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 Judiciary Committee

BILL:	CS/CS/SB 242
INTRODUCER:	Judiciary Committee, Education Pre-K-12 Committee, and Senator Wise
SUBJECT:	Single-gender Schools, Classes, and Programs
DATE:	March 6, 2008 REVISED:

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

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill authorizes district school boards to establish and maintain a single-gender nonvocational class, extracurricular activity, or school for elementary, middle, or high school students when the school district also makes available a substantially equal:

- Single-gender class, extracurricular activity, or school to students of the other gender; and
- Coeducational class, extracurricular activity, or school to all students.

A district school board that establishes a single-gender class, extracurricular activity, or school:

- May not require participation by any student and must ensure that participation is voluntary.
- Must evaluate the class, activity, or school every two years in order to ensure compliance with state and federal requirements.

This bill amends sections 1000.05 and 1002, Florida Statutes, and creates section 1002.311, Florida Statutes.

II. Present Situation:

Federal Education Law

Title IX of the Education Amendments of 1972 (Title IX) prohibits sex discrimination in federally assisted education programs and activities. The original Title IX regulations issued by the former Department of Health, Education, and Welfare generally required that classes be coeducational to ensure nondiscrimination. However, 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. Department of Education proposed amendments to the Title IX regulations.[2] These regulations, finalized on November 24, 2006, permit the creation of single sex classes and programs with the following restrictions:

- 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]

Status of Single-Sex Public Education

As of November 2007, the National Association for Single Sex Public Education reported that 366 public schools in 37 states and The District of Columbia offered single-gender educational opportunities.[4] These include single-gender schools, programs, and classes. Of these, 88 operate as single-gender public schools, present in 18 states and the District of Columbia.[5]

Arguably, current Florida law prohibits single-gender schools and classrooms thereby preventing school districts from accessing federal funds under the NCLB for the introduction of single-gender schools and classrooms. Section 1000.05(2), F.S., of the Florida Educational Equity Act, prohibits discrimination on the basis of gender against a student in the state system of public K-20 education. Admission to a program or course may not be restricted based on gender.

Nevertheless, according to a national proponent of single-gender education, Florida has approximately 14 schools providing some combination of single-gender classes.[6] Additionally, there are 18 schools in Florida that operate on a single-gender program for students at risk.[7]

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[1] 20 U.S.C.A. s. 7215(a)(23).
[2] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 71 Fed. Reg. 62,530 (Oct. 25 2006) (codified at 34 C.F.R. pt. 106).
[3] Suzanne Weiss, *Same Sex Schooling*, PROGRESS EDUC. REFORM 2007 (Educ. Comm'n of the States), Jan. 2007, http://www.ecs.org.
[4] NAT'L ASS'N FOR SINGLE SEX PUBLIC EDUC., *Single- Sex Schools* (2007), http://www.singlesexschools.org/schools-classrooms.htm.
[5] *Id*.
[6] *Id.*

III. Effect of Proposed Changes:

Authorization

This bill authorizes district school boards to establish and maintain a single-gender nonvocational class, extracurricular activity, or school for elementary, middle, or high school students when the school district also makes available a substantially equal:

- Single –gender class, extracurricular activity, or school to students of the other gender; and
- Coeducational class, extracurricular activity, or school to all students.

A district school board that establishes a single-gender class, extracurricular activity, or school:

- May not require participation by any student and must ensure that participation is voluntary.
- Must evaluate them every two years in order to ensure compliance with state and federal requirements.

The bill provides an exception for single-gender programs in s. 1000.05, F.S., the section that prohibits gender discrimination for Florida's K-20 educational system. It also adds a reference to single-gender programs in s. 1002.20(6)(a), F.S., the paragraph that lists public school choice options.

Effective Date

The provisions of this bill shall take effect on July 1, 2008.

Performance Research

In a comprehensive review of single-sex schooling, the Department of Education reported that, a third of all the studies on single sex education reported favorable results with the remaining studies being split between null and mixed results.[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

[7] *Id.*

[8] *See* U.S. Department of Education, Office of Planning, Evaluation and Policy Development, *Single-Sex Versus Coeducational Schooling: A Systematic Review* (September 2005) at http://www.ed.gov.

> 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]

In an isolated study conducted at Woodward Elementary School in Deland, Florida, in partnership with Stetson University, data showed an increase in rates of student proficiency in single-gender classes. Over the past three academic years, student FCAT data indicated that 37 percent of boys and 59 percent of girls in coed classes scored proficient on FCAT subjects as compared to 86 percent of boys and 75 percent of girls in single-sex classes.[10]

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 U.S. Supreme 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.[11] 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.[12] At times, the Court has required the government to demonstrate an "exceedingly persuasive justification"[13] for the 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.[14]

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[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] *See* National Association of Single Sex Public Education, *Single Sex Versus Coed: The Evidence*, available at http://www.singlesexschools.org/research-singlesexvscoed.htm.
[11] Susan G. Clark, *Public Single-Sex Schools: Are They Lawful?* 213 WELR 319, 323 (2006).
[12] *Mississippi University for Women v. Hogan*, 102 S.Ct. 3331, 3333 (1982).
[13] *See, i.e., Mississippi University for Women v. Hogan*, 102 S.Ct. 3331 (1982); *U.S. v. Virginia*, 116 S.Ct. 2264 (1996).
[14] 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).

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.[15] 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.[16] 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.[17] 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.[18]

The Supreme Court revisited the issue of whether a single-gender school is constitutional in 1996, in *U.S. v. Virginia*.[19] Here, the Virginia Military Institute (VMI) only accepted men for training as "citizen-soldiers," through a rigorous course of leadership and military teachings.[20] In contrast to the single-gender 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.[21] 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.[22] In striking down the policy, the Court labeled the Women's Institute a "pale shadow" of VMI in regard to curricular choice range, faculty stature, funding, prestige, alumni support, and influence.[23] However, the Court's opinion supports the conclusion that a government objective of diversity of educational options is a "sufficiently important objective for single-sex schools, at least when such diversity is offered to both sexes."[24]

To justify the classification of students by gender, the Court stated that the "justification must be genuine, not hypothesized or invented post hoc in response to litigation. And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females."[25] In terms of single-gender classes, "the objectives… should be based on evidence about the current educational problems, needs, and barriers that educators are attempting to address."[26] Finally, to make the strongest case that substantially equal quality is provided, a school district may want to consider offering a

[15] *Hogan*, 102 S.Ct. at 3332-3333.
[16] *Id.* at 3333.
[17] *Id.*
[18] *Id.* at 3341.
[19] *Virginia*, 116 S.Ct. at 2267.
[20] *Id.*
[21] *Id.* at 2272.
[22] *Id.* at 2279.
[23] *Id.* at 2285.
[24] Kimberly J. Jenkins, *Constitutional Lessons for the Next Generation of Public Single-Sex Elementary and Secondary Schools*, 47 WM. & MARY L. REV. 1953, 1975 (2006).
[25] *Virginia*, 116 S.Ct at 2275.
[26] Jenkins, *supra* note 24, at 1971.

single-sex class or program within a school, using the same teacher and same coursework, but offering the class at different times, for male and female students.

A few months prior to the finalization of the amendments to Title IX regulations permitting the creation of single-sex classes and programs, the American Civil Liberties Union and the ACLU of Louisiana brought suit on behalf of a 13-year-old Louisiana eighth grader against the Livingston Parish School Board. The plaintiffs sought an immediate stop to the plans of the Livingston Parish School Board to segregate students on the basis of sex. The complaint cited to the Title IX prohibitions against providing education programs separately on the basis of sex. The Livingston Parish School Board agreed to stop plans to segregate students on the basis of sex one day after the suit was filed.[27]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill authorizes, but does not mandate, single-gender schools, classes, or programs. If a local school board's implementation did not impact the number of schools, classes, or programs, there would be no fiscal impact.

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.)

CS by Education Pre-K on January 9, 2008:
The committee substitute differs from SB 242 in the following ways:

[27] *See* "ACLU Wins Major Lawsuit Against Sex-Segregated School in Louisiana," ACLU press release, August 3, 2006, http://www.aclu.org/womensrights/edu.

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 two years in order to ensure that they comply with federal requirements.[28]

CS by Judiciary on March 5, 2008:
The committee substitute differs from CS/SB 242 in the following ways:

- Provides an exception for single-gender programs in s. 1000.05, F.S., the section that prohibits gender discrimination for Florida's K-20 educational system;
- Adds a reference to single-gender programs in s. 1002.20(6)(a), F.S., the paragraph that lists public school choice options;
- Requires compliance with 34 C.F.R. s. 106.34, and amends the bill language to conform to requirements and terminology used in those federal regulations; and
- Adds that the district school board must evaluate the programs every two years to ensure compliance with state law as well as federal law.

B. Amendments:

None.

[28] 34 C.F.R. s. 106.34 (2006).