

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: CS/SB 242

INTRODUCER: Education Pre-K-12 Committee and Senator Wise

SUBJECT: Single-gender Schools, Classes, and Programs

DATE: January 9, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	Matthews	ED	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

This bill authorizes district school boards to establish and maintain a single-gender school, class, or program when the school district also makes available:

- A coeducational school, class, or program that has equal academic standards; and
- A school, class, or program for pupils of the other gender that has equal standards.

Student participation at a single-gender school, class, or program is voluntary.

Each district school board that establishes single-gender schools, classes, or programs must evaluate them every 2 years in order to ensure compliance with federal requirements.

This bill creates an unnumbered section of law.

II. Present Situation:

No Child Left Behind Act of 2001

The No Child Left Behind Act of 2001 (NCLB), signed into law on January 8, 2002, encouraged the introduction of single-gender schools and classrooms by providing local educational agencies access to earmarked federal funds for innovative programs.¹ Following NCLB, the U.S.

¹ 20 U.S.C. s. 7215(a)(23).

Department of Education proposed amendments to Title IX.² These regulations, finalized on November 24, 2006, restrict the creation of single-sex classes and schools as follows:

- Schools must serve an important governmental objective and demonstrate a substantial relationship between the objective and the means employed;
- Student enrollment is entirely voluntary;
- Coeducational classes, extracurricular activities, and schools are available for students of the opposite gender, that are of substantially equal quality; and
- Single gender programs are evaluated at least every two years by the funding recipient to ensure federal compliance.³

As of April, 2006, 209 public school districts in 33 states offered single-gender educational opportunities. These include single gender schools, programs, and classes. Of these, 44 operate as single gender public schools, present in 17 states.⁴ By comparison, as of November 2007, 366 public schools in the U.S. were offering single-sex educational opportunities, and, of these, 88 operate as single gender public schools.⁵ According to a national proponent of single gender education, Florida has approximately 13 schools providing some combination of single gender classes.⁶ Additionally, there are 19 schools in Florida that operate on a single gender program for students at risk.⁷

III. Effect of Proposed Changes:

Authorization

This bill authorizes district school boards to create single-gender schools, classes, or programs when the school district also makes available:

- A coeducational school, class, or program that has equal academic standards; and
- A school, class, or program for pupils of the other gender that has equal standards.

Student participation at single-gender schools, classes, or programs is voluntary. Options are increased where a single-gender school is made available, as a student can choose between a single-gender and a coeducational school.

Each district school board that establishes single-gender schools, classes, or programs must evaluate them every 2 years in order to ensure compliance with federal requirements.

School districts can create single-gender schools, classes, or programs without the bill.

² Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 71 Fed. Reg. 62,530 (2006) (codified at 34 C.F.R. pt. 106).

³ *The Progress of Education Reform 2007, Same Sex Schooling*, Education Commission of the States (January 2007).

⁴ Susan G. Clark, *Public Single-Sex Schools: Are They Lawful?* 213 WELR 319 (2006).

⁵ National Association for Single Sex Public Education; See <http://www.singlesexschools.org/schools-schools.htm#06>, last checked December 7, 2007.

⁶ *Id.*

⁷ *Id.*

Performance Research

Research findings appear mixed regarding learning advances at single-gender schools.⁸ In a global study spanning the last four decades, researchers conclude:

Reviews in Australia, USA, Canada, New Zealand, Ireland, and the UK have found little evidence of consistent advantages in either single-sex or co-education....The importance of pupil ability and background makes it essential that these are taken into account in school comparisons. In the few studies where ability has been controlled for, apparent advantages to single-sex or co-education can emerge, but they are small and inconsistent....While there are some very good girls' schools and boys' schools, it does not look as though they are good because they are single-sex....In America, against a background of co-education, it has been found that single-sex schooling can benefit disadvantaged children. It is argued that this is not because of the gender mix *per se* but because it represents a pro-academic choice on the part of their parents/guardians.⁹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Equal Protection

Gender classifications may be subject to challenge, based on an argument that the distinction violates the Equal Protection provision of the Federal Constitution. The standard of review that the court typically applies to gender-based challenges is intermediate level scrutiny. At this level, notably, the classification is presumed unconstitutional until the government proves otherwise.¹⁰ To survive intermediate scrutiny, the defendant must show that the classification serves an important governmental objective(s), and that the discriminatory means employed are substantially related to the achievement of those objectives.¹¹ At times, the court has required the government to demonstrate an "exceedingly persuasive justification"¹² for the

⁸ *The Progress of Education Reform 2007, Same Sex Schooling*, *supra* note 3, at 3.

⁹ Smithers, Alan and Pamela Robinson, *The Paradox of Single-sex and Co-educational Schooling*, Centre for Education and Employment Research, University of Buckingham (2006).

¹⁰ Clark, *supra* note 4, at 323.

¹¹ *Mississippi University for Women v. Hogan*, 102 S.Ct. 3331, 3333 (1982)

¹² *See, i.e., Mississippi University for Women v. Hogan*, 102 S.Ct. 3331 (1982); *U.S. v. Virginia*, 116 S.Ct. 2264 (1996).

classification to pass constitutional muster, which some deem indicative of a heightening of the intermediate level standard of review, almost to the level of strict scrutiny.¹³

In Mississippi University for Women v. Hogan, the Supreme Court accepted a challenge by a male plaintiff denied admission to a female-only nursing school.¹⁴ The school justified the classification by asserting that the admission policy corrects discrimination against women. Here, the court concluded that the policy stated, in practice, perpetuates the very stereotype of categorizing nursing as “women’s work” that the school purports to oppose.¹⁵ Additionally, the court found the defendant’s argument that female students’ learning suffers in the presence of men similarly weak, as the school admitted male attendees as auditors.¹⁶ In finding that the defendant failed to meet the burden of intermediate level scrutiny, much less present an exceedingly persuasive justification, the court ruled the policy violative of the Equal Protection Clause of the Fourteenth Amendment.¹⁷

The Supreme Court revisited the issue of whether a single-gender school is constitutional in 1996, in U.S. v. Virginia.¹⁸ Here, the Virginia Military Institute (VMI) only accepted men for training as “citizen-soldiers,” through a rigorous course of leadership and military teachings.¹⁹ In contrast to the single nursing school in Hogan, in this instance, women had the option of attending an institute of similar design, the Virginia Women’s Institute for Leadership.²⁰ The VMI stated as grounds for the classification the encouragement of diversity in education and that the stringent method employed at the VMI is not easily modifiable to accommodate women.²¹ In striking down the policy, the court labeled the Women’s Institute a “pale shadow” to the VMI in regard to curricular choice range, faculty stature, funding, prestige, alumni support, and opportunities.²² In so concluding, the court reinforced the requirement that all gender-based classifications face heightened scrutiny.²³

This bill on its face may not implicate constitutional concerns; rather, any challenge is likely to proceed on the program, class, or school’s implementation at the district level. To make the strongest case that substantially equal quality is provided, a school district may want to consider offering a single-sex program within a school, using the same teacher, and same coursework, but offering the class at different times, for male and female students.

¹³ Isabelle Katz Pinzler, *Separate But Equal Education in the Context of Gender*, 49 NYLSLR 785, 794 (2004); Gary J. Simson, *Separate But Equal and Single-Sex Schools*, 90 CNLLR 443, 451 (2005).

¹⁴ *Hogan*, 102 S.Ct. at 3332-3333.

¹⁵ *Id.* at 3333.

¹⁶ *Id.*

¹⁷ *Id.* at 3341.

¹⁸ *Virginia*, 116 S.Ct. at 2267.

¹⁹ *Id.*

²⁰ *Id.* at 2272.

²¹ *Id.* at 2279.

²² *Id.* at 2285.

²³ *Id.* at 2286.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

The Committee Substitute differs from SB 242 in the following ways:

The school, class, or program that is provided for the other gender or is coeducational must be equal—rather than substantially equal—to the single-gender school, class, or program established by the school district.

Each district school board that establishes single-gender schools, classes, or programs must evaluate them every 2 years in order to ensure that they comply with federal requirements.²⁴

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁴ 34 C.F.R. s. 106.34 (2006)