SENATE BILL REPORT
SB 5575

As Reported By Senate Committee On:
Early Learning, K-12 & Higher Education, March 2, 2005

Title: An act relating to higher education admissions.

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, Pridemore, Shin, Brown, Rockefeller, McAuliffe, Berkey, Thibaudeau, Franklin, Kline, Regala, Jacobsen and Keiser.

Brief History:
Committee Activity: Early Learning, K-12 & Higher Education: 2/11/05, 3/2/05 [DPS, DNP].

SENATE COMMITTEE ON EARLY LEARNING, K-12 & HIGHER EDUCATION

Majority Report: That Substitute Senate Bill No. 5575 be substituted therefor, and the substitute bill do pass.

Signed by Senators McAuliffe, Chair; Pridemore, Vice Chair; Weinstein, Vice Chair; Berkey, Eide, Kohl-Welles, Rasmussen, Rockefeller and Shin.

Minority Report: Do not pass.

Signed by Senators Benton, Schmidt, Ranking Minority Member; Carrell, Delvin, Mulliken and Pflug.

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:

- no admission slots may be set aside on the basis of race, color, ethnicity, or national origin nor must any person be given separate consideration based solely on race, color, ethnicity, or national origin;
- every policy will include individualized consideration of each qualified applicant and all forms of diversity must be taken into account;
- race, color, ethnicity, or national origin must not be given a predetermined numerical value or weight in the admissions process;
- 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
- 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.

A referendum clause is included in the bill.

Substitute Bill Compared to Original Bill: Changes to the intent section are made to further clarify that the flexibility given to colleges and universities is limited and that racial preferences are not allowed.

A referendum clause is included.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: This bill contains a referendum clause and takes effect if adopted and ratified by the voters at the next general election.

Testimony For: As you can see from the bill itself, the bill amends, but does not repeal, I-200. The bill does not do away with prohibitions against preferential treatment, quotas, set asides or create reverse discrimination. Under the bill institutions must use individual consideration and consider the whole applicant, it is narrowly drawn and provides numerous safeguards. The bill gives our universities and colleges some limited flexibility so that they can compete with peer institutions and achieve a more diverse student body. Admissions officers should be able to evaluate the whole person. We are one of only two states that does not allow our universities this flexibility and our institutions are having a hard time recruiting the top students. Perception is a big factor in this difficulty because the perception is that Washington is not friendly to diversity. This perception also impacts recruiting quality faculty.

The U.S. Supreme Court ruled that diversity is a compelling interest and, as a faculty member, I can say that it is true that students receive a higher quality education when there is a diverse student body. Greater diversity enhances the education of all students. By producing diverse professional graduates we also produce great mentors for our youth. Students need

this knowledge to succeed in the global economy and that is why many major business are supportive of this bill. While some institutions can say we have a higher diversity in our freshman class today than we have had in the past, that is a misleading statement and masks the issue because our student body is still not representative of the diversity in our state. The issue is not about statistics and numbers, it is about leadership and sending a positive message to students of color about how important their college education is and that Washington values diversity. Institutions do not have enough slots for all our qualified applicants and we need to be able to do a holistic consideration of the entire applicant. This bill gives institutions one more tool.

America is trying to climb the Everest of humanity and do what no nation has ever done - eliminate inequality. Our country has come a very long way over the years in regards to racial and human equality. People who support I-200 and oppose this bill must think that we have already made it and that we have overcome racial inequity but we have not made it yet. The most complicated part is still before us because equality is not always equal; not everyone starts out at the same spot, some have barriers and biases that they must overcome that others do not. One may hope that someday we will not need affirmative action but that day has not yet arrived.

Testimony Against: This bill allows universities to do now what they were doing before I-200 passed and what they cannot do under I-200, that's not a tweak, that is a repeal. The gutting of I-200 by this bill would be a betrayal of the voters this body represents. Before I-200 passed, opponents to the initiative were claiming that the initiative would be a disaster for diversity. But at the University of Washington today you see a freshman class that is the most diverse class in the school's history. Instead of admitting they were wrong, critics of I-200 are now saying let's unravel the I-200 prohibition on preferences and go back to using race in admissions anyway. The personal statement on student's applications already gives institutions enough information about how a student will contribute to the diversity of the institution without having to use racial stereotypes.

We are a multi-racial society and the days of treating people differently based on race are over. People spoke overwhelmingly in support of that when they voted to pass I-200 six years ago. We do have serious issues of race and opportunity left to grapple with but we should not use someone's race as a justification to treat them differently.

In the U.S. Supreme Court decisions, the Court came within one vote of imposing I-200 restrictions on the entire country. Instead the Court said you can continue to use race preferences but the sun is setting on that ability and it tightened the manner in which those preferences could be used. We were already in compliance with that Supreme Court ruling and so it can not be a justification for this bill. The Court's ruling was permissive not mandatory. While diversity is important, we must get there without discriminating. Racial discrimination is wrong when it is done by people and indefensible when it is done by the government. The Orwellian wording of this bill twists I-200 into a pretzel and violates its principles. I-200 closed the door on discrimination and this bill re-opens that door.

Who Testified: PRO: Senator Kohl-Welles, prime sponsor; Senator Prentice, 11th District; Senator Shin, 21st District; Michael Salvador, Gail Stygall, Jim Huckabay; Council of Faculty Representatives; Ken Alhadef, Sally Savage, Raol Sanchez, WSU; Oscar Eason, Rev. Phyllis

Beaumonte, NAACP; Dough Scrima, TESC; Bruce Botka, HECB; Marcine Anderson, WSBA; Jeremy Sher, Seattle Human Rights Commission; Christina Gaeta, LEAP; David Thourd, Tim Washburn, Enrique Morales, UW; Nani Jackins Park, SBCTC; Dr. Jull Wakefield, President South Seattle Community College; Enrique Gonzales, Precious Aure, Jamie Coring, UW Students.

CON: John Carlson, I-200 Chairman; Tim Eyman, Voters Want More Choices; Aaron Schwitters, Nick Dayton, Brent Ludeman, UW Students.

Signed in, Unable to Testify & Submitted Written Testimony: PRO: Wendy Rader-Konofalski, AFT Washington and UFWS; Lloyd Burroughs, citizen.