

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 363 (Leyva)
Version: April 5, 2021
Hearing Date: May 4, 2021
Fiscal: No
Urgency: No
TSG

SUBJECT

Educational equity: government instruction conferences

DIGEST

This bill repeals an exemption to some of California's civil rights in education laws. That exemption currently may allow the American Legion to discriminate on the basis of sex when organizing or operating civics programs known as Boys State conference, Boys Nation conference, Girls State conference, and Girls Nation conference. The exemption also may allow any California high school to discriminate on the basis of sex when promoting these conferences or nominating students to attend them.

EXECUTIVE SUMMARY

The American Legion puts on a state and a national civics conference each year for high school boys. The American Legion Auxiliary puts on a state and a national civics conference each year for high school girls. By all accounts, these programs provide wonderful and valuable opportunities for growth, learning, and networking to their participants. However, because the programs are segregated by gender, do not provide equal access or experience for girls, and entirely exclude non-binary students, these programs also have a discriminatory effect. Among other things, they provide roughly twice the number of opportunities for boys' leadership and professional development as they do for girls. Currently, there are both federal and state statutes that possibly sanction this discrimination. This bill would repeal the state statute that does so.

The bill is sponsored by Equal Rights Advocates. Support is from women's rights advocates and some conference alumni. Opposition comes from other conference alumni and the organizations who put on the conferences in question. Opponents contend, among other things, that the programs are not so dissimilar, that federal law allows this discrimination, and that eliminating the exemption would restrict access to the conferences. The bill passed out of the Senate Education Committee by a vote of 4-1.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Provides that 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. (20 U.S.C. § 1681(a).)
- 2) Exempts both of the following from (1), above:
 - 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 the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or, the selection of students to attend any such conference. (20 U.S.C. § 1681(a)(7).)
- 3) Authorizes nonvocational single-gender extracurricular activities within the context of (1), above, so long as the following criteria are met:
 - a) each single-sex extracurricular activity either:
 - i) improves the educational achievement of its students through the educational institution's overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective; or
 - ii) meets the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective;
 - b) the recipient implements its objective in an evenhanded manner;
 - c) enrollment in the single-sex extracurricular activity is completely voluntary;
 - d) the educational institution provides to all other students, including students of the excluded sex, a substantially equal extracurricular activity in the same subject or activity.
 - e) the educational institution conducts periodic evaluations to ensure that single-sex classes or extracurricular activities are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes or extracurricular activities are substantially related to the achievement of the important objective for the classes or extracurricular activities. (34 C.F.R. 106.34(b).)

Existing state law:

- 1) Provides that no person shall be denied the equal protection of the laws. (Cal. Const., art. I, § 7(a).)
- 2) 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. (Cal. Const., art. I, § 31.)
- 3) Declares that it is the policy of the State of California to afford all persons in public schools equal rights and opportunities in the educational institutions of the state, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or immigration status. (Ed. Code § 200.)
- 4) Prohibits discrimination on the basis of, or the perception of, disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or immigration status, in the conduct of any program or activity by an educational institution that receives, or benefits from, state financial assistance, or that enrolls pupils who receive state student financial aid. (Ed. Code §§ 210.2 and 220.)
- 5) Prohibits the exclusion of a person or persons from participation or any other discrimination in any academic, extracurricular, research, occupational training, or other program or activity, on the basis of sex. (Ed. Code § 230.)
- 6) Makes an exception to (7), above, for any program or activity undertaken by the American Legion to discriminate on the basis of sex in any program or activity undertaken in connection with the organization or operation of any Boys State, Boys Nation, Girls State, or Girls Nations conferences. (Ed. Code § 224(a).)
- 7) Makes an exception to (7), above, allowing California high schools to discriminate on the basis of sex in any program or activity for the purpose of:
 - a) promoting any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or
 - b) selecting students to attend any of those conferences.

This bill:

- 1) Repeals the state law exemption that currently allows the American Legion to discriminate on the basis of sex in any program or activity undertaken in connection with the organization or operation of any Boys State, Boys Nation, Girls State, or Girls Nations conferences.

- 2) Repeals the state law exemption that currently allows California high schools to discriminate on the basis of sex in any program or activity for the purpose of promoting any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or selecting students to attend any of those conferences.

COMMENTS

1. About the American Legion and the American Legion Auxiliary

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 American 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 servicemembers 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.”¹ 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.”²

Both organizations are adamant that they are completely separate, independent entities and that neither one can exercise any control over the other. As the Legion puts it: “[t]he Legion is a non-profit registered with the California Secretary of State [...] and is headquartered in Sanger, CA, while the Auxiliary [...] is headquartered in San Francisco. Both entities are governed by California Corporation Law and neither entity has power or control over the other. While the education goals of Boys State and Girls State are similar, they are sponsored, funded and offered by two completely separate entities.”

2. About the Boys State and Girls State conferences

According to the American Legion, the Boys State Conference:

... is among the most respected and selective educational programs of government instruction for U.S. high school students. A

¹ *About us*. American Legion Auxiliary <https://www.legion-aux.org/about> (as of Apr. 24, 2021).

² *Mission Statement*. American Legion Auxiliary <https://www.legion-aux.org/about/mission> (as of Apr. 24, 2021).

participatory program in which students become part of the operation of local, county and state government, Boys State was founded in 1935 to counter the socialism-inspired Young Pioneer Camps. [...]

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.

Legion posts select high school juniors to attend the program. In most cases, individual expenses are paid by a sponsoring post, a local business or another community-based organization.

[...] As separate corporations, Boys State programs vary in content and method of procedure, but each adheres to the same basic concept: teaching government from the township to the state level.³

Meanwhile, the Auxiliary describes the Girls State Conference as:

... an amazing week of learning focused on responsible citizenship, leadership, and love for God and country. Female high school students who have completed their junior year are competitively selected and sponsored by American Legion Auxiliary units for this program, where they 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." Assistance from dedicated ALA volunteers ensures the program's nonpartisan governmental, patriotic, and civic objectives are carried out through interactive learning. Though the week is filled with many learning opportunities, there is always time for fun and the formation of long-term friendships.

The art of civil debate is one of the main skills learned at this premier program, hosted by the American Legion Auxiliary since

³ *About Boys State & Boys Nation*. American Legion <https://www.legion.org/boysnation/about> (as of Apr. 28, 2021).

1937. Many ALA Girls State participants have gone on to a lifetime of service to our country in the military, civil service, or advocacy.⁴

3. 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. (See Comment 4 for how this selection process differs by gender.)

The costs of attending the conferences are mostly paid by the local Legion posts and Auxiliary units. (See Comment 4 for how some registration fees differ by gender.) 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, DC, 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.

4. Differences between the Boys State and Girls State conferences

While both the California Boys and Girls State conferences are weeklong civics education programs, they currently offer substantially different opportunities to the state's high school students, depending on the students' gender. These differences are both quantitative and qualitative. That is, 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.

⁴ Youth Programs. American Legion Auxiliary https://www.legion-aux.org/CMSDesk/ALA/media/PDF/Brochures/Youth_Programs_Brochure-lp.pdf (as of Apr. 28, 2021).

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 get anything even close to it.

The selection and registration process also differ by gender. Each high school may only send one delegate to attend Girls State.⁵ 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.⁶

Everyone agrees that the high school girls who do get to go to one of these conferences typically have a wonderful and enriching experience. Nonetheless, it is a different experience from what their male counterparts enjoy, and in multiple ways, the girls' experience is qualitatively inferior. First and foremost, the high school boys attend their conference in Sacramento, at 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.

The author points to additional qualitative differences between the conferences, though the Legion disputes some of these. According to the author:

California Boys State applicants pay no fees to apply to the program, while California Girls State applicants must pay a \$75 application fee. Also, California Boys State hosts a college night where the young men have opportunities to meet directly with representatives from various colleges and career paths, while California Girls State participants do not have similar access during their program week. California Boys State attendees are also provided one-on-one access to government and law enforcement officials where they gain insight and potential career access that is not available to California Girls State participants.

⁵ See <https://www.cagirlsstate.org/faq> ("Q: Can my school have more than one delegate at ALA California Girls State? A: No. Our rules state that only one delegate may be selected from a high school.")

⁶ See 2021 Delegate Parent/Guardian Packet, American Legion Auxiliary California Girls State https://9be06b13-4084-46a4-92ca-b33f586fa4f2.filesusr.com/ugd/c8d8c1_44687867eecb44598d3c60244747da07.pdf (as of Apr. 28, 2021) at (g).)

In response to these claims, the Legion attempts to refute the suggestion that there is anything dramatically better or different about the Boys State Conference when compared to the Girls State Conference. In its letter opposing the bill, the Legion points out that the Governor of California has only dropped by the Boys State Conference on one very rare occasion, that the Girls State Conference has now taken to having a “college night” during their conference, just like the Boys, and that the registration fee charged only to the girls is something the Auxiliary chose to implement in order to discourage last-minute no shows.

The Legion also downplays the significance of proximity to the Capitol Building as an element in the conference experience. Capitol visits, it indicates, only occupy three hours out of the seven-day long Boys State conference. Ninety percent of the conference participants visited their Senator or Assemblymember’s office, according to the Legion’s post-conference surveys, but only 10 percent got to meet with their Senator directly and only 15 percent got to meet in-person with their Assemblymember. Yet even if it is fair to say that the boys’ time in the Capitol is relatively brief, it is also fair to point out that the boys’ three hours in the Capitol is three hours more than any of the participants in the Girls State conference get. Similarly, 10-15 percent may be a fleeting chance of getting facetime with your elected representative at the Capitol, but they are still far better odds than what is available to the girls at a college campus 400 miles away.

5. Why the differences between the conferences and the exclusion of non-binary students from these conferences matter

Participation in Boys State and Girls State is a valuable thing. The experience in and of itself has value, of course. Students interact with and get to know talented peers, get to travel to a new place, gain confidence and independence by spending supervised time on their own away from home, learn about public service, and have the chance to meet a variety of professional role models. As AMVETS-Department of California, the Military Officers Association of California, and the American Legion-Department of California write in opposition to this bill: “[t]he Boys State and Girls State programs [...] are highly respected events which provide invaluable experience and exposure to boys and girls from across the state.”

The fact of participation also has significant value. For instance, both conferences are explicitly mentioned in bullet point one of West Point’s suggested list of extracurricular activities for high school juniors hoping to get into that prestigious U.S. Military Academy. Moreover, the peer and professional contacts that Boys and Girls State participants gain are likely to pay dividends over the course of a lifetime. Writing in opposition to the bill, the Legion highlights the fact that a number of Boys and Girls State participants have gone on to achieve great things:

Some famous alumni of the Boys State Conference include astronaut Neil Armstrong, Justice Samuel Alito, President Bill

Clinton, and former Speaker of the California State Assembly, John Perez. The Girls State Conference alumni include journalist Jane Pauley, Governor Ann Richards, Brigadier General Michelle Johnson USAF, and US Representatives Connie Morella, Barbara Cubin, and Jennifer Dunn.

This impressive list affirms that participation in Boys State and Girls State acts as a stepping-stone to future success.

And it is precisely because these programs are prestigious, effective, and valuable that discriminatory access to them is so problematic. Since attending these conferences boosts a student's chances of getting into prestigious colleges, connects them with a network of peers and professionals that can help them advance their careers, and heightens the likelihood that the student will eventually pursue a career in public service, the fact that fewer girls have the chance to attend and the fact that non-binary students are excluded altogether means that fewer girls and fewer non-binary individuals will be able to get into prestigious colleges, fewer girls and non-binary individuals will achieve professional prominence, and fewer girls and non-binary individuals will go on to careers in public service. It is with this effect in mind that the sponsors of the bill write that the current structure of the California Boys and Girls State conferences is "a model for discrimination where it should instead be a model for equity and engagement in our shared civic privileges and responsibilities."

6. The Auxiliary's fears about harm to Girls State if this bill is enacted

In opposition to this bill, the Auxiliary argues that repealing its permission to discriminate on the basis of sex pursuant to Education Code Section 224 represents an existential threat to the Girls State conference.

The ALA California Girls State program has relied on the exemption of EC 224 to protect it as a single gender program. [...] By focusing on women and girls, we foster skills that help delegates navigate male-dominated arenas. For many of our young women, this is the first time they have been able to excel and build empowering relationships without interference from strong male voices. [...] Eliminating EC 224 would threaten this very special and unique learning environment for our young women.

These fears may be misplaced, however.

First, the plain language of Education Code Section 224 does not apply to the Auxiliary. Education Code Section 224 says that *the Legion* is exempt from the Sex Equity in Education Act, but it does not mention *the Auxiliary* at all. In pertinent part, the text of Education Code Section 224 reads:

The sex discrimination provisions of this article shall not apply to [...] [a]ny 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. (Emphasis added.)

Thus, if the two entities are truly separate and independent (as they both strongly assert), then the Auxiliary has been operating the Girls State conference as a single-gender program for decades without the benefit of any protection from Education Code Section 224 and without any apparent problems. From the Auxiliary's perspective therefore, repeal of Education Code Section 224 may make no legal difference at all.

Second, it is not entirely clear that the Sex Equity in Education Act prohibits a single-gender civics program like Boys State or Girls State even without the exemption provided by Education Code Section 224. Since the Sex Equity in Education Act is the state equivalent to Title IX, courts would likely look to interpretation of Title IX to determine what is permissible under the state law. The relevant federal regulation states that nonvocational, single-sex extracurricular activities are permissible, provided that the single-sex activity meets a number of criteria, including that the single-gender nature of the activity is relevant to the educational objective and that the excluded sex has access to a substantially equal extracurricular activity in the same subject. (34 C.F.R. 34(b).) From this, it appears that even in the absence of Education Code Section 224, Girls State would probably be able to continue to operate on a single-gender basis without violating the Sex Equity in Education Act, provided that boys have access to a substantially equal program. It would seem that the Boys State conference more than suffices.

7. Opposition fears with regard to the role of high schools in promoting Boys and Girls State conferences and nominating students to attend them

Both the Legion and the Auxiliary express concern that repealing Education Code Section 224 would dissuade California high schools from continuing to play their role in informing students about the existence of Boys and Girls State, and in nominating students to attend. In the absence of school-based promotion, the Legion contends, only high school students "in the know" will successfully access the program. The underlying assertion seems to be that if subdivision (b) of Education Code Section 224 were repealed, California high schools would become subject to liability for discrimination in a way that they presently are not.

While it is possible that California high schools would react in this way, there are also reasons to think they would not. First of all, above, it is not necessarily the case that promoting a single-gender, extracurricular civics education conference or even nominating students to attend would constitute a violation of the Sex Equity in Education Act. A set of recently published U.S. Department of Education Frequently

Asked Questions regarding the application of Title IX, the federal analog statute, may be instructive:

May a school promote, sponsor, or advertise an academic or extracurricular program offered to students or employees by a third party if that program imposes a preference or restriction based on sex? Answer: In limited circumstances. Schools generally may not provide significant assistance to a third-party organization or person that offers academic or extracurricular programs if those programs impose a preference or restriction on the basis of sex.³⁶ Whether a school is providing significant assistance to an outside organization “will turn on the facts and circumstances of specific situations.” However, OCR has long interpreted “significant assistance” to include a school’s “giv[ing] an organization special status or privileges that it does not offer to all community organizations,” including “official recognition of the organization, the designation of faculty sponsors, or the use of campus facilities at less than fair market value.” There may be other instances in which a school’s non-financial support for an organization constitutes significant assistance. Significant assistance may also involve the provision of funding to third-party groups. Recipients must therefore generally avoid providing faculty sponsors, administrative staff, or other such support to third-party academic or extracurricular programs offered by organizations that discriminate on the basis of sex. However, simply advertising (by listing on the school’s website or otherwise) the availability of an academic, extracurricular, or other program offered by third party that provides no financial support for the school’s students is unlikely to violate Title IX. [...]⁷

Thus, it seems that schools could continue to promote the availability of Boys and Girls State, even in the absence of their exemption under Education Code Section 224. They would just have to stop short of providing “significant assistance.”

Second, if promoting or nominating students to attend a single-gender civics education conference *is* discriminatory, then most California high schools may already be liable for doing so. Education Code Section 220 prohibits any educational institution that “receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid” is already prohibited from discriminating on the basis of gender (among other things). Nothing in Education Code Section 224 changes that, because

⁷ *Questions and Answers Regarding OCR’s Interpretation of Title IX and Single Sex Scholarships, Clubs, and other Programs* (Jan. 14, 2021) United States Department of Education, Office for Civil Rights <https://www2.ed.gov/about/offices/list/ocr/docs/qa-single-sex-20210114.pdf> (as of Apr. 29, 2021) at pp. 10-11. Footnotes omitted.

Section 224 only exempts high schools from the application of “this article,” meaning the Sex Equity in Education Act, or Education Code Sections 221.5 through 232. (Contrast this with the language in Education Code Section 223, which exempts the Boy Scouts, Girl Scouts, and YMCA, among others, from application of “[t]his chapter” which *does* encompass Education Code Section 220.) In other words, if promoting Boys and Girls State or participating in the nomination process for those conferences is discriminatory, then most California high schools may already be exposed to liability for it under Education Code Section 220. That will not change whether Education Code Section 224 remains on the books or gets repealed.

With all of this in mind, the Committee may wish to inquire further of the opposition why the existence of Education Code Section 224 is critical to the continued operation of Boys and Girls State as single-gender extracurricular activities, if those two programs do indeed offer boys and girls substantially equal opportunities and programs?

8. Relevance of similar exemptions in federal law?

Similar to the exemption at issue in this bill, Title IX, the federal law prohibiting discrimination in education on the basis of sex, also contains an exemption that allows the American Legion to continue discriminating on the basis of sex. In fact, it appears that the Title IX exemption for Boys and Girls State Conferences was simply copied over into state law when California chose to enact its state analog to Title IX about 40 years ago. (AB 3133, Roos *et al*, Ch. 1117, Stats. 1982.) The opponents to this bill point to the federal exemption as one of the reasons why they believe this bill should not be passed.

The bill’s sponsor responds that nothing prevents California from repealing Education Code Section 224. The sponsor expresses the view that, even if the repeal of Education Code Section 224 would set up a conflict with federal law – a point the sponsor does not concede – Title IX merely establishes a minimum federal set of protections against sex discrimination in the educational context and that states are free to go further.

9. Necessity for legislation?

Legion and Auxiliary members devote considerable time and effort to making the Boys and Girls State programs happen. Much of this effort is voluntary and motivated by a desire to improve the lives of young Californians, nurture future leaders, and strengthen public understanding of democratic processes. The opposition to this bill expresses fear that these considerable and valuable efforts could be lost if the bill passes. Based on the author’s statements in the Senate Education Committee hearing, it is not the author’s intent to harm the conferences. Rather, the author seeks true parity between them. During the same hearing and in subsequent correspondence, the Legion and the Auxiliary have expressed a renewed commitment to trying to ensure that Girls State offers its participants a genuinely comparable experience to that available at Boys State. In particular, the Auxiliary has stated an intent to work toward moving the Girls

State conference back to Sacramento. On the basis of this intent, the opposition declared its hope that the issues implicated by this bill could be addressed in some non-legislative fashion.

It should be noted, however, that returning the Girls State conference to Sacramento would only address some of the aspects of the current structure of the conferences that discriminate on the basis of sex. As previously mentioned, the Boys State conference is currently about double the size of the Girls State conference, meaning that even if both programs took place in Sacramento, boys in California would still have about twice the opportunity to attend one of these conferences as California girls do. Moreover, continuing to have conferences that are divided into one conference that is exclusively for boys and one conference that is exclusively for girls still leaves out those students who do not identify with either category. A non-legislative solution may be appropriate, therefore, but Committee members may wish to obtain assurances that some of these broader inequities will be addressed in the process.

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11. Possible amendments for consideration

Given that all parties seem to be in agreement that Boys and Girls State are of great value to the state and should continue, the parties may wish to consider the following possible amendments that would enable that continuation while ensuring that any discriminatory elements of the current structures of the programs are addressed:

- maintain the existing exemption for the Legion and schools, but clarify that it extends to the entire chapter of non-discrimination law, not just the Sex Equity in Education Act;
- extend the exemption to the Auxiliary and
- make all of these exemptions conditioned upon operation of both Boys and Girls State in ways that give substantially equal access and experience to boys and girls and ensure that non-binary students may also attend.

A mock-up of the possible amendments in context is attached to this analysis.

12. Arguments in support of the bill

According to the author:

SB 363 furthers California's goal of providing an equal educational opportunity to all students by repealing the American Legion's exception to sex discrimination provisions in the California Education Code. In order to promote and encourage gender parity, SB 363 will require the American Legion to follow California sex discrimination laws in education when administering their Boys State and Boys Nation conferences.

As sponsor of the bill, Equal Rights Advocates writes:

When California first promulgated its education equity laws in response to the adoption of Title IX at the federal level in 1972, an exception was allowed for the American Legion Boys' and Girls' state programs. Although of questionable legitimacy, this exception might have arguably been intended to ease such organizations into a new era of legally mandated equity for women and girls. However any such rationale that may have existed at that time is at best dubious, and has far outlived any purported justification.

This exception to our education civil rights law has real and detrimental effects. [...] 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. [...] Unfortunately, the program provides a clearer and more accessible path to [...] leadership experiences for boys than for girls simply because of their sex, with no justifiable basis for the differences in access to this program. This has made California Boys and Girls State a model for discrimination where it should instead be a model for equity and engagement in our shared civic privileges and responsibilities.

13. Arguments in opposition to the bill

In opposition to the bill, the American Legion – Department of California writes:

SB 363 makes the assumption that the Boys State Conference discriminates against females, even though the American Legion

Auxiliary hosts the Girls State Conference. The Auxiliary is an autonomous, separate non-profit organization which carries out the mission of providing an excellent civic and governmental Conference for girls. The Auxiliary has made the choice for over two decades to host their Conferences in Southern California. Your bill seeks to dictate how two separate organizations should run their Conferences, both of which have been striving to instill excellence and civic engagement in boys and girls for many years.

In further opposition to the bill, the Girls State Alumnae Foundation writes:

The two programs have made different programmatic choices, as is their prerogative as separate and distinct organizations. These choices include the number of delegates, location of the programs, choice of speakers and more. SB 363 can and would do nothing to change the separate and distinct ownership and leadership of these programs. Instead, by removing the exemption for these programs, this undesired bill would effectively eliminate ALA Girls State - an amazing program supporting female empowerment

Gender equity is a laudable goal, but SB 363 does not achieve that goal - it undermines it. Because TAL and ALA are separately incorporated and run independently, removal of the exemption under Education Code 224 would not generate the intended result of a so-called equity. Instead, it would put both programs at risk of complete elimination, preventing ALA Girls State from its mission of encouraging female empowerment and civic engagement.

SUPPORT

Equal Rights Advocates (sponsor)
California Women's Law Center
IGNITE
National Women's Political Caucus of California
Women's Foundation California

OPPOSITION

American Legion Auxiliary, Department of California
American Legion, Department of California
AMVETS, Department of California
California Girls State Alumnae Foundation

Military Officers Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1308 (Leyva, 2020) 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. SB 1308 was not heard in the Senate Education Committee due to the compressed legislative timelines relating to the COVID-19 pandemic.

AB 3133 (Roos *et al*, Ch. 1117, Stats. 1982), known as the Sex Equity in Education Act, prohibited discrimination in programs and activities by any educational institution receiving state funds. The bill duplicated 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.

PRIOR VOTES:

Senate Education Committee (Ayes 4, Noes 1)

Amended Mock-up for 2021-2022 SB-363 (Leyva (S))

Mock-up based on Version Number 98 - Amended Senate 4/5/21

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 224 of the Education Code is amended to read:~~repealed.~~

224. ~~(a)~~ The sex discrimination provisions of this ~~article~~chapter shall not ~~be construed to prevent the American Legion or the American Legion Auxiliary from operating programs and activities undertaken in connection with the organization or operation of any Boys State conference or Girls State conference in a gender-segregated manner apply to any of the following,~~ provided that these conferences comply with all of the following every year that the conferences take place:

(1) The conferences provide substantially similar access to government officials and facilities.

(2) The conferences provide substantially similar programming except where the programming relates to the role of gender in public service specifically.

(3) There are an equal number of opportunities for girls to participate in the conferences as there are for boys.

(4) Any limitations on the number students 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.

(5) Students who do not identify as either male or female are allowed to apply to either conference.

(6) The conferences comply with all other nondiscrimination provisions of state and federal law:

~~(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) Provided that the Boys State conference and the Girls State conference meet all of the requirements of paragraphs (1) to (6) of subdivision (a), the sex discrimination provisions of this chapter shall not be construed to prevent Any program or activity of any secondary educational institution from engaging in programs or activities specifically for any of the following purposes:

(1) The promotion of any Boys State conference, ~~Boys Nation conference,~~ or Girls State conference, ~~or Girls Nation conference.~~

(2) The selection of students to attend any either of those conferences.