

Texas eyes options for intercity passenger rail

Passenger rail transportation in Texas has drawn renewed attention with the recent availability of federal and state funds for rail development. This includes about \$8.1 billion in available federal funds for high-speed and intercity passenger rail, which will be awarded on a competitive basis, and a contingent appropriation of state funds for rail relocation and rehabilitation.

Proponents of passenger rail in Texas have focused attention on promoting the concept of a “Texas T-Bone,” which is a proposed high-speed rail corridor connecting the major metropolitan areas of Texas, as well as on a commuter rail line between Austin and San Antonio, improvements to a key rail intersection in Fort Worth, and a variety of other projects around the state.

Federal money available

The American Recovery and Reinvestment Act, signed into law by President Obama in February, made available \$8 billion for high-speed rail corridors and intercity passenger rail service and \$1.3 billion for Amtrak. Texas has applied for about \$21.5 billion in federal funds for high-speed intercity rail projects through the Recovery Act and other federal sources, according to the Texas Department of Transportation (TxDOT).

The combined federal funds are available through the High-Speed

Intercity Passenger Rail program (HSIPR). The funds include the \$8 billion in Recovery Act funds, plus \$9.5 million for intercity passenger rail planning and \$82.4 million in fiscal 2008-09 appropriations, for a total of about \$8.1 billion. In addition, the U.S. Congress recently appropriated another \$2.5 billion for high-speed and intercity rail and \$1.6 billion for Amtrak for fiscal 2010.

For federal funding purposes, high-speed rail is defined as rail service that can be expected to reach speeds of 110 mph or faster. Intercity passenger rail is broader — it includes rail transportation between cities and generally is

federally operated through a contract with Amtrak. Intercity passenger rail generally does not include commuter rail, which is short-haul service within a metropolitan area or region, usually having reduced fares, multiple rides, and morning and evening peak operation.

The \$8 billion in Recovery Act funds for high-speed and intercity passenger rail will be administered by the Federal Railroad Administration as competitive grants. Funds may be used to acquire and build tracks and stations but not for project planning. Some planning expenses may be eligible for matched

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UT–Austin implements new top 10 percent rules for freshman admissions

Students graduating in the top 10 percent of their high school classes in Texas may no longer be guaranteed admission to the University of Texas at Austin, beginning with the entering class for 2011-12. A law enacted in 1997 guaranteed admission to any public university in Texas to a student who graduated in the top 10 percent of the student’s high school class, but a new law enacted this year modified the automatic admissions process for UT-Austin.

SB 175 by Shapiro, enacted during the regular session of the 81st Legislature, allows UT-Austin to limit automatic admissions to 75 percent of its enrollment capacity for entering resident freshmen. UT-Austin is projected to reach the new cap in the 2011-12 school year by automatically admitting students who graduate in the top 8 percent of their high school classes. The remaining spaces will be filled through a “holistic” review that considers a variety of factors, including a student’s race and ethnicity (*see page 10*). Under the new law, UT-Austin may limit automatic admissions through the 2015 school year.

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federal assistance from unrelated federal appropriations for fiscal 2008 and 2009.

The two Texas applications with the largest funding requests total about \$21.4 billion. Those applications include a \$19.7 billion request for a high-speed rail corridor connecting major Texas cities and a \$1.7 billion request for planning for high-speed rail corridors. Both projects are still in the planning and evaluation stages. The remaining Texas applications are for a variety of projects around the state. (*see page 3*).

Criteria for selecting projects

Requests for federal funds will be considered in “tracks” based on the proposed purpose of the funds. Applications will be assessed for their individual merit and for their regional benefits, taking into account national priorities and schedules.

Evaluation criteria used to assess projects individually will include:

- public return on investment — including improved passenger rail integration, transportation safety benefits, job preservation and creation, and environmental and energy benefits;
- factors that may contribute to the project’s success — including organizational capacity, availability of operating financial support, adequacy of engineering, progress toward environmental clearance, safety and security planning, stakeholder support, track record of comparable projects, management plans, and quality of planning processes; and
- project readiness and how quickly the project can be completed.

The Federal Railroad Administration also will review projects to ensure national balance and diversity of regional passenger rail options, among other factors. Applications may be evaluated based on whether additional state and local funds are available, although matching funds are not required to receive Recovery Act funds.

National Rail Plan

Future funding for high-speed and intercity passenger rail will be governed broadly by the forthcoming National Rail Plan — including up to \$3.7 billion in funds authorized in PRIIA (Passenger Rail Improvement and Investment Act of 2008) for intercity passenger rail service, high-speed rail corridor development, and grants to reduce congestion or increase ridership.

A preliminary plan released by the Federal Railroad Administration in October identifies several objectives for rail as part of the national transportation system. These objectives include improving the performance of passenger and freight rail, integrating all transportation modes, identifying projects of national significance, and fostering public awareness of the benefits of rail transportation. The preliminary plan also includes a map of proposed high-speed rail corridors being considered by Congress and other governmental bodies. One of those corridors is the South Central High-Speed Rail Corridor, which includes a proposed link between San Antonio and Dallas-Fort Worth.

The FRA anticipates launching a series of web conferences and regional stakeholder meetings as part of initial work on the National Rail Plan in 2010.

Passenger rail infrastructure in Texas

Amtrak currently operates two long-distance passenger routes in Texas and one short-distance route supported jointly by Texas and Oklahoma. The routes include:

- the Texas Eagle, ultimately connecting Chicago with Los Angeles and providing service in Texas from Texarkana to El Paso, by way of San Antonio;
- the Sunset Limited, which ultimately connects New Orleans with Los Angeles and provides service in Texas from Beaumont to El Paso; and
- the state-supported Heartland Flyer, which connects Fort Worth to Oklahoma City along the I-35 corridor.

Texas applications for federal funds for passenger rail

Funds available for passenger rail development through the American Recovery and Reinvestment Act will be administered as competitive grants through the Federal Railroad Administration. The Recovery Act funds and other federal funds are available through the High-Speed Intercity Passenger Rail Program, which has organized applications into four “tracks” based on how the funds would be used.

Track one is for ready-to-go projects and for preliminary federal environmental and engineering studies for projects that may be accomplished within two years. The Texas applications are for:

- signal improvements along the Burlington Northern Santa Fe (BNSF) rail line in Fort Worth for Amtrak’s Heartland Flyer (\$3.7 million requested);
- engineering and preliminary environmental clearance for the Austin-San Antonio high-speed rail line (\$17.9 million requested; \$35.7 million estimated total project costs);
- reducing delays on Amtrak’s Texas Eagle route between Fort Worth and Temple (\$8.5 million requested);
- rail improvements to alleviate congestion at Tower 55 in Fort Worth, an intersection of BNSF and Union Pacific (UP) lines associated with the Heartland Flyer and Texas Eagle (\$30 million requested; \$93.7 million estimated total project costs);
- initial planning for high-speed rail corridors within Texas, commonly known as the Texas T-Bone (\$1.7 billion requested); and
- engineering and environmental clearance to develop rail and other improvements to alleviate congestion at both Tower 60 and the Saginaw Interlocker in Fort Worth (\$520,000 requested).

Track two is for high-speed rail corridor programs — specifically, development of inter-related projects that are part of a long-range service development plan. The Texas application is for:

- development of the high-speed rail corridor associated with the Texas T-Bone High-Speed Passenger Rail Corridor (\$19.7 billion requested). According to TxDOT, this project does not have a service development plan or environmental clearance at this time.

Track three is for planning aimed at securing future high-speed rail projects. The Texas applications are for:

- planning tasks and study of a corridor between Dallas and Marshall, including preparing for a service development plan (\$200,000 requested; \$400,000 estimated total project cost); and
- initial planning for the Texas T-Bone (\$9.5 million requested; \$19 million estimated total project cost).

Track four is for fiscal 2009 appropriations — an alternative for projects in engineering, environmental, and construction phases with matched funding and longer horizons for completion. The Texas application is for:

- track improvements for the Trinity Railway Express around Valley View (\$7.2 million requested; \$14.4 million estimated total project costs).

Service times vary for each rail line, but all Amtrak passenger trains in the state run on freight lines operated by Union Pacific and Burlington Northern Santa Fe (BNSF) and provide service to their destinations daily or every two to three days.

Past efforts at high-speed, intercity rail. In addition to Amtrak-operated lines, Texas for many years has been considered fertile ground by some for implementing high-speed intercity passenger rail service to major metropolitan areas. The Texas Triangle was envisioned as a three-way connection of the state's major metropolitan areas of Dallas-Fort Worth, San Antonio-Austin, and Houston. The state's pursuit of a high-speed rail network accelerated in the late 1980s but was aborted in 1995 for a variety of reasons.

In 1989, the Texas Legislature created the Texas High-Speed Rail Authority through the Texas High-Speed Rail Act. The authority was to consider the public benefits of high-speed rail in the state and was authorized to award a franchise for developing all or part of a high-speed rail network to a qualified applicant. The act prohibited the use of state funds to support development of such a network, relying instead on the potential profitability of the project to lure a private entity into absorbing the costs for potential future returns.

In 1992, the Texas High-Speed Rail Authority signed a 50-year franchise agreement with Texas TGV, which represented a consortium of interests that included a French rail engineer and builder. Texas TGV ultimately was unable to secure private funding for the project. In

Funding sought for planning of Austin-San Antonio commuter rail

The Texas Department of Transportation (TxDOT) has applied for federal funds to develop a commuter rail line between Austin and San Antonio. The Texas application to the Federal Railroad Administration's High-Speed Intercity Passenger Rail program is for \$17.9 million for engineering and environmental work for the line. The Texas Legislature appropriated \$8.7 million in state funds for the line for fiscal 2010-11. TxDOT estimates total costs for the initial engineering and environmental work would be \$35.7 million, with the remainder funded with money from the Lone Star Rail District.

The proposed line would run from Georgetown, north of Austin, to San Antonio, using existing Union Pacific tracks that carry freight and Amtrak trains. The project would require building a new bypass rail line, at an estimated cost of \$1.2 to \$1.7 billion, in order to move freight between Austin and San Antonio and remove freight from the existing tracks. The existing tracks also would have to be upgraded to accommodate the higher-speed passenger rail, which would reach speeds of 90 to 110 mph.

The Legislature authorized a governing authority for the proposed rail line, the Austin-San Antonio Intermunicipal Commuter Rail District (Lone Star Rail District), in 1997, and the district officially was created by the member municipalities in 2003. The district has expanded to include Georgetown and Williamson County, San Marcos, New Braunfels, and other areas. It has received federal funds for planning, conceptual design, financial analyses, and revenue forecasts. Administrative costs are funded mainly through a yearly assessment of about \$50,000 on local member governments. Other revenue has been available from the regional transportation planning organizations within the district's boundaries. The district currently has about \$40 million to match available state and federal funds for preliminary planning and engineering.

The district anticipates federal approval for engineering and environmental studies in 2011, which could be completed with available revenue and additional federal and state funds. Final design and construction could start after initial federal approval to proceed.

1994, the rail authority moved to cancel the franchise agreement, and in the following regular legislative session in 1995, the Texas Legislature repealed the Texas High-Speed Rail Act, effectively ending development of the Texas Triangle for the foreseeable future.

The collapse of a statewide effort to develop high-speed rail did not suppress ongoing interest in developing key rail lines, and the Austin-San Antonio high-speed rail connection has been a subject of enduring interest and study (*see page 4*). The Austin-San Antonio Intermunicipal Commuter Rail District, recently re-named the Lone Star Rail District, was authorized by the Legislature in 1997. The Lone Star Rail District could be a mechanism for pursuing the Austin-San Antonio rail line if federal and other funding becomes available.

Texas T-Bone. Since the High-Speed Rail Authority was disbanded in the 1990s, the Texas Triangle concept has been replaced by the Texas T-Bone. The revised concept, which TxDOT requested to have included in the nationally designated South Central High-Speed Rail Corridor in 2003, removed the Triangle's direct link between Dallas-Fort Worth and Houston in exchange for an indirect connection between those cities running through Killeen-Temple.

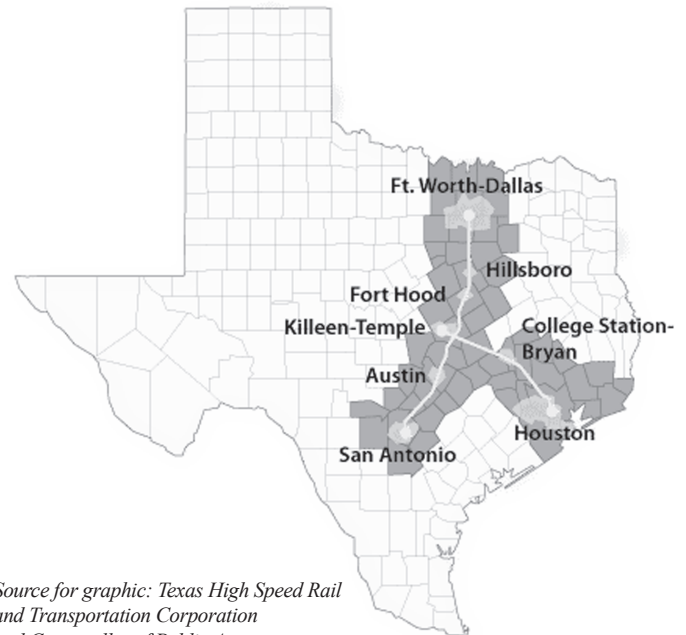
One segment of the proposed Texas T-Bone was identified as part of the designated South Central High-Speed Rail Corridor in the high-speed rail strategic plan that the FRA published in April. In the strategic plan the corridor runs from San Antonio to Dallas, where it forks into two lines, one destined for Tulsa through Oklahoma City and another for Little Rock through Texarkana.

Recent state action on passenger rail

The 81st Texas Legislature recently approved various initiatives to bolster development of passenger rail in the state and expanded potential sources of state funding for intercity passenger rail.

Legislation. The 81st Legislature in 2009 considered a variety of measures related to intercity passenger rail in Texas and adopted three:

Texas T-Bone: proposed high-speed rail corridor



Source for graphic: Texas High Speed Rail and Transportation Corporation and Comptroller of Public Accounts.

This map shows a proposed high-speed rail corridor for Texas, known as the "Texas T-Bone," with connections among the major metropolitan areas of the state.

SB 1382 by Carona requires TxDOT to coordinate activities for planning, building, operating, and maintaining a statewide passenger rail system. The bill directs TxDOT to prepare and update a long-term plan for statewide passenger rail yearly and provides requirements for the content of such a plan.

HB 646 by Hughes authorizes the governor to enter into the Southern High-Speed Rail Compact with Mississippi, Louisiana, and Alabama. If the governor were to execute the compact, a joint interstate commission would study the feasibility of providing high-speed rail service between member states. The compact would take effect upon being ratified by other participating states and with the consent of the U. S. Congress. States contiguous to a party state could join the compact with the approval of their respective legislatures.

SB 581 by Wentworth allows the Austin-San Antonio Inter-municipal Commuter Rail District (Lone Star

Rail District) to acquire, develop, and own facilities for intercity or other types of passenger rail services, in addition to commuter rail, and allows public entities to become members of the district if the encompassing county is a member.

TxDOT announced last summer that it would create a rail division similar to one that was outlined in Sunset legislation that the Legislature considered but did not enact. As of December 2009, TxDOT had hired a director to oversee the rail division but other administrative and budgetary measures related to the division were still pending.

Potential funding sources. Fiscal 2010-11 appropriations by the Texas Legislature in SB 1 by Ogden included funding for passenger and freight rail development. This includes \$8.7 million for environmental review and preliminary planning for the Austin-San Antonio passenger rail project and \$3 million to rehabilitate track for the South Orient Rail Line from San Angelo to Coleman. Funding for the Austin-San Antonio passenger rail project could be paired with federal funding applied for through the Recovery Act to complete engineering and design to further develop that line (see page 4).

The Legislature also made an allocation to the Texas Rail Relocation and Improvement Fund, contingent upon the comptroller issuing a finding of fact that a net gain to the State Highway Fund of at least \$182 million from fiscal 2008-09 to fiscal 2010-11. The net gain to the State Highway Fund used to calculate the trigger for appropriations to the relocation fund would include reductions in appropriations from the State Highway Fund to agencies other than TxDOT, minus any reduction in general revenue appropriations to TxDOT.

The relocation fund was adopted by constitutional amendment in 2005 to finance the relocation and improvement of passenger and freight rail facilities. The fund was intended to create a mechanism for financing the relocation of dangerous freight rail lines from densely populated areas through bonds and other obligations.

Appropriations to the relocation fund, which previously had not received funding from the Legislature, would be made from the State Highway Fund and would go, in part, to improvements to relieve congestion at an intersection of lines in Fort Worth known as Tower 55. The appropriations would not include revenue from constitutionally dedicated motor fuels taxes or vehicle registration fees. Instead it would come from fees that are not dedicated, such as vehicle certificates, special vehicle registrations, and commercial transportation fees.

Requests for attorney general opinions. The contingent appropriation to the Relocation Fund has been the subject of two requests for opinions from the Texas attorney general.

The first request, submitted by Sen. Jeff Wentworth in early November, asked whether — when calculating the increase in revenue to the State Highway Fund that must reach a certain threshold to trigger the appropriation to the rail relocation fund — a transfer of funds from

TxDOT to the newly created Department of Motor Vehicles (DMV) constitutes an appropriation. The request argues against treating the transfer as an appropriation. Treating it as an appropriation would reduce the net gain in the State Highway Fund enough that it would bring it below

the minimum necessary to trigger the appropriation to the rail relocation fund. The second request for an opinion, submitted in late November by Comptroller Susan Combs, also seeks clarification on issues related to calculating the amount that would trigger appropriations to the relocation fund. It posed a question similar to the one posed by Sen. Wentworth, as well as a question about transfer of funds from TxDOT to the Health and Human Services Commission and the Texas Workforce Commission in fiscal 2008-09.

Attorney general opinions generally are released within 180 days of the receipt of the request.

The rail relocation fund was adopted by constitutional amendment in 2005 to finance the relocation and improvement of passenger and freight rail facilities.

Passenger rail development in other states

The Federal Railroad Administration has received 259 applications and \$57 billion in requests for recently available federal high-speed rail funds. Several states and regions have taken measures to prepare for development of high-speed rail.

California. California has applied for \$4.7 billion from the federal High-Speed Intercity Passenger Rail program for a variety of projects. In 2008, California voters approved a proposition authorizing the state to sell \$9.95 billion in general obligation bonds to fund construction of a high-speed passenger train system and capital improvements to passenger rail. Proposition 1A authorized the issuance of the bond funds, but the California legislature has not appropriated any of those funds. The proposition designated \$9 billion to develop a high-speed passenger rail system connecting San Francisco to Los Angeles and for extensions to Sacramento, Orange County, and San Diego. The remaining \$950 million is for capital projects to enhance systems outside the primary network. The California High-Speed Rail Authority estimated that developing the whole system would cost about \$45 billion. The authorized funds could be used broadly to develop the system but not to cover more than 50 percent of the total cost of building each corridor or segment.

Midwestern states. In July, governors of eight states included in the Midwest high-speed rail network signed a memorandum of understanding agreeing to coordinate high-speed rail applications for funding available through the Recovery Act. The memorandum established a steering group with representatives from each state. The proposed Midwest high-speed rail network would be a massive system of passenger rail lines linking Chicago to neighboring major cities in a hub-style system. The network would connect Chicago to Detroit, Cleveland, Pittsburgh, Philadelphia, Cincinnati, St. Louis, Minneapolis, and other regional centers with high-speed rail connections.

Southeastern states. The Southeast High-Speed Rail Corridor would connect Washington, D.C. to Atlanta through Richmond, Virginia, and Charlotte, North Carolina. In 2002, North Carolina and Virginia finalized a general environmental study and began work on a second, more detailed environmental study, expected to be complete in 2010. After additional requirements are finalized, right-of-way and permitting could begin in 2011 on parts of the proposed rail connections between Washington, D.C. and Charlotte, depending on the availability of funds.

Florida. Florida has applied for \$2.6 billion from the federal High-Speed Intercity Passenger Rail program, much of that for a high-speed rail corridor from Tampa to Orlando. The Florida Department of Transportation is in the final stages of reevaluating a final environmental impact study of the line. The Florida Legislature created a statewide passenger rail commission this month and took steps to authorize development of the 61-mile Sun Rail commuter rail line in central Florida. It also provided another \$15 million yearly to the state's Tri Rail commuter rail that provides service to Miami.

Debate on high-speed and intercity rail

Renewed attention to high-speed and intercity passenger rail nationally and in Texas may give rise to arguments about its advantages and disadvantages, including its financial sustainability and cost.

Supporters of funding high-speed rail argue that existing transportation infrastructure is inadequate to meet current and future demands. Existing interstate systems, such as I-35 and I-10, already are at or beyond capacity and are projected to grow even more congested as the state's population continues to swell. Regional airports also are congested, and air travel may not be

ideal for traveling short distances. Existing Amtrak service is infrequent and not designed for high-use, intercity travel.

Developing a more effective and faster intercity passenger rail system in Texas would improve mobility, reduce congestion on roads, encourage economic development, and offer environmental benefits. Texas is in a good position to fully pursue a high-speed rail network. A high-speed rail network in the T-Bone region — connecting Dallas-Fort Worth to San Antonio and Austin to Houston — would connect the state's most heavily populated and relatively close metropolitan areas. It also would provide a framework for future connections to neighboring states. Focusing on one segment of the T-Bone, such as the Austin-San Antonio line, would be a good initial test for the popularity and sustainability of intercity and high-speed rail and would build confidence in future connections to major metropolitan areas.

The popularity of existing light-rail programs in Dallas and in Houston demonstrates the potential success of passenger rail ventures that are well designed and tailored to suit potential passengers. The success of these systems could be expanded to larger initiatives in the state. Investing in high-speed rail in Texas would provide a crucial alternative to auto and airplane transportation and would reinforce the state's long-standing reputation as a leader in mobility and transportation.

Opponents of funding high-speed intercity passenger rail cite the ultimate economic unsustainability of passenger rail transportation. Opponents reference previous failures to implement a statewide high-speed rail network with private funding as evidence that any such initiative would require massive upfront and ongoing public subsidies.

Because there is no fee on users for the non-existent system, any upfront investment would have to be made using general fund revenue or revenue from the State Highway Fund, which collects funds from the state motor fuels tax, registration fees, and other user fees imposed on drivers. Using State Highway Fund revenue to fund high-speed rail development would take critical resources away from maintaining and expanding the state's highway infrastructure. Further, the major revenue components of the State Highway Fund — the motor fuels tax and vehicle registration fees — are constitutionally restricted to use for improving and policing state roads.

The lack of funds designated for transportation projects leaves few options other than general revenue to fund high-speed passenger rail. Using general revenue for high-speed rail would give rise to a host of problems and complications. General revenue is committed to health and human services, public education, and other critical state functions. Further, spending general revenue on a service that benefits only a narrow geographic area would be unfair to those Texans who would not benefit from the service. Funding and development of high-speed passenger rail service should be delayed until the state can find a renewable source of funding to provide for building and maintaining the rail lines and service.

— *by Andrei Lubomudrov*

UT-Austin, from page 1**Freshman admissions at UT-Austin**

UT-Austin officials say a growing share of the university's admission slots were being filled by students who were automatically admitted. The large number of slots claimed by these students nearly eliminated the university's flexibility to admit other highly talented students who had not earned automatic admission. UT-Austin reported that among incoming freshmen from Texas high schools this fall, about 86 percent were automatically admitted. Officials say that if the law had not been amended, UT-Austin likely would have been forced by 2013 to reject all freshman applicants who were not top 10 percent graduates. By 2015, the typical UT-Austin freshman class of about 7,000 students would not have been able to accommodate any out-of-state or international students. The number of Texas high school graduates is projected to increase by more than 20 percent by 2014-15, and the number of top 10 percent students alone would have overwhelmed the capacity of the freshman class.

Officials say that if UT-Austin increased the size of its entering freshman class and significantly expanded the size of its student body to accommodate more students, the quality of all students' educational experience would suffer. Across the country, top-ranked universities manage enrollment to ensure that resources — including faculty, classrooms, and laboratory space — are not overwhelmed by too many students. UT-Austin already is one of the largest universities in the country, and a university-appointed task force recommended in 2004 that enrollment be reduced to about 48,000. It has since hovered around 50,000, and current enrollment is just under 51,000, an increase of about 1,000 from fall 2008.

Revised admissions system at UT-Austin

SB 175 requires the university, if implementing a cap, to offer admission to the highest-ranked students first, until the cap is reached, and to offer admission to all applicants with the same percentile rank. This means

that the university will offer admission to all students in the top 1 percent, then the top 2 percent, and so on, until the number of applicants admitted reaches 75 percent of the entering freshman class. The remaining students in the top 10 percent of their high school graduating classes who are not automatically admitted will be considered along with other applicants based on UT-Austin's holistic review criteria (*see page 10*).

According to university officials, any applicant who falls within the top 8 percent will be offered admission for fall 2011, even if this causes the university to exceed the allowable 75 percent enrollment cap.

SB 175 requires students receiving automatic admission to complete at least six semester credit hours during the evening or other low-demand hours. SB 175 will prohibit UT-Austin from considering in admissions whether or not a student has a family member who is a UT-Austin alumnus (sometimes referred to as a student's "legacy status"), although UT-Austin officials say this has never been a factor. Non-Texas resident students may not make up more than 10 percent of the entering class.

Any applicant who falls within the top 8 percent will be offered admission for fall 2011.

Notice to potentially eligible students

School districts must provide written notice about automatic admissions to all entering high school freshmen. High school juniors with a GPA in the top 10 percent also must be notified about their eligibility. High school counselors must explain the requirements for automatic admission to sophomores and juniors in the top 25 percent of their class.

By September 15 of each year, UT-Austin must notify Texas high school juniors through the school districts of the percentile rank that they anticipate will be offered automatic admissions under the 75 percent cap for the following school year.

The Texas Higher Education Coordinating Board (THECB) must design and implement a plan to increase the outreach efforts of universities to academically high-performing high school seniors who are likely to be eligible for automatic admission.

Students starting at two-year institutions

SB 175 also established a new pathway for automatic admission by requiring all public universities in Texas to admit as transfer students those applicants who started at two-year institutions and completed the core curriculum with at least a 2.5 GPA. The student must have graduated from high school in the top 10 percent no more than four years before requesting admission to the university or have been previously offered automatic admission under the top 10 percent requirements.

Scholarships

SB 175 created a scholarship program to encourage Texas high school students graduating in the top 10

percent to attend college at public universities in Texas. However, the Legislature did not appropriate any funds for the program, and it has not been implemented. The law allows a top 10 percent applicant who receives a TEXAS grant, and who applies but is denied admission to UT-Austin because of the 75 percent cap on automatic admissions, to receive a scholarship from the THECB if they also meet other criteria. While this program received no funding, the 81st Legislature did appropriate \$54 million to the THECB to maintain the scholarship program already in place for top 10 percent graduates. That program was created by the 80th Legislature in 2007 as part of an initiative to provide financial incentives to public general academic teaching institutions based on student and institutional performance. The Legislature appropriated \$100 million to the THECB for this purpose, with a portion of the funding to go for scholarships.

Holistic review for admissions

Under Texas law, public universities have discretion in undergraduate admissions decisions that are not automatic under the top 10 percent law. General academic teaching institutions may consider all or some of a list of factors in making freshman admission decisions, plus other factors the institution considers necessary to fully assess an applicant. This is sometimes referred to as a “holistic review.”

Some of the factors listed in Education Code, sec. 51.805 that may be considered include an applicant’s academic record, standardized test scores, and extracurricular and community activities. Because of changing demographic trends, diversity, and population increases in Texas, universities also must consider some socioeconomic factors, which may include household income, whether the applicant would be the first generation in the student’s family to attend college, bilingual proficiency, and responsibilities in high school, including work experience. To promote a more diverse student body, UT-Austin also considers race and ethnicity in admissions as part of its holistic review, with no particular weight given to those factors and no quotas or specific goals.

Holistic review, also called “full file review,” considers all credentials submitted by an applicant that represent academic and personal achievement. The review seeks to determine if the applicant has not only the academic qualifications for admission, but also skills and experiences that would facilitate completion of the degree. UT-Austin admission officials say the university evaluates a broad range of merit, taking into account a student’s ambition to tackle rigorous coursework, desire to make a difference in one’s school, home, or community, depth and breadth of experiences, leadership positions, and honors and awards in high school — all in the context of a student’s circumstances.

Texas law does not guarantee admission to a specific major, so even if an applicant qualifies for automatic admission, the application still may go through holistic review to determine if the student will be admitted to the student’s chosen major.

Race and ethnicity in admissions

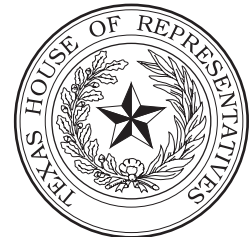
Under SB 175, if the use of race and ethnicity as a factor in admissions were to be prohibited by a court or by the UT Board of Regents, the 75 percent cap no longer would apply and the original top 10 percent plan would be restored. In August, a federal district court in Austin upheld UT-Austin's use of race as a consideration in undergraduate admissions in *Fisher v. Texas*. It is the first challenge to UT's undergraduate admissions process since the U.S. Supreme Court decision in 2003 in *Grutter v. Bollinger*, 539 U.S. 306, that race could be an element of admissions decisions if its consideration were sufficiently narrowly tailored. *Grutter* overturned the prohibition on race as a criterion for admission to Texas colleges and universities established by the 1989 decision of the Fifth U.S. Circuit Court of Appeals in *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996). In response to the *Hopwood* ruling, the 75th Legislature in 1997 enacted the top 10 percent law, HB 588 by Rangel, guaranteeing admission to any public college or university in the state for Texas students who graduate in the top 10 percent of their high school classes. The law was designed to broaden access to public higher education institutions by promoting greater geographic, socioeconomic, and racial/ethnic representation without using race as an admissions criterion.

The lawsuit did not challenge the top 10 percent law but instead contended that UT-Austin unlawfully uses racial and ethnic criteria to select other students for admission who did not graduate in the top 10 percent of their class. The plaintiffs in *Fisher* argued that their rights were violated under the equal protection clause of the 14th amendment and that UT cannot consider race in the admissions process if they can achieve racial diversity through the use of race-neutral alternatives, such as the top 10 percent law.

U.S. District Judge Sam Sparks found that the university followed the diversity guidelines set forth by the Supreme Court and that UT's consideration of race in admissions is constitutional. The decision of the district court is being appealed to the Fifth U.S. Circuit Court of Appeals.

— by **Rita Barr**

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