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BILL ANALYSIS

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Senate Bill 1296 (as enrolled)
Senate Bill 1305 (as passed by the Senate)
Sponsor: Senator Buzz Thomas
Committee: Education

Date Completed: 7-19-06

RATIONALE

Although single-gender private and parochial schools have existed in Michigan since the State's inception, public schools in the State historically have been coeducational. Under State and Federal law, public schools are required to offer equivalent educational opportunities to students, and are forbidden from discriminating against students based on gender. Many have interpreted the laws as prohibiting the separation of students based on gender, except in limited circumstances such as for physical education or sex education, or for remedial or affirmative action purposes. Where single-gender schools have been proposed or established, they frequently have been the subject of lawsuits or complaints by parents or civil rights groups. Attempts by the Detroit Public Schools to establish three boys' schools in 1991 were met with a legal challenge, causing the district to abandon the plans. Some believe, however, that students could benefit from a learning environment limited to students of one gender, and that such schools could be a way of providing a higher-quality education to disadvantaged students. It has been suggested that Michigan law should be amended to permit the creation of voluntary single-gender public schools, under limited conditions.

CONTENT

The bills would amend the Revised School Code and the Elliot-Larsen Civil Rights Act, respectively, to permit the establishment of a single-gender school, class, or program within a school if pupils of each gender had access to a substantially equal single-

gender and a substantially equal coeducational school, class, or program.

Senate Bill 1296

The bill would amend the Revised School Code to permit the board of a school district or intermediate school district (ISD), or the board of directors of a public school academy (PSA) to establish and maintain a single-gender school, class, or program within a school if the school district, intermediate school district, or PSA made available to pupils a substantially equal coeducational school, class, or program and a substantially equal school, class, or program for pupils of the other gender.

Currently, the Code prohibits the establishment of a separate school or department for a person on account of race, color, or sex. Under the bill, this prohibition would apply except as provided above or under Section 475 of the Code (which Senate Bill 699 and House Bill 4264 would create to allow the board of a first class school district to establish and maintain a single-gender school).

A school board or board of directors could not require any of its pupils to participate in a single-gender school, class, or program created under the bill, and would have to ensure that participation in a single-gender school, class, or program was wholly voluntary. Participation would not be considered voluntary unless the school district, ISD, or PSA also made available to the pupil a substantially equal coeducational school, class, or program.

Senate Bill 1305

The bill would amend Article 4 (Educational Institutions) of the Elliott-Larsen Civil Rights Act to specify that the article would not prohibit the board of a school district or intermediate school district, or the board of directors of a PSA, from establishing and maintaining a single-gender school, class, or program within a school as provided under Section 1146 of the Revised School Code (the section Senate Bill 1296 would amend).

(Article 4 prohibits an educational institution from discriminating against a person because of religion, race, color, national origin, or sex.)

MCL 380.1146 (S.B. 1296)
Proposed MCL 37.2404a (S.B. 1305)

BACKGROUND

Title IX

Title IX of the Education Amendments of 1972 was enacted to ensure that students of both genders received equal educational opportunities. The statute specifies, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...". According to the U.S. Department of Education, the current regulations implementing Title IX prohibit the development of single-gender classes, but since admissions to nonvocational elementary and secondary schools are not covered under Title IX, the Department has said that the statute does not prohibit single-gender schools, provided that the district creates comparable equal schools for students of both genders.

The Secretary of Education suggested in 2002 that the regulations implementing Title IX should be revised to ease restrictions on single-sex schools, and proposed regulations were distributed in March 2004. The suggested changes would permit the establishment of single-sex schools as long as comparable educational opportunities were available for students of the other gender, either in a single-sex school or in a coeducational environment, and also would permit the creation of single-gender nonvocational classes within coeducational

schools. The subject of much debate, the proposed rules have not been finalized, although they still are under active consideration, according to a spokesperson for the U.S. Department of Education.

Legal Challenges to Single-Gender Schools

In 1991, the Detroit Public Schools announced its intention to establish three public boys' academies within the district. Some parents and students challenged the proposal in the United States District Court for the Eastern District of Michigan (*Garrett, et al. v The Board of Education of the School District of the City of Detroit*, 775 F.Supp 1004). The plaintiffs claimed that the establishment of males-only academies would violate Title IX, the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Michigan Constitution (which guarantee equal protection under the law), the Elliott-Larsen Civil Rights Act, and other Federal and State statutes. The District Court granted the plaintiffs' motion for a preliminary injunction, and the Detroit Public Schools subsequently abandoned its plans for the proposed schools.

The District Court based its ruling, in part, on a 1982 decision of the United States Supreme Court, *Mississippi University for Women v Hogan* (458 U.S. 718), in which the Supreme Court laid out specific criteria to determine when the consideration of gender was appropriate. In that case, the Court ruled against a state-supported university that denied men entrance to its nursing program. The Court rejected the university's argument that Congress, in enacting Title IX, expressly authorized the university to continue its single-sex admissions policy by exempting public undergraduate institutions that traditionally have used such policies from the statute's gender discrimination prohibition, and through that provision, limited the reach of the Fourteenth Amendment. According to the Court, "[T]he party seeking to uphold a statute that classifies individuals on the basis of their gender must carry the burden of showing an 'exceedingly persuasive justification' for the classification...The burden is met only by showing at least that the classification serves 'important governmental objectives, and that the discriminatory means employed' are 'substantially related to the achievement of

those objectives.” In regard to the university’s argument, the Court stated, “[N]either Congress nor a State can validate a law that denies the rights guaranteed by the Fourteenth Amendment.”

In 1996, the U.S. Supreme Court applied the *Hogan* criteria in *United States v Virginia, et al.* (518 U.S. 515), in which the Court ruled against the Virginia Military Academy (VMI), a state-funded school that limited enrollment to men. Initially, the U.S. District Court upheld the school’s admission policy and rejected the equal protection challenge; the U.S. Circuit Court of Appeals for the Fourth Circuit disagreed and ordered Virginia to remedy the constitutional violation. In response, the state proposed a parallel program for women: the Virginia Women’s Institute for Leadership (VWIL). The state returned to District Court, which decided that the plan met equal protection requirements. The Fourth Circuit affirmed, finding that the state’s purpose of providing single-gender educational options was legitimate, and the exclusion of men at VWIL and women at VMI was essential to that purpose. Since its analysis risked bypassing an equal protection scrutiny, the Circuit Court added another test it called “substantive comparability”, and found that the educational opportunities at the two schools were sufficiently comparable. The U.S. Supreme Court disagreed. Applying the *Hogan* criteria, the Court concluded that Virginia had shown no exceedingly persuasive justification for excluding all women from VMI and had violated that Fourteenth Amendment. Finding that Virginia had not shown substantial equality in the separate educational opportunities it supported at VWIL and VMI, the Court ruled that the proposed remedy did not cure the constitutional violation.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

A growing body of evidence indicates that boys and girls develop at different rates, and respond best to different types of teaching techniques. Leonard Sax, director of the National Association for Single Sex Public Education, has cited research indicating that young girls develop language and fine motor

skills at an earlier age than boys do, while boys develop skills using spatial relations and geometry at an early age (*Dayton Daily News*, 7-28-05). Girls also are more attuned to color and texture, while boys tend to focus on motion. Sax claims that these are physical differences in the brains and eyes of young boys and girls, that even out as children grow older. In elementary and secondary school, however, studies show that boys and girls could benefit from different teaching environments that take advantage of those developmental differences. For example, one study evidently found that boys performed best in a classroom at a temperature of 69 degrees, while girls worked better at 75 degrees (*Arkansas Democrat Gazette*, 8-14-05). According to Sax, girls prefer a quiet learning environment, while boys tend to be less bothered by noise and distractions.

In a single-gender setting, teachers can take advantage of these differences by designing classroom conditions and lesson plans to meet the developmental needs of their students. Such adjustments are not possible in a classroom containing both boys and girls, where teachers must compromise between the techniques best suited for boys and for girls. Schools that have experimented with single-gender education have shown impressive results, improving the quality of education for both boys and girls, often in struggling schools districts containing high proportions of disadvantaged or minority children.

Thurgood Marshall Elementary School, located in a low-income neighborhood of Seattle, was considered to be a failing school with significant discipline problems and low academic achievement. In 2000, the school was converted to a gender-separate format, and student performance improved immediately. In the first year after the transition, standardized test scores at Thurgood Marshall rose dramatically for both boys and girls. Attendance improved, and discipline problems decreased (*Education Week*, 3-2-05). Single gender-schools in other states have reported similar results. The Young Women’s Leadership School in East Harlem, New York, was established in 1996 to provide an all-female learning environment for disadvantaged girls. Although the school has been criticized by some civil rights groups, the benefits to the student body, which consists

almost entirely of minorities, have been significant. According to Insideschools.org, an online reviewer of public schools in New York, seniors graduating from the school have a very high college acceptance rate, and the classes place a heavy emphasis on discussion and writing. Students transferring from other schools reportedly experience a noticeable change of attitude, attributed to the school's sense of community and its dedicated teachers.

As the successes of these schools become more widely known, an increasing number of districts in a variety of states are instituting single-gender schools and programs, and there is a large demand for these programs from parents who believe that their children would benefit from a single-gender educational environment. Private boys' and girls' schools have been commonplace throughout the nation's history, and many of the most highly respected schools in the country are limited to students of one sex. Many parents, however, cannot afford the expense of sending their children to private schools. The benefits of single-gender instruction should be available to students in public school, not only to advantaged students in private schools.

Participation in a single-gender school or program would be completely voluntary under the bills. If a district created a class, program, or school for students of one gender, it would have to offer equivalent opportunities to the other gender, as well as an equivalent coeducational program. These provisions would ensure that no students would be forced into a single-gender setting, and that each student would have equivalent educational opportunities regardless of whether he or she were enrolled in a single-gender program or not.

With the recent focus on improving Michigan's schools to meet the requirements of the No Child Left Behind Act, the State cannot afford to overlook this important tool for crafting innovative educational strategies to address the needs of both boys and girls. Some of Michigan's lowest-performing schools could benefit from additional options, and the State should allow them to try, while protecting the right to equality of education for all students.

Opposing Argument

Segregating students on the basis of gender could lead to the reinforcement of gender stereotypes, a return to the days when girls were taught home economics while boys attended shop class. American history has progressively moved toward integrating students of different races, genders, and backgrounds, and society has benefited from that diversity. The bills would undo some of that progress by retreating from integration. Although some promote single-gender education as a way to address sexual harassment or unequal treatment of boys or girls, a better approach would be to resolve and remove those problems. As students move into adulthood, they need to be able to work well among members of both sexes, and separating them as students would do nothing to prepare them for future challenges they will face.

In addition, there is little consensus that single-gender education offers any benefits to students. Many of the studies purporting to show such effects are fundamentally flawed. In most cases, the improvements in performance, attendance, and behavior can be attributed to other factors, such as increased funding, better facilities, higher-quality teachers, parental involvement, and the self-selection of more motivated students who might want to participate in such programs. These positive conditions could be replicated in a coeducational environment, producing comparable gains without the problematic segregation of students.

Currently, the Elliot-Larsen Civil Rights Act prohibits separating students based on sex, race, or other factors. Those provisions were placed into law to protect students from unequal treatment. Allowing exceptions for single-gender schools could lead to unequal educational opportunities for different students. Although Senate Bill 1296 would require that school districts provide substantially equal schools, classes, or programs for both genders, the bill does not specify what "substantially equal" would mean. Schools cannot be identical in every way, and funding disparities, varying teacher qualifications, and different course offerings could end up creating divergent educational opportunities in schools that were nominally equivalent. Students should be allowed to choose the best educational opportunities available, regardless of their

gender. If a girls' school established under the bills were to outperform a boys' school, or vice versa, on what grounds could the school district deny a boy the opportunity to attend the better school? The bills would limit choices, reinforce gender stereotypes, and undermine the progress made toward educational equality for both girls and boys.

In addition, the bills could be in conflict with the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, which states, "No state shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws." In a number of U.S. Supreme Court cases, including *United States v Virginia* and *Mississippi University for Women v Hogan*, the Supreme Court has ruled that excluding individuals based on gender violates the Fourteenth Amendment. Changing the State law would do nothing to resolve this constitutional violation.

Response: In those cases, no equivalent school was available for members of the other gender. The bill would require that students have access to an equivalent class, program, or school that was limited to students of the opposite sex, as well as an equivalent coeducational option. Providing these options for parents and students should meet the requirements of equal protection.

Opposing Argument

The bills would violate the basic precept of integration, and create so-called separate-but-equal schools. In deciding *Brown v Board of Education* in 1954, the United States Supreme Court ruled that the establishment of "separate but equal" educational facilities for minorities was unconstitutional, and that schools segregated on the basis of race were inherently unequal, reinforcing social stereotypes and propagating racial divisions in society. The bills would create similar divisions along gender lines, and could have similar negative effects, magnifying gender differences and fostering unhealthy attitudes and assumptions. For example, a female teacher at an all-boys' school in Maryland suggested that what the boys liked best about the class was that there were no girls in it (*Washington Post*, 1-8-05). Also, many of the teaching techniques recommended by proponents of single-sex schools reveal assumptions about the propensities of boys and girls. According to Dr. Leonard Sax of

the National Association for Single Sex Public Education, teachers should speak in softer tones to girls than to boys, who may respond well to yelling, and girls prefer cooperative activities, while boys are more competitive and responsive to confrontation (*National Post*, 3-3-03). Attempts to modify curricula to address perceived differences between males and females would inevitably incorporate society's preconceived notions about the abilities and preferences of men and women. To the extent that those preconceptions and stereotypes stifle children or channel them in one direction or another, educational practices based on those beliefs would be discriminatory and unjust to both boys and girls, in much the same way that racial segregation was unjust to minorities.

Response: Allowing boys and girls to attend separate classes or schools would not reinforce gender stereotypes; in fact, it could help to overcome some gender-based barriers. For example, offering all-girl science and math classes could encourage more females to enter science and engineering, currently male-dominated fields. Many educators are concerned that girls' performance in math and science falls behind that of boys as they progress through school. Some research indicates that girls do better in these areas when separated into all-girl classes. The State has been looking for ways to improve the performance of Michigan's schools; this legislation would give school districts another tool for providing the best quality education to all students, both boys and girls. Furthermore, the program would be completely voluntary. If a student or parent objected to the idea of single-gender education, he or she could remain in the coeducational school or program.

Also, voluntary single-gender schools are completely unlike forced racial segregation of the past. In segregated schools, students did not have the option of choosing which school to attend, while under the bills parents would be free to choose the best school for their children, whether single-gender or coeducational. Unlike racial segregation, which was implemented for social reasons and was not purported to have any educational benefits, single-gender education has been shown to have positive effects on children's academic achievement.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bills would have no fiscal impact on the State.

There could be an indeterminate fiscal impact on a local school district if establishing a single-gender school, class, or program would require the district to hire additional personnel for the school, class, or program.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.