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Senate Bill 943 (Substitute S-3 as passed by the Senate)  
Senate Bill 944 (Substitute S-4 as passed by the Senate)  
Sponsor: Senator Wayne Kuipers  
Committee: Education

Date Completed: 4-29-04

### **RATIONALE**

Some people are concerned that the teaching of abstinence in sex education courses is not a significant part of the public schools' curriculum. Since 1993, the Revised School Code has required a public school, if it offers a course in human sexuality, to teach that abstinence is an effective prevention against disease and unwanted pregnancy, and that it is a positive lifestyle. Reportedly, in some districts, teachers and sex education advisory boards are overshadowing this message by strongly emphasizing contraception and healthy sexual relationships. Further, some parents have reported that their districts' sex education advisory boards are not meeting the needs of those who would like a more abstinence-based curriculum taught in their children's schools. It has been suggested that schools be required to emphasize abstinence in their sex education curriculum; that the make-up and goals of sex education boards be revised; and that a formal complaint process be established to address districts' noncompliance with statutory requirements governing sex education.

### **CONTENT**

**Senate Bill 943 (S-3) would amend the Revised School Code to require that public school instruction on HIV, AIDS, and sex education emphasize abstinence, the consequences of sexual behavior, refusal skills, and other content. The bill also would prescribe the membership, terms, and responsibilities of each district's "health education advisory board".**

**Senate Bill 944 (S-4) would amend the State School Aid Act to provide for a complaint process for those who believed a district was not complying with current statutory sex education requirements and the advisory board provisions proposed by Senate Bill 943 (S-3). Also, Senate Bill 944 (S-4) would reduce the percentage of State aid a district must forfeit if it fails to comply with requirements for sex education instruction, but would include violations of the advisory boards provisions among those subject to the penalty. The bill is tie-barred to Senate Bill 943.**

### **Senate Bill 943 (S-3)**

#### Sex Education Instruction

The Code permits a school district to offer an elective class in sex education, including family planning, human sexuality, reproductive health, and the recognition, prevention and treatment of sexually transmitted diseases. A district is required, however, to teach its pupils about HIV, AIDS, and other communicable diseases. The Superintendent of Public Instruction must provide for the development and distribution to school districts of material on HIV and AIDS; under the bill, this material would have to be medically accurate.

Any teaching on communicable diseases and sex education must include the teaching of abstinence from sex as a responsible method of preventing disease and unwanted pregnancies, and as a positive lifestyle for unmarried young people. The bill would retain these provisions, but require that this

instruction stress that abstinence from sex is a responsible and effective method of preventing unplanned or out-of wedlock pregnancy, and that it is the only protection that is 100% effective against unplanned pregnancy, sexually transmitted disease, and sexually transmitted HIV infection and AIDS.

Sex education material discussing sexual intercourse would have to be age appropriate, and do all of the following:

- Discuss the benefits of abstaining from sex until marriage and the benefits of ceasing sex if a pupil is sexually active.
- Include a discussion of the possible emotional, economic, and legal consequences of sex.
- Stress that unplanned pregnancy and sexually transmitted diseases are serious possibilities of sexual intercourse that are not fully preventable except by abstinence.
- Advise pupils of the laws pertaining to their responsibility as parents to children born in and out of wedlock.
- Teach pupils how to say "no" to sexual advances and that it is wrong to take advantage of, harass, or exploit another person sexually.
- Teach refusal skills and encourage pupils to resist pressure to engage in risky behavior.
- Teach that the pupil has the power to control personal behavior, and teach pupils to base their actions on reasoning, self-discipline, a sense of responsibility, self-control, and ethical considerations such as respect for self and others.
- Provide instruction on healthy dating relationships and on how to set limits and recognize a dangerous environment
- Provide information for pupils about how young parents can learn more about adoption services and about the provisions of the Safe Delivery of Newborns Law.

The sex education material also would have to ensure that pupils were taught the laws of the State pertaining to sexual activity, including, but not limited to, those relating to sodomy, lewd and lascivious cohabitation or behavior, indecent exposure, gross indecency, and criminal sexual conduct in the first, second, third, and fourth degrees. Further, the material would have to include information clearly informing pupils that

having sex or sexual contact with an individual under the age of 16 is a crime punishable by imprisonment and that one of the other results of being convicted of this crime is to be listed on the sex offender registry on the Internet for at least 25 years. The bill provides that these requirements would not prohibit a public school from offering sex education with behavioral risk reduction strategies as defined by law.

#### Health Education Advisory Board

Under the Code, a district providing a course in sex education must have in place an advisory board to review the material and instructional methods used for the course, and to make recommendations to the district regarding changes in the course materials or methods. The board must consist of parents with children in the district's schools, pupils in the district's schools, educators, local clergy, and community health professionals.

Under the bill, this board would be called the "health education advisory board". The district's school board would have to determine the advisory board members' terms of service, the number of members who would serve on it, and a membership selection process that reasonably reflected the school district's population. The school board would have to appoint a parent to co-chair the health education advisory board. At least 50% of the members of the advisory board would have to be parents who had a child attending a school operated by the school district. The remainder of the board would have to consist of pupils enrolled in the district's schools, educators, local clergy, community health professionals, and any other individuals the school board considered appropriate. Written notice of a health education advisory board meeting would have to be sent to each member at least two weeks before the date of the meeting.

A health education advisory board would have to establish program goals and objectives for pupil knowledge and skills that likely would reduce the levels of sex, pregnancy, and sexually transmitted diseases. (The bill states that this would not prohibit a school district from establishing additional program goals and objectives, as long as they were not contrary to the

program goals and objectives and the Code's other requirements for sex education and HIV/AIDS instruction.) The board also would have to review the materials and methods of instruction used, and make recommendations to the school board for implementation. The advisory board would have to take into consideration the school district's needs, demographics, and trends, including teenage pregnancy rates, sexually transmitted disease rates, and incidents of student sexual violence and harassment.

At least once every two years, the board would have to develop procedures for evaluating, measuring, and reporting the attainment of its program goals and objectives. The board would have to make the resulting report available to parents in the district.

#### Family Planning Drug or Device

The Code prohibits a person from dispensing or distributing a family planning drug or device in a public school. The bill would extend this to public school property.

### **Senate Bill 944 (S-1)**

#### Penalties

The State School Aid Act requires a district or intermediate district providing instruction on reproductive health or other sex education under particular sections of the Revised School Code, or under any other provision of law, to comply with certain requirements, or forfeit 5% of its total State aid allocation. (These requirements include informing pupils that sex with a person under 16 is a crime; notifying parents of the content of the instruction; and notifying parents of their right to excuse their child from instruction.) Under the bill, a district would have to forfeit 1% of its total State aid allocation if it failed to comply with current requirements and those proposed in Senate Bill 943 (S-3) governing health advisory boards.

#### Complaint Process

Senate Bill 944 (S-4) provides that, if a parent or legal guardian of a pupil enrolled in a district or intermediate district believed that the district had violated requirements contained in the Revised School Code and the State School Aid Act pertaining to

HIV/AIDS instruction, sex education (other than requirements specifying curriculum content), and the health education advisory boards, the person could file a complaint with the superintendent or chief administrator of the district or intermediate district in which the pupil was enrolled. The superintendent or chief administrator then would have to investigate the complaint and, within 30 days of the date of the complaint, provide a written report of his or her findings to the complainant and to the Superintendent of Public Instruction. If the investigation revealed that one or more violations had occurred, the written report would have to contain a description of each violation and of action the district would have to take to correct the situation to ensure no further violations occurred. The district would have to take the corrective action within 30 days after the date of the written report.

If a parent who had filed a complaint with a school district were not satisfied with the investigation or findings made by the district superintendent or chief administrator, the parent could appeal the findings to the intermediate district in which the district was located. The intermediate superintendent would have to investigate the complaint and, within 30 days after the date of the appeal, provide a written report of his or her findings to the parent or guardian and to the Superintendent of Public Instruction. If the intermediate superintendent's investigation revealed that one or more violations had occurred, he or she would have to develop, in consultation with the local district, a plan for the district to take corrective action to ensure that there were no further violations. The intermediate superintendent would have to include this plan with the written report provided to the parent or legal guardian and the Superintendent of Public Instruction. The district would have to take the corrective action described in the plan within 30 days.

If a parent who had filed a complaint or an appeal with an intermediate district were not satisfied with the investigation or findings made by the intermediate superintendent, the parent could appeal the findings to the Michigan Department of Education (MDE). The MDE would have to investigate the complaint and, within 90 days after the date of the appeal, provide a written report of its findings to the parent or guardian, to the

Superintendent of Public Instruction, and to the district and intermediate district. If, as a result of the investigation, the MDE found one or more violations, the Department would have to develop a plan for the district or intermediate district to take to correct the situation to ensure that there were no further violations, and would have to include this plan for corrective action with the written report provided to the parent or legal guardian, the Superintendent of Public Instruction, and the district or intermediate district. The district would have to take the corrective action within 30 days after the date of the written report.

In addition to withholding State aid, the MDE could assess a fee to the district or intermediate district, in an amount not to exceed the actual cost to the Department of conducting the investigation and making the reports that the bill would require.

With the approval of the Superintendent, the MDE would have to establish a reasonable procedure for appealing to the Department. The process could not place an undue burden on the complainant, the school district, or the Department.

#### MDE Report

The Department would have to track the number of complaints and appeals it received for the 2004-2005 school year and, not later than the end of that school year, submit a report to the Legislature detailing the number and nature of those complaints and appeals and the cost to the Department in handling them.

MCL 380.1169 et al. (S.B. 943)

MCL 388.1766a (S.B. 944)

#### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Senate Bill 943 (S-3) would provide a balance to the current emphasis in schools on condom use and sexual relationships by requiring that a specific, consistent abstinence message be delivered to all students enrolled in sex education courses.

Abstinence from sexual activity is, after all, the only 100% effective method of preventing pregnancy and sexually transmitted infections and diseases (STDs), including HIV (which is the cause of AIDS), herpes, syphilis, gonorrhea, Chlamydia, and HPV (Human Papilloma Virus), some strains of which are the recognized cause of cervical cancer. Too many students seem to be getting the message from the media, from their peers, and now from their schools that indulging in sexual activity is safe, fun, and a part of being a teenager. Yet the consequences of this behavior can be dire. A 1995 study published by the Heritage Foundation in 2003 reported that early initiation of sexual activity and high numbers of nonmarital sex partners are linked, among women, to increased rates of STDs, out-of-wedlock pregnancy and birth, single parenthood, maternal and child poverty, abortion, and depression; and to decreased rates of happiness and marital stability. In Michigan, a criminal record also can result from engaging in sexual intercourse with someone 15 or younger.

According to the Heritage Foundation, a successful abstinence program teaches that human sexuality is primarily emotional and psychological, not physical, in nature; that, in proper circumstances, sexual activity leads to long-term emotional bonding between two people; and that sexual happiness is inherently linked to intimacy, love, and commitment--qualities primarily found within marriage. Senate Bill 943 (S-3) would require the teaching of similar content: that sex has emotional consequences, that young people have the power to control personal behavior, and that there are benefits to abstaining from sex until marriage. Teaching young people these values does them a great service, and reflects what most parents evidentially want for their children. A telephone study designed by Focus on the Family and conducted by Zogby International in December 2003, of 1,004 parents with children under 18 found that 47% of respondents wanted teens to be taught that "young people should not engage in sexual activity until they are married". Another 32% wanted teens to be taught that "young people should not engage in sexual intercourse until they have, at least, finished high school and are in a relationship with someone they feel they would like to marry".

During Senate Education Committee testimony, many young people testified that they, too, wanted more instruction on abstinence. Several said the topic was glossed over or not discussed in their sex education classes. According to these youths, practicing abstinence has given them a powerful sense of freedom: from fear, emotional distress, worry, disease, pregnancy, and parenthood. Adding more abstinence instruction into the classroom could only benefit students and their families.

### **Supporting Argument**

The health education advisory board requirements under Senate Bill 943 (S-3) and the complaint process proposed by Senate Bill 944 (S-4) would empower parents, especially those who feel that their wishes are not being heard by current sex education advisory boards. The complaint process would provide for a tiered approach, where a parent with a complaint about a district policy or a teacher's instruction on HIV/AIDS or sex education first would contact local district officials. If the complaint were not resolved to the parent's satisfaction, he or she could appeal to the intermediate district and then, if the issue still were not settled, to the Michigan Department of Education. This process would encourage problem-solving at the local level but ultimately allow for an outside objective agency to investigate, if needed. The bill would provide for fair, timely investigations, written reports, and a logical appeals process.

### **Opposing Argument**

The 2003 Michigan Youth Risk Behavior Survey revealed that 50% of Michigan high school seniors reported having had sexual intercourse in the previous three months. No matter how alarming this statistic or how much parents wish it were not true, the number points to a truth: Abstinence from sexual intercourse is hardly the norm for unmarried young people. Sex education programs, therefore, must address the needs of all students--those who have abstained from sexual activity, those who have engaged in sexual activity but are currently abstaining, those who are engaging in sexual activity, and those who will decide to engage in sexual activity in the future.

While most agree that teaching about abstinence is vital, and that teens are safer when they practice it, an overemphasis on abstinence would alienate a great number of today's teens. For example, an abstinence message disregards pregnant teenagers and young parents attending alternative high school programs. Further, while Senate Bill 943 (S-3) would not require teachers to "preach" abstinence until marriage, it would require them to discuss the benefits of abstaining until marriage. This discussion would further alienate gay students who, under Michigan law, may not marry.

According to the State Board of Education's "Policy to Promote Health and Prevent Disease and Pregnancy", evidence on current best practice methods for teaching a comprehensive sexual education course are "centered on a positive, healthy definition of sexual health, rather than one that focuses only on avoiding negative outcomes". A teenager at a Committee hearing reported that much of what drives teens' sexual activity is curiosity, and an adult simply telling them not to have sex would continue to leave them curious and likely to pursue it.

Because very few students will take another course on human sexuality and reproductive health once they leave high school, it is imperative that students are educated for a lifetime. Since the bill would prescribe 12 additional requirements for sex education courses, its practical effect would be to limit other information that could be taught in a short, sometimes nine-week, course. Adolescents need plenty of accurate, current information that teaches them how to reduce the risk of HIV, other STDs, and unintended pregnancy--information that parents, peers, and the media often are not able to provide.

**Response:** The bill would not prohibit the teaching of contraception, healthy sexual relationships, or other information schools currently teach. It simply would require an enhanced teaching of abstinence.

### **Opposing Argument**

Senate Bill 943 (S-3) would require teachers to inform students about the consequences of breaking certain Michigan laws prohibiting sodomy, cohabitation before marriage, and "gross indecency", which has been defined in the courts as including same-sex masturbation and fellatio. Some of these laws are outdated or have been ruled

unconstitutional in other states. Further, they would seem to have no place in a high school classroom, let alone in a middle school, where reproductive health often is taught.

### **Opposing Argument**

The provisions in Senate Bill 943 (S-3) concerning the proposed health education advisory boards could limit the ability of many advisory boards to function at top efficiency. For example, the bill would require that parents comprise at least half of the board members, and that a parent co-chair the board. Finding enough parents who are willing, able, and knowledgeable enough to co-chair and serve on the board could be difficult, especially in smaller districts or those that struggle with parent participation. Also, parents by nature tend to be interested primarily in the welfare of their own child, and tend to stop volunteering once their child leaves the school. A co-chair of such a board should be objective and willing to serve long-term. The bill also would require a health advisory board to give a two-week notice before each meeting; this could prove to be difficult if a meeting had to be canceled and then rescheduled due to inclement weather, school closings, or other unforeseen circumstances.

### **Opposing Argument**

Michigan's public schools' sex education programs seem to be working. Births to Michigan teenagers aged 15-19 have decreased by 41% from 1991 to 2002, according to the National Vital Statistics Reports (Volume 52, No. 10, 12-17-03). Since 1993, Michigan has consistently ranked below the national average in teen birth rates: In 1993, the State's rate was 12.6% and the U.S. average was 12.8%; in 2001, those numbers were 10.2% and 11.3%, respectively, according to Kids Count: The Right Start Reports Online (updated 1-29-04). Michigan's abortion rate for women aged 15-44 is also down, according to the Michigan Department of Community Health--from 14.9% in 1992 to 12.6% in 2001 (Critical Health Indicators, August 2003). These trends suggest that Michigan teens are getting the right message about either abstaining from sex or practicing safe sex.

**Response:** While pregnancy and abortion rates are down slightly, STDs among teens are rapidly rising. According to

the Michigan Department of Community Health's Critical Health Indicators, from 1997 to 2002, the rates of Chlamydia, gonorrhea, and syphilis increased for those between the ages of 15 and 19. For example, in 1997, the total number of cases of syphilis was 36; five years later, this number was 53. Perhaps this is an indication that teens increasingly are getting the message that it is safe to have sex, as long as a condom is used. Condoms often are used ineffectively, however, and sometimes not used at all, despite the person's intent. While condoms may reduce the risk of contracting some STDs, teenagers need to know that having sex always poses a risk to their health.

### **Opposing Argument**

The bills would attempt to fix a problem that seems to concern only a minority of parents. At Committee hearings, many parents testified that they were satisfied with the way their district handled sex education. Some parents reported that, while they felt it was their responsibility to teach their children as much as they could about abstinence and risk-avoidance, their knowledge and skills were limited. Schools, they felt, did a better job of providing up-to-date medical information and using techniques such as role-playing and peer discussion. A February 2004 poll by the Kaiser Family Foundation, National Public Radio, and Harvard's Kennedy School of Government supports this anecdotal evidence. That study reported that 42% of parents with children in sex education programs felt that their school's program had been very helpful to their children in dealing with sexual issues. More than three out of four parents of children who had taken a sex education course (77%) said that they were at least somewhat familiar with the sex ed programs in their community's schools. Also, 46% of parents believed that the most appropriate approach for sex education is the "abstinence-plus" approach: an approach that teaches that abstinence is the best practice, but, since some teens do not abstain, also teaches about condoms and contraception (the approach Michigan schools take, according to some parents and educators who spoke during Committee hearings). Only 15% of American parents believed that schools should teach only about abstinence from sexual intercourse and should not provide information on how to obtain and use

condoms and other contraception. If these findings can be specifically applied to Michigan, parents in the State are generally satisfied with the approach taken by their schools.

Legislative Analyst: Claire Layman

### **FISCAL IMPACT**

#### **Senate Bill 943 (S-3)**

The bill would have no fiscal impact on State or local government.

#### **Senate Bill 944 (S-4)**

The bill could result in minor increased costs for the Department of Education related to the required tracking of complaints and appeals for 2004-2005, and the associated report to the Legislature. Further, the Department could see increased costs for the assignment of departmental personnel to investigate complaints under the proposed public complaint procedure. However, the bill would allow the Department to assess a fee to a district or intermediate school district (ISD) that committed a violation in an amount up to the actual cost to the MDE of conducting the investigation and issuing the required reports.

In current law, the penalty to a local district or ISD that does not comply with sex education requirements in the School Aid Act or School Code is 5% of its total State aid. This bill would lower that financial penalty to 1% of a district's or ISD's State aid, if the district or ISD were found to have violated Section 166a of the School Aid Act or Sections 169, 1506, or 1507 of the Revised School Code (which contain the requirements for reproductive health and sex education instruction).

Fiscal Analyst: Kathryn Summers-Coty

#### **A0304\S943a**

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.