

HOUSE BILL REPORT

HB 3001

As Reported by House Committee On:
Judiciary

Title: An act relating to prohibiting discrimination on the basis of sex in public community athletics programs.

Brief Description: Prohibiting discrimination in community athletics programs.

Sponsors: Representatives Rolfes, Nelson, Simpson, Williams, Appleton, Eddy, VanDeWege, Kenney, Roberts and Upthegrove.

Brief History:

Committee Activity:

Judiciary: 2/4/08, 2/5/08 [DPS].

Brief Summary of Substitute Bill

- Prohibits any city, town, county, or district or third party contractor from discriminating on the basis of sex in the allocation of facilities and resources in administering youth or adult community athletic programs.
- Requires the court to consider specific factors in making determinations of discrimination and accommodation.
- Establishes a civil action for violations, independent of any other rights and remedies under the law, including injunctive relief, damages, reasonable attorney's fees, and costs to the prevailing party.
- Establishes a legislative committee workgroup to study alternate or additional remedies for violations, and to determine appropriate compliance reporting procedures.

HOUSE COMMITTEE ON JUDICIARY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Lantz, Chair; Goodman, Vice Chair; Flannigan, Kirby, Moeller, Pedersen and Williams.

Minority Report: Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern and Ross.

Staff: Lara Zarowsky (786-7123).

Background:

Congress passed Title IX of the Education Amendments in 1972, prohibiting discrimination on the basis of sex in all educational programs and activities receiving federal financial assistance.

The same year the Equal Rights Amendment to the Washington State Constitution, Amendment 61, was approved by voters, providing that "equality of rights and responsibility under the law shall not be abridged on account of sex."

Title IX establishes the federal standard for gender equity, applied most prominently in the context of intercollegiate sports. Under Title IX, institutions must meet at least one of three identified criteria. Institutions must: (1) provide "substantial proportionality" between the number of female and male undergraduate students and the number of intercollegiate sports opportunities provided to students of both genders; (2) prove a continuing history of expanding women's sports; or (3) provide evidence that the interests and abilities of women have been accommodated by the institution's sports program.

In 1975 state legislation modeled after Title IX was enacted, prohibiting inequality in the educational opportunities afforded women and girls at *all* levels of public schools in Washington, and directing the Superintendent of Public Instruction to develop regulations and guidelines to eliminate gender discrimination in Washington schools.

In 1989 legislation was enacted to improve gender equity in public higher education, specifically in academic programs, student employment, counseling, financial aid, recreational activities, and intercollegiate athletics. If student participation in intercollegiate athletic opportunities were found to be disproportionate to the female and male student population, the college or university was required to adopt a plan to comply with the requirements, identify barriers to equal participation, and encourage gender equity in all aspects of college and university life. The Higher Education Coordinating Board is required to report to the Legislature every four years on institutional efforts to comply with the requirements of the law.

The gender equality laws applicable to public education do not explicitly extend to opportunities in community athletic programs.

Summary of Substitute Bill:

A city, town, county, or district is prohibited from discrimination on the basis of sex in the operation, conduct, or administration of community athletics programs for youth or adults in the allocation of resources and facilities used to support such programs.

A city, town, county, or district may not authorize or grant permits or permission to any third party for the use of such facilities and resources if the third party program discriminates on the basis of sex.

Definitions are provided for "community athletics program," "district," and "park and recreation facilities and resources."

In determining whether adequate accommodation has been made for males and females, the court shall assess whether the community athletics program has:

- shown that the program opportunities for both males and females are provided in numbers substantially proportionate to their respective numbers in the community;
- shown a history and continuing practice of program expansion and allocation of resources demonstrably responsive to developing interest and abilities of the members of an under-represented sex; or
- demonstrated that the interests and abilities of the members of an under-represented sex have been fully and effectively accommodated by the present program and allocation of resources.

A city, town, county, district, or school district may not permit or lease its facilities and resources to a third party unless the third party contractor is in compliance.

In determining whether discrimination has occurred, the court shall consider:

- whether selection of the community athletics programs effectively accommodates the interests and abilities of both genders;
- the provision of funding, equipment, and supplies;
- game and practice schedules;
- coaching opportunities;
- assignment and compensation for coaches and officials;
- access to land through permits and other land use options;
- selection of the season for a sport;
- the location of games and practices;
- locker room facilities;
- practice and competition facilities;
- publicity; and
- officiation by those who have met relevant training and certification standards.

A cause of action, independent of any other rights and remedies, is established to enforce any ordinances, regulations, or resolutions adopted by a city, town, county, district or public school district. Injunctive relief, damages, reasonable attorneys' fees and costs to the prevailing party are available.

A legislative committee workgroup is established to study (1) reporting guidelines that will enable effective compliance monitoring of community athletics programs, and (2) appropriate

alternate or additional remedies for violations. The workgroup shall consist of interested stakeholders, including representatives from cities, towns, counties, districts, school districts, and third party community athletics programs.

Substitute Bill Compared to Original Bill:

The requirements related to reporting to the State Human Rights Commission are removed. The direction to the Municipal Research Council to establish reporting guidelines to monitor community athletics programs is removed. A legislative committee workgroup is established to study 1) reporting guidelines that will enable effective compliance monitoring of community athletics programs, and 2) appropriate alternate or additional remedies for violations.

Appropriation: None.

Fiscal Note: Requested on January 31, 2008.

Effective Date of Substitute Bill: The bill takes effect January 1, 2009.

Staff Summary of Public Testimony:

(In Support) Title IX does not apply to public agencies other than schools. Men and women, boys and girls, should have equal access to community athletics programs. There are concerns regarding how we will make this happen, but it is a goal we should work toward.

Girls are sometimes not able to continue playing baseball and are instead steered onto softball teams. In Bainbridge Island, the boys' la crosse team was given the school play field every day after school, while the girls' team was required to take a bus to a different school field some distance away and, a few days a week, wait for 25 minutes for the team to open up. The girls said this was unfair, embarrassing to have to take the bus and wait in the parking lot, and that it was as if the boys team was more important than the girls team. The boys team was able to reserve the field every day of the week even though they only used it three days a week. Upon request that the girls team be given equal access to the school's field, the response was that it was tradition for the boys team to use the field and that the boy's team generally had more money to contribute to field improvements.

This is more about the totality of the circumstances, making sure that everyone has an opportunity to participate. It won't necessarily be one-to-one parity. If the team is available but people don't show up to play, that's not discrimination.

(In support with concerns) This bill has a significant amount of mandatory reporting, regardless of whether there appear to be problems with compliance. That will take resources, and without funding this becomes an unfunded mandate in the public sector. In volunteer situations, the organizations will be required to find volunteers to handle all of this reporting. It will be very burdensome and difficult to get the required reporting information from third

party contractors. The biggest problem is limited space; there is simply a finite amount of that resource.

There needs to be more discussion about how to apply these reporting requirements in the public setting. There is clear data in the education environment that makes it easier to monitor. There is a lot more variety in the community at large. We don't have data to know whether the problems in the community, if any, are a matter of gender inequity or simply a matter of limited space.

There are unintended consequences and may become an unfunded mandate. School districts would be required to use tax payer money intended for schools to monitor community programs. This is a good concept but is impractical. Maybe the Human Rights Commission should monitor for the school districts. The districts themselves really are not in position to do this kind of work.

Persons Testifying: (In support) Representative Rolfes, prime sponsor; and Jennifer Shaw and Cyndie Yearous, The American Civil Liberties Union.

(In support with concerns) Dan Steele, Washington State School Director's Association; and Jennifer Schroder, Mary Dodsworth, Brit Kramer, Jerry Bender, Washington Recreation Park Association.

(Opposed) None.

Persons Signed In To Testify But Not Testifying: None.