPORT

SB 6268

As Reported By Senate Committee On:
Higher Education, January 22, 2004

Title: An act relating to bringing state law into conformity with 2003 United States supreme court affirmative action decisions.

Brief Description: Permitting a college or university to maintain a diverse student population by considering race, color, ethnicity, or national origin in the admission and transfer process without using quotas, predetermined points, or set asides.

Sponsors: Senators Kohl-Welles, Carlson, Jacobsen, Schmidt, Shin, Regala, Kline, McAuliffe and Franklin; by request of Governor Locke.

Brief History:

Committee Activity: Higher Education: 1/22/04 [DPS-JUD].

SENATE COMMITTEE ON HIGHER EDUCATION

Majority Report: That Substitute Senate Bill No. 6268 be substituted therefor, and the substitute bill do pass and be referred to Committee on Judiciary.

Signed by Senators Carlson, Chair; Schmidt, Vice Chair; Kohl-Welles, B. Sheldon and Shin.

Staff: Heather Lewis-Lechner (786-7448)

Background: Under current Washington law, higher education institutions may not grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin.

In June 2003, the U.S. Supreme Court held that a law school's use of race in its admissions decisions to further an interest in obtaining the educational benefits that flow from a diverse student body is not a violation of the U.S. Constitution's Equal Protection Clause. In a separate decision that same day, however, the court held that an undergraduate university's admissions policy that automatically distributed points to under-represented minority applicants was unconstitutional under the Equal Protection Clause. In these two cases, the court laid out detailed guidelines for what types of admissions programs that take into account race or ethnicity would be constitutional and what types would not.

Summary of Substitute Bill: Colleges and universities are allowed to consider race, color, ethnicity or national origin in their admission or transfer policies if the purpose of the consideration is to promote diversity and if the policy meets a list of minimum requirements. The minimum requirements are taken from the guidelines established by the U.S. Supreme Court decisions:

- (a) no admission slots may be set aside on the basis of race, color, ethnicity, or national origin nor shall any person be given separate consideration based solely on race, color, ethnicity, or national origin;
- (b) every policy will include individualized consideration of each qualified applicant and all forms of diversity shall be taken into account;
- (c) race, color, ethnicity or national origin shall not be given a predetermined numerical value or weight in the admissions process;
- (d) the policy must include criteria for evaluating whether the consideration of race, color, ethnicity, or national origin is still necessary to promote diversity and there must be a process for periodic reviews; and
- (e) there must be a process for periodically exploring workable race-neutral alternatives that would achieve the diversity that the college or university is seeking, without compromising academic quality.

Substitute Bill Compared to Original Bill: The title was changed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is about providing higher education institutions with the flexibility they need to provide Washington students with the highest quality academic environment. It allows for a comprehensive approach to admissions with an emphasis on tolerance and inclusion where all of an individual's characteristics are taken into account. It does not allow preferential treatment, set asides, or numerical quotas. This will allow institutions to form student bodies that are reflective of our society. It will promote intellectual stimulation in Washington institutions and better prepare students for the real world. A diverse student body helps create a better learning environment for all students.

This bill is of great importance to the state of Washington; it is an opportunity to do what is right for the people of Washington by showing that we are a diverse body and we support our diversity. America is a melting pot and right now under current Washington law a key ingredient is missing. This bill brings Washington law into alignment with the federal law and other institutions around the country. Washington institutions compete for students nationally and right now our universities cannot compete with peer institutions. There are fewer minority student at Washington institutions than peer institutions.

The business community also recognizes the importance of a diverse workforce and its benefits on economic development. Businesses are concerned with the body of applicants our universities are producing. When businesses are considering moving into an area they often come to the local college or university campus to see what sort of workforce is being prepared for them. In the health care field, for example, there is a disparity in the health status among our state's increasingly diverse community and we need to increase the diversity in our health care work force in order to help address this. The only way to do that is to increase the diversity of the students that will be entering that work force. In the original Supreme Court

decisions, the nation's military academies became involved because they recognized the importance of diversity and the need for flexibility. The academies were involved because they had determined that they could not do their mission of national security in an efficient, effective and proper way if their cadre of managers, CEOs, etc. were not reflective of the society they were working in and had not had diverse educational experiences.

Perception is very important and some prospective students will not even apply at our universities because of their perception that diversity is not valued or encouraged in our state. Our state is a very diverse one and we should not be afraid to embrace total diversity. This bill is about recognizing the values and benefits of diversity and providing opportunities to all students; it is about considering the whole person.

Testimony Against: None.

Testified: PRO: Senator Kohl-Welles, prime sponsor; Rep. Kenney; Alton McDonald, National Action Network; Vickie Ybarra, WA State Board of Health; Tim Washburn, UW; Lee Huntsman, UW President; Michael Salvador, Council of Faculty Representatives; Julia Harrison, Graduate & Prof. Student Senate, UW; Deb Merle, Governor's Office; Doug Scrima, TESC; Joaquin Hernandez, WA State Hispanic Bar Assoc. King County Bar Assoc.; Manik Ahuja, citizen; Jerry Sheehan, ACLU-WA; Lee Lambert, Centralia College; Bruce Botka, HECB; Brittany Goodnight, ASUW.