

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 213 Education

**SPONSOR(S):** Legg

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 242

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Education Innovation &amp; Career Preparation</u>	<u></u>	<u>Beagle</u>	<u>White</u>
2) <u>Schools &amp; Learning Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
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### SUMMARY ANALYSIS

In recent years, the prevalence of single gender schools and classrooms has increased. Approximately 366 public schools in the United States offer single gender educational opportunities, including 19 public schools in Florida. California, District of Columbia, Michigan, Nebraska, Nevada, New York, Ohio, Tennessee, Virginia, and Wisconsin currently have laws permitting some form of single gender educational opportunity. Recently adopted federal law permits local education agencies (LEAs) to implement single gender schools and classrooms.

House Bill 213 authorizes a district school board to establish a single gender school, class, or program within a school if the board also offers:

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

The bill provides that no student may be required to enroll in a single gender school, class, or program. Student participation must be voluntary.

The bill does not appear to have a fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Empower Families--** The bill authorizes school districts to provide an additional education choice option to students and parents.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Single Gender Education Programs

In recent years, the prevalence of single gender schools and classrooms has increased significantly. The emergence of single gender education is rooted in research indicating that girls and boys have unique learning styles. Based on this research, proponents of single gender education assert that, because separating students by gender enables teachers to use instructional techniques targeted to the learning styles of each gender, some students may be better served in a single gender learning environment.<sup>1</sup> Research regarding the educational and social impacts of single gender education is largely inconclusive.<sup>2</sup>

Approximately 366 public schools in the United States offer single gender educational opportunities, including 19 public schools in Florida.<sup>3</sup> California, District of Columbia, Michigan, Nebraska, Nevada, New York, Ohio, Tennessee, Virginia, and Wisconsin currently have laws permitting some form of single gender education program.<sup>4</sup>

*Federal Law:* The No Child Left Behind Act of 2001 (NCLB) states that federal funds may be provided to LEAs for the purpose of implementing innovative assistance programs, which may include single gender schools and classrooms.<sup>5</sup> At the time of NCLB's passage, these provisions were in conflict with regulations implementing Title IX of the Education Amendments of 1972 (Title IX).<sup>6</sup> Title IX prohibits gender-based discrimination by educational institutions that receive federal funding.<sup>7</sup> Thus, in May of 2002, the U.S. Department of Education (USDOE) announced its intent to adopt revised Title IX regulations to

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<sup>1</sup> The Gurian Institute *available at* <http://www.gurianinstitute.com>. See also National Association for Single Sex Public Education *available at* <http://www.singlesexschools.org/schools-classrooms.htm>.

<sup>2</sup> See U.S. Department of Education, Office of Planning, Evaluation and Policy Development, *Single-Sex Versus Coeducational Schooling: A Systematic Review* (September 2005)(Finding that whether single gender education produces better academic outcomes than coeducational education is unclear. For example, students in single gender schools showed improved performance on "all-subject" academic achievement tests in the short term; however, there was no apparent link to improved performance over the long term.); and Smithers, Alan and Pamela Robinson, The Centre for Education and Employment, University of Buckingham, *The Paradox of Single-Sex co-Educational Schooling* (July 2006) (Stating that the, "main determinants of a school's performance are the ability and social background of the pupils," and that the determination as to whether to implement a single gender or coeducational student configuration should, "be a matter of judgment. " "It is for the providers to work out which they think is the most appropriate to offer in their circumstances, and for parents to choose the schools they think would best suit their children." Also noting that single gender student configurations have been found to benefit disadvantaged students in American schools.).

<sup>3</sup> National Association for Single Sex Public Education, *Single-Sex Schools/Schools with Single-Sex Classrooms/What's the Difference?* *available at* <http://www.singlesexschools.org/schools-schools.htm>.

<sup>4</sup> Cal. Educ. Code § 58521 (West 2007), D.C. Code Ann. § 38-1851.07(2007), Mich. Comp. Laws Ann. § 380.475 (2007), Neb. Rev. Stat § 79-1807 (2007), Nev. Rev. Stat 386.580 (Michie 2007), N.Y. Educ. Law § 2854 (McKinney 2007), Ohio Rev. Code Ann. § 3314.06 (Anderson 2007), Tenn. Code Ann. § 492-108 (2007), Va. Code Ann. § 22.1-212.1:1 (2007), and Wis. Stat. Ann. § 118.40 (2007).

<sup>5</sup> 20 U.S.C.A. § 7215(a)(23).

<sup>6</sup> See 34 C.F.R. 106.34(b)-(f) and 34 C.F.R. 106.35(both amended in 2006).

<sup>7</sup> 20 U.S.C.A. § 1681. (Title IX also prohibits gender based discrimination pertaining to participation in extracurricular activities).

provide flexibility to LEAs seeking to establish single gender schools and classrooms.<sup>8</sup> These regulations became effective in November of 2006.<sup>9</sup>

The 2006 regulations establish separate standards for single gender schools and classrooms. Generally, single gender schools and classrooms may only be established to serve elementary or secondary students. The school or classroom must also be nonvocational in nature.<sup>10</sup> In addition, the regulations require that:

- The LEA's purpose in establishing a single gender classroom must be substantially related to achieving one of two important governmental objectives: (a) to improve student achievement as part of a policy of providing diverse learning opportunities; or (b) to meet the specific learning needs of students.
- The LEA must implement single gender classrooms in an evenhanded manner.
- Enrollment in a single gender classroom must be entirely voluntary.
- Single gender classrooms must be evaluated every two years. The LEA must demonstrate that it is adhering to the important governmental objectives for which its single gender classrooms were established to serve. It must also demonstrate that its program continues to operate free from overly-broad gender stereotypes.<sup>11</sup>

In order to operate a single gender school or classroom, a LEA must provide all other students, including members of the excluded gender, a coeducational option that is of "substantially equal" quality.<sup>12</sup> In some cases, the LEA may be required to offer a substantially equal single gender option to members of the excluded gender.<sup>13</sup>

*State Law:* Statute prohibits gender-based discrimination by public K-20 educational institutions that receive state or federal funding. Such institutions may not restrict access by establishing admission criteria to a program or course based on gender; however, students may be separated by gender for: (a) physical education classes involving participation in bodily contact sports;<sup>14</sup> and (b) classes dealing primarily with human reproduction.<sup>15</sup>

### **Effect of Proposed Changes**

House Bill 213 authorizes a district school board to establish a single gender school, class, or program within a school if the board also offers:

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

The bill provides that no student may be required to enroll in a single gender school, class, or program. Student participation must be voluntary.

### **C. SECTION DIRECTORY:**

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<sup>8</sup> Federal Register, Vol. 67, No. 89 (May 8, 2002) *available at* <http://www.ed.gov/legislation/FedRegister/proprule/2002-2/050802a.html>.

<sup>9</sup> Federal Register, Vol. 71, No. 206 (October 24, 2006) *available at* <http://www.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>.

<sup>10</sup> 34 C.F.R. 106.34.

<sup>11</sup> 34 C.F.R. 106.34(b).

<sup>12</sup> 34 C.F.R. 106.34(b)(1)(iv) and (c)(1).

<sup>13</sup> 34 C.F.R. 106.34(2).

<sup>14</sup> Section 1000.05(3)(c), F.S., states, "For the purpose of this section, bodily contact sports include wrestling, boxing, rugby, ice hockey, football, basketball, and other sports in which the purpose or major activity involves bodily contact."

<sup>15</sup> Section 1000.05(2), F.S. (These provisions also prohibit discrimination on the basis of race, ethnicity, disability, and other factors).

**Section 1.:** Authorizes a district school board to establish a single gender school, class, or program within a school; requires districts to provide substantially equal single gender and coeducational options to students; and requires student enrollment in single gender educational options to be voluntary.

**Section 2.:** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

This bill does not appear to have a fiscal impact on state revenues.

#### **2. Expenditures:**

This bill does not appear to have a fiscal impact on state expenditures.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

This bill does not appear to have a fiscal impact on local revenues.

#### **2. Expenditures:**

This bill does not appear to have a fiscal impact on local expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill does not appear to have a direct economic impact on the private sector.

### **D. FISCAL COMMENTS:**

If a district school board chooses to establish a single gender school, class, or program, it will be required by the bill to also provide both a single gender and a coeducational alternative of substantially equal quality to all other students. School districts may incur additional costs in complying with this requirement.

School districts that choose to provide professional development training in instructional practices targeted to the strengths of female and male students may incur additional costs. One provider's fee schedule for such training indicates a cost of \$6,000.<sup>16</sup>

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

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<sup>16</sup> The Gurian Institute, Fee Schedule for Michael Gurian and the Gurian Institute Training Division.

This bill does not require counties or municipalities to take an action requiring the expenditure of funds.

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

## 2. Other:

*Equal Protection:* The constitutionality of gender classifications may be subject to challenge under the Equal Protection Clause of the Federal Constitution.<sup>17</sup> The standard of review for gender classifications is intermediate-level scrutiny. The burden of proof is on the defendant to show that the classification is substantially related to the achievement of an important government objective.<sup>18</sup> In some cases, courts have employed a more rigorous standard by requiring the defendant to also demonstrate an “exceedingly persuasive justification” for the gender classification.<sup>19</sup>

The United States Supreme Court has decided two cases specifically addressing the constitutionality of single gender education programs. Both cases dealt with single gender admissions policies at state sponsored universities. In *Mississippi University for Women v. Hogan*, the court declared the defendant university’s female-only admissions policy for its nursing school to be unconstitutional. The university argued that its policy was intended to compensate for past discrimination against women. The court rejected this argument, reasoning that its policy perpetuated the stereotype that nursing was an all-female profession.<sup>20</sup> Because the university had a policy of permitting male students to audit into its nursing courses, the court also rejected university’s argument that the presence of men at the school disrupted female’s ability to learn.<sup>21</sup> The court held that the university’s use of overly-broad female stereotypes to justify its policy did not satisfy its burden to demonstrate an “exceedingly persuasive justification” for the classification. Nor did it prove that its policy served “important governmental objectives” in a manner “substantially related to the achievement of those objectives.”<sup>22</sup>

In *United States v. Virginia*, the court declared the Virginia Military Institute’s (VMI) male-only admissions policy to be unconstitutional. VMI argued that its course of study, which included rigorous military training unsuitable to women, necessitated its all-male admissions policy. The court rejected this reasoning, stating that gender classifications must not be justified on the basis of overly-broad generalizations and stereotypes of female inferiority.<sup>23</sup> The court also addressed VMI’s assertion that its policy was justified because it had established an all-female university to provide comparable leadership education to female students. The court rejected this argument, reasoning that the all-female school was inferior to VMI in all facets. Among other things, it lacked VMI’s resources, student capacity, faculty, facilities, reputation, and network of alumni. As such, it did not provide comparable educational benefits for female students.<sup>24</sup>

*Title IX:* Prior to revision in 2006, the regulations for Title IX prohibited single gender classes in all cases except: (a) physical education classes during participation in contact sports; (b) physical education classes that result from the application of objective standards of physical ability; (c) elementary and secondary courses dealing primarily with human sexuality; and (d) choruses based on vocal range or quality, which may result in a single sex or predominantly single sex grouping.<sup>25</sup>

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<sup>17</sup> U.S. Const. amend. XIV, § 1.

<sup>18</sup> *Wengler v. Druggists Mutual Insurance Co.*, 446 U.S. 142, 150 (1980).

<sup>19</sup> *See Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981).

<sup>20</sup> *Hogan*, 102 U.S. 3331, 3339 (1982).

<sup>21</sup> *Id.* at 3340.

<sup>22</sup> *Id.*

<sup>23</sup> *United States v. Virginia*, 518 U.S. 515, 533-534 (1996).

<sup>24</sup> *Id.* at 547-554.

<sup>25</sup> *See* 34 C.F.R. 106.34(b)-(f) (prior to its amendment in 2006).

Likewise, a LEA was prohibited from establishing a single gender school unless it also made a comparable program available to the excluded gender “pursuant to the single policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.”<sup>26</sup> In light of the *Hogan* and *VMI* cases, the USDOE interpreted “comparable program” to mean that, in order to operate a single gender school, the LEA was required to open a “comparable” single gender school for the excluded gender.<sup>27</sup>

Subsequently in 2006, the regulations for Title IX were amended in order to provide LEAs with greater flexibility to establish single gender schools as authorized by the NCLB Act. According to the USDOE’s Office of Civil Rights (OCR):

The purpose of the amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination.<sup>28</sup>

Under the new regulations, a LEA, in order to operate a single gender school or classroom, must provide all other students, including members of the excluded gender, a coeducational option that is of “substantially equal” quality. LEAs may also be required to offer a single gender option to members of the excluded gender.<sup>29</sup>

Such programs must be evaluated every two years. The LEA must demonstrate that it is adhering to the important governmental objectives for which its single gender programs were established to serve. It must also demonstrate that its program continues to operate free from overly-broad gender stereotypes, and that single gender and coeducational options are substantially equal in quality.<sup>30</sup>

Several factors are set forth for use in determining whether a coeducational or single gender alternative to the single gender school or classroom is “substantially equal.” These factors include the quality of policies, admissions criteria, educational benefits, faculty, facilities, instructional materials, technology, resources, and intangibles such as faculty reputation.<sup>31</sup> Such factors form the basis of inquiry for required program evaluations by, and investigations of complaints filed against such programs with, the USDOE’s OCR.<sup>32</sup>

#### B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1000.05, F.S., provides that public K-20 institutions may not restrict access by establishing admission criteria to a program or course based on gender, except that students may be separated by gender for: (a) physical education classes involving participation in bodily contact sports; and (b) classes dealing primarily with human reproduction. Consideration may be given to amending the

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<sup>26</sup> See 34 C.F.R. 106.35 (prior to its amendment in 2006).

<sup>27</sup> U.S. Department of Education, Guidelines Regarding Single-Sex Classrooms and Schools, 4000-01-U (May 3, 2002) *available at* <http://www.ed.gov/about/offices/list/ocr/t9-guidelines-ss.html>.

<sup>28</sup> Federal Register, Vol. 67, No. 89 (May 8, 2002) *available at* <http://www.ed.gov/legislation/FedRegister/proprule/2002-2/050802a.html>.

<sup>29</sup> 34 C.F.R. 106.34(b)(1)(iv) and (c)(1).

<sup>30</sup> 34 C.F.R. 106.34(b).

<sup>31</sup> 34 C.F.R. 106.34(b)(3) and (c)(3).

<sup>32</sup> Federal Register, Vol. 71, No. 206 (October 24, 2006) *available at* <http://www.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>.

section to also include an exception for the single gender schools, classes, and programs authorized by the bill.

#### D. STATEMENT OF THE SPONSOR

Representative Legg submitted the following sponsor statement:

As the single gender classroom trend grows nationally, we are seeing more and more positive results. Because girls and boys are so diverse, single gender classrooms offer unique educational opportunities for both. Allowing school districts the choice to offer single gender classrooms will facilitate a better understanding of the learning differences of boys and girls. In addition, it will ultimately give students the chance to learn in an environment with less distractions and a greater emphasis on the individual needs of each student.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**