

Date of Hearing: June 23, 2021

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 363 (Leyva) – As Amended June 14, 2021

[Note: This bill is double referred to the Assembly Judiciary Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SENATE VOTE: 29-2

SUBJECT: Educational equity: government instruction conferences

SUMMARY: Exempts Boys State and Girls State conferences, operated by the American Legion and the American Legion Auxiliary, from specified sex discrimination laws provided they meet certain requirements. Specifically, **this bill:**

- 1) Deletes the exclusion from sex discrimination provisions of current law for Boys State and Girls State conferences, effective January 1, 2023.
- 2) As of January 1, 2023, exempts programs and activities operated by the American Legion or the American Legion Auxiliary provided in a gender-segregated manner, including Boys State conferences or Girls State conferences, from specified sex discrimination prohibitions provided that the following conditions are met each year that the conferences are held:
 - a) The conferences provide substantially similar access to government officials and facilities;
 - b) The conferences provide substantially similar programming except where the programming relates to the role of gender in public service specifically;
 - c) There are an equal number of opportunities for girls to participate in the conferences as there are for boys;
 - d) Any limitations on the number of pupils that can be nominated to attend the conferences from a single high school apply equally to boys and girls, unless the high school is a single-gender high school;
 - e) Pupils who do not identify as either male or female are allowed to participate in either conference; and
 - f) The conferences comply with all other nondiscrimination provisions of state and federal law.
- 3) Provides that the sex discrimination provisions of existing state law do not prevent any secondary education institution from engaging in programs or activities to promote Boys State or Girls State conferences and for selecting pupils to attend either of those conferences, provided that all of the above provisions are met.

EXISTING LAW:

- 1) Prohibits the State from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public housing. (California Constitution, Article I, Section 31)
- 2) Prohibits any person from being subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation or any other characteristic that is contained in the definition of hate crimes in any program or activity conducted by an educational institution that receives, or benefits from state financial assistance, or enrolls students who receive state student financial aid. (Education Code (EC) Section 220)
- 3) Exempts from sex discrimination provisions any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State, Boys Nation, Girls State, or Girls Nation conferences. (EC 224)
- 4) Prohibits discrimination on the basis of sex in any federally funded educational program or activity. (Title IX of the Education Amendments of 1972, 20 U.S. Code, Section 1681-1688)
- 5) Makes an exception to the general prohibition against sex discrimination or non-vocational classes or extracurricular activities in an elementary or secondary school under certain circumstances, including the following: (U.S. Code, Title 20, Section 1681)
 - a) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference.
 - b) Any program or activity of any secondary school or educational institution specifically for:
 - i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or,
 - ii) The selection of students to attend any such conference.
 - c) Membership practices of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age.
 - d) An educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization.

FISCAL EFFECT: This bill has been keyed non-fiscal by the Office of Legislative Counsel.

COMMENTS:

Need for the bill. According to the author, “The California Girls State and Boys State programs are intended to impart a better understanding of government and civic responsibilities, as well as active participation in the privileges and responsibilities of democracy. Sadly, young women participating in California Girls State are not afforded comparable equal civics education opportunities as young men in California Boys State. SB 363 furthers California’s goal of providing an equal educational opportunity to all students by requiring both the California Boys State and California Girls State programs to offer substantially similar curriculum, substantially similar access to government officials and facilities, an equal number of participants, any limitations on nominations be equal, and allow non-binary people to participate in either program.”

Boys State. Boys State is sponsored by the American Legion. According to the California Boys State website, Boys State was founded in 1935 as “a participatory program in which students become part of the operation of local, county and state government. At Boys State, participants learn the rights, privileges and responsibilities of franchised citizens. The training is objective and centers on the structure of city, county and state governments. Operated by students elected to various offices, Boys State activities include legislative sessions, court proceedings, law-enforcement presentations, assemblies, bands, choruses and recreational programs. Typically, high schools will submit a recommended lists of eligible candidates to local American Legion posts. Those individuals who have successfully completed their junior year of high school and who have at least one more semester remaining are considered.”

Girls State. Girls State is sponsored by the American Legion Auxiliary Department of California, a completely separate entity from the American Legion. According to the Girls State website, Girls State was founded in 1937 and is “a leadership program sponsored by the American Legion Auxiliary, designed to increase awareness and knowledge of governmental processes while learning about the duties, privileges, rights and responsibilities of citizenship. Delegates come away with a greater appreciation of the American Flag and of the sacrifices made by our veterans. Girls State is focused on responsible citizenship, leadership, and love for God and country. Female high school students learn about the political process by electing officials for all levels of state government and actively running a mock government. The girls are assigned to mock cities and either the ‘Federalist Party’ or ‘Nationalist Party.’ The art of civil debate is one of the main skills learned at this premier program.”

The two programs are operated by separate organizations. According to the American Legion-Department of California (Legion), the Legion is “the nation’s largest veterans service organization and its Department of California is dedicated to serving the approximately 1.7 million men and women living in communities across the Golden State. The Legion is committed to mentoring youth and the sponsorship of wholesome conferences in our communities, advocating patriotism and honor, promoting strong national security, and continued devotion to our fellow service members and veterans.”

The American Legion Auxiliary (Auxiliary), meanwhile, describes itself as “the male and female spouses, grandmothers, mothers, sisters, and direct and adopted female descendants of members of The American Legion.” It declares its mission to be: “to support The American Legion and to honor the sacrifice of those who serve by enhancing the lives of our veterans, military, and their

families, both at home and abroad. For God and Country, we advocate for veterans, educate our citizens, mentor youth, and promote patriotism, good citizenship, peace and security.”

The two organizations contend that they are completely separate, independent entities and that neither one can exercise any control over the other. The Legion is a non-profit registered with the California Secretary of State and is headquartered in Sanger, while the Auxiliary is headquartered in San Francisco. While the education goals of Boys State and Girls State are similar, they are sponsored, funded, and offered by two completely separate entities.

Similarities between the Boys State and Girls State Conferences. Participants for both the Boys and Girls State Conferences are chosen through a nomination and selection process. Each high school in California may nominate high school juniors for the program. Local Legion Posts then select those who will attend the Boys State Conferences from among the nominees. Auxiliary units select those who will attend the Girls State Conference.

The costs of attending the conferences are mostly paid by the local Legion posts and Auxiliary units. Not all of the posts or units are able to raise sufficient funds to send students to the conferences, however. Thus, whether any given high school student can attend a conference depends on a combination of whether their high school nominates them, whether the local post or unit has sufficient funding to send students to the conference, and, if so, whether the post or unit selects the student to go.

Both conferences are approximately a week in length. Students at both conferences participate in civics-related programming and education during the day and stay overnight at the conference location.

Both the Boys State and Girls State Conference act as feeders into the corresponding Boys and Girls National Conferences. Two outstanding Girls State participants are selected to attend the Girls Nation Conference, held in Washington, D.C., and two top representatives from each Boys State Conference are selected to attend the Boys Nation Conference, which also take place in the nation’s capital.

Differences between the Boys State and Girls State conferences. While both the California Boys and Girls State conferences are weeklong civic education programs, they currently offer substantially different opportunities to the state’s high school students, depending on the students’ gender. The differences mean that fewer California high school girls have the opportunity to participate in the conferences to begin with, and even the girls who are able to participate do not have access to the same quality of experience that their male counterparts do.

To begin with, there are far fewer slots available for high school girls to attend the Girls State conference than there are slots for high school boys to attend the Boys State conference. Specifically, annual attendance at the Boys State conference is usually around 1,000 boys, while typically only a little over 500 girls are able to attend the Girls State conference. This means that for every two high school boys who gain the benefits and advantages that attendance at these conferences confers, only one girl will have the chance to do so.

The selection and registration process also differ by gender. Each high school may only send one delegate to attend Girls State. There does not appear to be any such limitation on the number of

boys from each high school that can attend Boys State. It is also noteworthy that girls are forbidden to attend the Girls State Conference if they are pregnant.

The high school boys attend their conference in Sacramento, the seat of state government. The boys' experience includes touring the State Capitol and the State Supreme Court building. The boys' experience involves making visits to the Capitol offices of state representatives and may include conducting mock hearings and debates on legislation using some of the same government facilities where the actual Legislature conducts its business. The girls, meanwhile, attend their conference at a college campus in Southern California.

In a letter to the author dated April 12, 2021, the Auxiliary states that they have decided to move the Girls State conference to Sacramento beginning with the 2023 session, provided that they continue to receive the exemption from sex discrimination provisions, that they are able to address the myriad of logistical issues involved in such a move, and finally provided that such a move is approved by their membership at their 2022 convention. The author has amended the bill to have the effective date postponed to January 1, 2023 in recognition of the need for time for these changes to be effected.

Arguments in support. Equal Rights Advocates, the sponsor of the bill, state “SB 363 addresses a longstanding inequity that is perpetuated by an outdated exception to the sex discrimination prohibitions in our Education Code. This exception to our education civil rights law has real and detrimental effects. Approximately 1,000 young men attend California Boys State in Sacramento each summer, where they are afforded learning opportunities, including participation in a mock legislative process as well as a visit to the State Capitol to tour the building and meet with legislators and staff. Also held during the summer, California Girls State—with only about half the number of participants as Boys State—hosts its own program at a college campus in Southern California, hundreds of miles away from the state capital and the center of California’s legislative process.

Though California Girls State participants are able to experience some of the same aspects of the civics education and leadership opportunities as California Boys State participants, inequities still remain. For example, California Boys State applicants pay no fees to apply to the program, while California Girls State applicants must pay a \$75 application fee. This fee for Girls State applicants where there is none for Boys State applicants is even more onerous for girls from low-income families. This causes the additional harm of creating an inequitable hurdle based on sex magnified by an intersecting income disparity hardship. In California, ample data exists to show us that this will mean girls of color may be disproportionately affected and barred from participation in California Girls State.

In an era when a record number of women are running for office, it is critical that young women are provided similar access to civic education and leadership opportunities as the young men participating in California Boys State, including visiting the State Capitol and Sacramento. SB 363 will rightly ensure that the American Legion does not sponsor or facilitate a program that discriminates based on gender.”

Related legislation. SB 1308 (Leyva) of the 2019-20 Session would have prohibited public funds or resources from being used in connection with any secondary educational program of government instruction located in Sacramento that does not provide an equal opportunity for female and male students. This bill was held in the Senate Education Committee.

AB 23 (Ridley-Thomas), Chapter 654, Statutes of 2017, authorizes a school district with an average daily attendance of 400,000 or more to maintain any single gender schools and classes that were enrolling pupils as of July 1, 2017, provided that specified conditions are met.

AB 3133 (Roos), Chapter 1117, Statutes of 1982, known as the Sex Equity in Education Act, prohibits discrimination in state law for programs and activities by any educational institution receiving state funds. The bill enacted federal sex discrimination laws, including the exemption for Boys State and Girls State, except that the bill covered education institutions receiving state funds, whereas the federal laws cover educational institutions receiving federal funds.

REGISTERED SUPPORT / OPPOSITION:**Support**

American Legion Auxiliary 25th District CA
California Federation of Teachers AFL-CIO
California Women's Law Center
Equal Rights Advocates
Ignite
National Women's Political Caucus of California
Public Counsel
Women's Foundation California

Opposition

None on file

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