

Referendum Measure No.

90

The legislature passed Engrossed Substitute Senate Bill 5395 concerning comprehensive sexual health education.

This bill would require school districts to adopt or develop, consistent with state standards, comprehensive age-appropriate sexual health education, as defined, for all students, and excuse students if their parents request.

Should this bill be:

[] Approved

[] Rejected

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Final Votes Cast by the Legislature

Senate: Yeas, 27; Nays, 21; Absent, 0; Excused, 1
House: Yeas, 56; Nays, 40; Absent, 0; Excused, 2



You are voting to Approve or Reject the bill passed by the Legislature

Approve — you favor the bill passed by the Legislature

Reject — you do not favor the bill passed by the Legislature



The Secretary of State is not responsible for the content of statements or arguments (WAC 434-381-180).

Explanatory Statement

Written by the Office of the Attorney General

The Law as it Presently Exists

School districts may choose to provide, or not to provide, sexual health education. Parents or legal guardians may have their children excused from any planned instruction in sexual health education.

If the school district offers sexual health education, it must be medically and scientifically accurate. It must also be age-appropriate and appropriate for students of any gender, race, disability status, or sexual orientation. It must include information about abstinence and other methods of preventing pregnancy and sexually transmitted diseases. It cannot consist only of information about abstinence.

A school may choose to provide comprehensive sexual health education using separate outside speakers or a prepared curriculum. Sexual health education must be consistent with guidelines developed by the state Department of Health and the Office of the Superintendent of Public Instruction. The Superintendent of Public Instruction and the state Department of Health must make these guidelines available on their web sites.

The Superintendent of Public Instruction, consulting with the state Department of Health, develops a list of sexual health education curricula that are consistent with state guidelines. State law encourages school districts that choose to offer sexual health education to review their program and choose a curriculum from the state list. School districts may choose or develop any other curriculum that complies with state law.

Any parent or legal guardian may review the curriculum offered in their school district.

The Effect of the Proposed Measure if Approved

The Legislature recently passed a bill that would change the law about sexual health education. If the voters approve Referendum 90, then the law would change as described below. If the voters reject Referendum 90, then the law will remain as summarized above.

Referendum 90 would require public schools to provide comprehensive age-appropriate sexual health education. Parents and legal guardians would continue to have the choice to exclude their students from sexual health education.

Comprehensive sexual health education would mean

age-appropriate instruction in human development and reproduction. Districts would use curriculum, instruction, and materials that are medically and scientifically accurate. The instruction must use language and strategies that avoid discrimination against any student. Comprehensive sexual health education must include information about affirmative consent and bystander training. This means teaching about a conscious and voluntary agreement to engage in sexual activity as a requirement before sexual activity.

The curriculum, instruction, and materials would vary by grade level. For students in kindergarten through grade three, it must be instruction in social-emotional learning that is consistent with standards and benchmarks established by the Office of the Superintendent of Public Instruction. For students in grades four through twelve, it must include information about six topics. These are:

- The physiological, psychological, and sociological developmental processes experienced by an individual;
- The development of intrapersonal and interpersonal skills to communicate, respectfully and effectively, to reduce health risks, and choose healthy behaviors and relationships that are based on mutual respect and affection, and are free from violence, coercion, and intimidation;
- Health care and prevention resources;
- The development of meaningful relationships and avoidance of exploitative relationships;
- Understanding the influences of family, peers, community, and the media throughout life on healthy sexual relationships; and
- Affirmative consent and recognizing and responding safely and effectively when violence, or a risk of violence, is or may be present with strategies that include bystander training.

The law would phase in over time. Public schools must provide comprehensive sexual health education in grades six through twelve beginning in the 2021-22 school year. They must begin doing so in all grades in the 2022-23 school year. Public school districts must provide comprehensive sexual health education at least once to students in kindergarten through grade three, once to students in grades four through five, twice to students in grades six through eight, and twice to students in grades nine through twelve.

The Office of the Superintendent of Public Instruction must keep training materials up to date. Public school districts may either choose a curriculum from the list

developed at the state level or choose other curriculum. A district choosing a curriculum that is not on the state list must make sure that it complies with state law and consult with the Office of the Superintendent of Public Instruction. The Office of the Superintendent of Public Instruction must provide technical assistance to public schools.

At the beginning of the 2021-22 school year, public schools must let parents and legal guardians know that they will provide comprehensive sexual health education. The district must provide access to all such course materials that it will use during the school year.

Public school districts must report to the Office of the Superintendent of Public Instruction the curricula used to provide comprehensive sexual health education. The report must describe how it aligns with state law requirements. The Office of the Superintendent of Public Instruction must summarize this information and report it to the Legislature.

Fiscal Impact Statement

Written by the Office of Financial Management
For more information visit www.ofm.wa.gov/ballot

FISCAL IMPACT SUMMARY

Engrossed Substitute Senate Bill 5395 was enacted in the 2020 legislative session, but has not gone into effect because the voters submitted petitions to refer the measure to the November 2020 general election ballot. If the voters approve the referendum, ESSB 5395 would go into effect. There would be no fiscal impact to state government in the 2019–21 biennium and ongoing. There would be a fiscal impact to local government (school districts), but the impact is indeterminate. There are no known state or local revenue impacts that would result from the passage of this measure.

SUMMARY

Referendum 90 places Engrossed Substitute Senate Bill 5395 (ESSB 5395) onto the 2020 general election ballot for approval or rejection by the voters.

Beginning September 1, 2021, ESSB 5395 would require every public school district to offer comprehensive sexual health education from a list of curricula provided on the Office of Superintendent of Public Instruction's (OSPI) website, or choose their own curricula using a tool provided by OSPI. Additionally, OSPI would be required to report to the Legislature data collected from school districts about the curricula they used to provide comprehensive sexual health education. Section 1(5)(a) of ESSB 5395 requires the Department of Health (DOH)

to consult with OSPI on the development of a list of comprehensive sexual health education curricula that are consistent with the 2005 guidelines for sexual health information and disease prevention and the Washington state health and physical education K–12 learning standards.

GENERAL ASSUMPTIONS

- If approved, the effective date of the referendum is December 3, 2020.
- The fiscal estimates use the state's fiscal year of July 1 through June 30. Fiscal year 2021 is July 1, 2020 to June 30, 2021.

REVENUE

The referendum has no known state or local revenue impact.

EXPENDITURES

A vote to approve the referendum would result in no costs for state government, specifically OSPI and DOH. School districts may incur costs, but those costs are indeterminate and are dependent upon local decisions regarding the adoption process and training for any new curriculum adopted.

State expenditures

Curricula. OSPI currently offers a list of curricula as part of its open education resources. There is no additional cost associated with maintaining sexual health education curricula.

Review Tools. OSPI currently offers a review tool for districts to use when selecting comprehensive sexual health education. The tool would require very little modification to be used as directed in the bill. There is no additional fiscal impact related to staff time to accomplish this work.

Data Collection. OSPI currently collects district-level data related to comprehensive sexual health education. No expenditure impact is anticipated as a result of this additional data collection requirement.

Reporting: OSPI is currently required to report on sexual health education to the Legislature. The time involved in reporting the results of the data reporting is already believed to be captured; therefore, no expenditure impact is expected.

School district expenditures

Curricula. School districts may use free sexual health education curricula that is available. Any curricula costs for districts not currently offering comprehensive sexual health education, or not using curricula that meets the standard in ESSB 5395, would be discretionary. Should districts choose curricula at

a cost, two federally-funded grant programs are available to provide financial assistance to districts for implementation. DOH administers the Personal Responsibility Education Program (PREP), and Planned Parenthood of the Great Northwest and Hawaiian Islands administers the Teen Pregnancy Prevention Program (TPPP). Both are funded by the U.S. Department of Health and Human Services Office of Adolescent Health.

Professional Development: ESSB 5395 does not require that districts send their teachers to training or provide any other professional development opportunities in comprehensive sexual health education. Any costs incurred by districts for professional development would be discretionary. To manage discretionary costs, districts could choose to send teachers to professional development opportunities offered by OSPI at no cost.

Districts could incur costs for travel and substitute teacher reimbursement.

Adoption of Curricula. Adoption costs are dependent upon local school district practices. It is assumed that districts changing their curricula will use current adoption processes and available financial resources, therefore, no additional costs will be incurred. However, districts may be impacted by changing their curriculum adoption schedule, substituting the adoption of sexual health education curricula in the place of currently planned curriculum updates. If they choose to add sexual health education curricula to their adoption process, this could result in additional costs for curriculum review, meetings, and public comment. There is no way to estimate statewide costs of the adoption processes; therefore, there is an indeterminate fiscal impact on districts.

New! Student Engagement Hubs



College students are on the move. Public universities now offer Student Engagement Hubs to ensure that students never miss an election just because they're away from home.

For dates, hours, and locations, contact student leadership at:

- | | | |
|----------------|----------------|---------------|
| CWU Ellensburg | EWU Cheney | TESC Olympia |
| UW Bothell | UW Seattle | UW Tacoma |
| WSU Pullman | WSU Tri-Cities | WSU Vancouver |
| WWU Bellingham | | |

Argument for

Approve Referendum 90 for Safe and Healthy Kids

Young people in every community deserve age-appropriate information and resources to make good decisions about sex and relationships, to enable them to protect their health, keep themselves safe, and build their futures. Right now, too many students are not receiving high-quality, medically-accurate sexual health education, putting them at immediate risk of harm.

Approving Referendum 90 will uphold a new Washington law requiring all public schools to teach age-appropriate, inclusive, comprehensive sex education. This starts with social and emotional learning for younger students and includes teaching older students about ways to prevent pregnancy and practice affirmative consent.

It will keep kids healthy

Studies show young people who receive quality sex education are less likely to partake in risky sexual behavior, experience unintended pregnancy, or get a sexually transmitted infection.

Sex education also serves as prevention for sexual abuse and rape

Young people need information and resources about healthy relationships to understand how to respect personal boundaries, ask for consent, and learn how to say and receive a “no.” Kids experiencing abuse urgently need to know how to get help. Children who are being sexually abused often don’t understand what is happening until someone provides them with the tools to communicate with a trusted adult.

This year, parents, educators, and medical professionals from across Washington worked together to pass a comprehensive sex education law. Let’s protect that law, and young people’s futures, by approving Referendum 90.

Rebuttal of argument against

Parents, teachers, and pediatricians know that in states with quality sex education, teens are talking about consent, waiting longer to have sex, avoiding getting pregnant, and keeping themselves safe. R90 gives parents the ability to opt children out if they’re uncomfortable with content, and every district must collaborate with communities on curriculum selection. R90 requires age appropriate education, meaning social and emotional learning for self-control and interpersonal skills in grades K-3. Approve R90.

Written by

Nikki Otero Lockwood, parent, school board member, Spokane; **Kevin S. Wang**, M.D., medical director of Swedish’s LGBTQI+ Initiative, Seattle; **Leah Griffin**, teacher librarian, Sexual Violence Law Center board, Seattle; **Jen Cole**, parent, Partnerships for Action Voices for Empowerment, Everett; **Peter Asante**, M.D., WA Chapter, American Academy of Pediatrics, Yakima; **Nichole Johnson**, parent, middle school teacher, Vancouver

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Argument against

Reject Referendum 90. Overturn the K-12 comprehensive sex education mandate.

The legislature passed a bill mandating a new comprehensive sexual education (CSE) curriculum for all students K-12. Huge numbers of students are failing math, science, and English. Olympia should prioritize improving literacy and helping students graduate, not creating a new mandate.

Reject Referendum 90. Restore local control for parents and local school boards.

The new CSE bill means unelected, unaccountable bureaucrats, not local communities, will develop statewide sex education standards for all students. It requires school districts to adopt a sex education curriculum that meets those standards. Parents and their local elected representatives will have little input in determining how they want their kids to be taught.

Reject Referendum 90. Stop the early sexualization of our kids.

Kindergarteners need to learn social skills and elementary students should focus on fundamental learning. Materials that currently meet state standards include graphic sexual subject matter. These are decisions that should be left to parents and local communities.

Reject Referendum 90. A costly mandate at a time when school budgets are being cut.

State and local budgets are facing massive deficits which threaten funding for basic programs. Schools cannot afford to add an expensive new requirement or design their own sex education curriculum that meets state standards.

Trust parents and local communities to develop school curriculum collaboratively. *Protect Local Control. Reject Referendum 90.*

Rebuttal of argument for

Referendum 90 is a blatant power grab by Olympia bureaucrats to take away parental control and impose a comprehensive sexual education curriculum starting in kindergarten. Parents and local schools are already doing an excellent job at this now. HHS.gov reports that for the last 25 years of available data, Washington’s teenage birthrate *dropped 69%*. Erin’s Law, which passed in 2018, addresses sexual abuse, prevention and online safety. *Vote reject* to retain parental and local control.

Written by

Mindie Wirth, mom, former Advocacy Chair, Northshore Council PTSA; **Suzanne Burke**, retired President, Fremont Dock Company, great grandmother, Rotarian; **Jude Verzosa**, MD, FACP, Chief Medical Officer, Rainier Health Network; **Brian Donovan**, MA, Certified 4th Grade Washington Public School Teacher; **Dawn McCravey**, mom, retired teacher, two term NSD Board Director; **Mark Clements**, retired Principal, River Home Link, Battle Ground District

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How do I read measure text?

Language in double parentheses with a line through it is existing state law; it will be taken out of the law if this measure is approved by voters.

~~((sample of text to be deleted))~~

Underlined language does not appear in current state law but will be added to the law if this measure is approved by voters.

sample of text to be added

Complete Text

Referendum Measure No. 90

AN ACT Relating to requiring comprehensive sexual health education that is consistent with the Washington state health and physical education K-12 learning standards and that requires affirmative consent curriculum; and amending RCW 28A.300.475.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 28A.300.475 and 2007 c 265 s 2 are each amended to read as follows:

(1) ~~((By September 1, 2008,))~~ (a)(i) In accordance with the requirements of this section, every public school ((that offers)) shall provide comprehensive sexual health education ((must assure that)) to each student by the 2022-23 school year. The curriculum, instruction, and materials used to provide the comprehensive sexual health education ((is)) must be medically and scientifically accurate, age-appropriate, ((appropriate for students regardless of gender, race, disability status, or sexual orientation)) and inclusive of all students, regardless of their protected class status under chapter 49.60 RCW, and must include((s)) information about abstinence and other methods of preventing unintended pregnancy and sexually transmitted diseases. ((All sexual health information, instruction, and materials must be medically and scientifically accurate.)) Abstinence may not be taught to the exclusion of other materials and instruction on contraceptives and disease prevention.

(ii)(A) Beginning in the 2020-21 school year, any public school that provides comprehensive sexual health education must ensure that the curriculum, instruction, and materials include information about affirmative consent and bystander training.

(B) The school district boards of directors of one or more public schools that are not providing comprehensive sexual health education in either the 2019-20 school year, the 2020-21 school year, or both, must prepare for incorporating information about affirmative consent and bystander training into the comprehensive sexual health education curriculum, instruction, and materials required

by this section. In satisfying the requirements of this subsection (1)(a)(ii)(B), school district boards of directors must also, no later than the 2020-21 school year, consult with parents and guardians of students, local communities, and the Washington state school directors' association.

(b) A public school may choose to use separate, outside speakers or prepared curriculum to teach different content areas or units within ((the)) its comprehensive sexual health education program ((as long as)) if all speakers, curriculum, and materials used are in compliance with this section.

(c) Comprehensive sexual health education must be consistent with the Washington state health and physical education K-12 learning standards and the January 2005 guidelines for sexual health information and disease prevention developed by the department of health and the office of the superintendent of public instruction.

~~((As used in chapter 265, Laws of 2007, "medically and scientifically accurate" means information that is verified or supported by research in compliance with scientific methods, is published in peer-review journals, where appropriate, and is recognized as accurate and objective by professional organizations and agencies with expertise in the field of sexual health including but not limited to the American college of obstetricians and gynecologists, the Washington state department of health, and the federal centers for disease control and prevention.))~~ (a) Beginning in the 2021-22 school year, comprehensive sexual health education must be provided to all public school students in grades six through twelve.

(b) Beginning in the 2022-23 school year, comprehensive sexual health education must be provided to all public school students.

(c) The provision of comprehensive sexual health education to public school students as required by (a) and (b) of this subsection (2) must be provided no less than:

- (i) Once to students in kindergarten through grade three;
- (ii) Once to students in grades four through five;
- (iii) Twice to students in grades six through eight; and
- (iv) Twice to students in grades nine through twelve.

(3) The office of the superintendent of public instruction and the department of health shall make the Washington state health and physical education K-12 learning standards and the January 2005 guidelines for sexual health information and disease prevention available to public schools ((districts)), teachers, and guest speakers on their web sites. Within available resources, the office of the superintendent of public instruction and the department of health shall also, and to the extent permitted by applicable federal law, make any related information, model policies, curricula, or other resources available ((as well)) on their web sites.

(4) The office of the superintendent of public instruction, in consultation with the department of health, shall

develop a list of comprehensive sexual health education curricula that are consistent with the 2005 guidelines for sexual health information and disease prevention, the Washington state health and physical education K-12 learning standards, and this section. This list ~~((shall be intended to)), which may serve as a resource for schools, teachers, or any other organization or community group, ((and shall))~~ must be updated ((no less frequently than)) at least annually, and must be made available on the web sites of the office of the superintendent of public instruction and the department of health.

(5) Subject to the availability of amounts appropriated for this specific purpose, the office of the superintendent of public instruction shall periodically review and revise, as necessary, training materials, which may be in an electronic format, for classroom teachers and principals to implement the applicable requirements of this section. The initial review required by this subsection (5) must be completed by March 1, 2021.

(6)(a) Public schools ((that offer sexual health education)) are encouraged to review their comprehensive sexual health education curricula and choose a curriculum from the list developed under subsection (4) of this section. Any public school ((that offers sexual health education)) may identify, choose, or develop any other curriculum((;)) if ((the curriculum chosen or developed)) it complies with the requirements of this section.

(b) If a public school chooses a curriculum that is not from the list developed under subsection (4) of this section, the public school or applicable school district, in consultation with the office of the superintendent of public instruction, must conduct a review of the selected or developed curriculum to ensure compliance with the requirements of this section using a comprehensive sexual health education curriculum analysis tool of the office of the superintendent of public instruction.

(c) The office of the superintendent of public instruction shall provide technical assistance to public schools and school districts that is consistent with the curricula review, selection, and development provisions in (a) and (b) of this subsection (6).

~~(((6)))~~ (7)(a) Any parent or legal guardian who wishes to have his or her child excused from any planned instruction in comprehensive sexual health education may do so upon filing a written request with the school district board of directors or its designee, or the principal of the school his or her child attends, or the principal's designee. The person or entity to whom the request is directed must grant the written request to have the student excused from this instruction in accordance with this subsection. In addition, any parent or legal guardian may review the comprehensive sexual health education curriculum ((offered)) provided in his or her child's school by filing a written request with the school district board of directors,

the principal of the school his or her child attends, or the principal's designee.

~~(((7) The office of the superintendent of public instruction shall, through its Washington state school health profiles survey or other existing reporting mechanism, ask public))~~ (b) At the beginning of the 2021-22 school year, each school providing comprehensive sexual health education must notify parents and guardians, in writing or in accordance with the methods the school finds most effective in communicating with parents, that the school will be providing comprehensive sexual health education during the school year. The notice must include, or provide a means for electronic access to, all course materials, by grade, that will be used at the school during the instruction.

(8)(a) Public schools ((to)) shall annually, by September 1st, identify to the office of the superintendent of public instruction any curricula used by the school to provide comprehensive sexual health education((- and shall report the results of this inquiry to the legislature on a biennial basis, beginning with the 2008-09 school year)) as required by this section. Materials provided by schools under this subsection (8)(a) must also describe how the provided classroom instruction aligns with the requirements of this section.

(b) The office of the superintendent of public instruction shall summarize and, in accordance with RCW 43.01.036, report the results provided under (a) of this subsection (8) to the education committees of the house of representatives and the senate biennially, beginning after the 2022-23 school year.

~~(((8) The requirement))~~ (9) RCW 28A.600.480(2), which encourages school employees, students, and volunteers to report harassment, intimidation, or bullying ((under RCW 28A.600.480(2))), applies to this section.

(10) Nothing in this section expresses legislative intent to require that comprehensive sexual health education, or components of comprehensive sexual health education, be integrated into curriculum, materials, or instruction in unrelated subject matters or courses.

(11) For the purposes of this section:

(a) "Affirmative consent" means a conscious and voluntary agreement to engage in sexual activity as a requirement before sexual activity;

(b) "Comprehensive sexual health education" means recurring instruction in human development and reproduction that is age-appropriate and inclusive of all students, regardless of their protected class status under chapter 49.60 RCW. All curriculum, instruction, and materials used in providing comprehensive sexual health education must be medically and scientifically accurate and must use language and strategies that recognize all members of protected classes under chapter 49.60 RCW. Comprehensive sexual health education for students in kindergarten through grade three must be instruction in social-emotional

learning that is consistent with learning standards and benchmarks adopted by the office of the superintendent of public instruction under RCW 28A.300.478. Comprehensive sexual health education for students in grades four through twelve must include information about:

- (i) The physiological, psychological, and sociological developmental processes experienced by an individual;
 - (ii) The development of intrapersonal and interpersonal skills to communicate, respectfully and effectively, to reduce health risks, and choose healthy behaviors and relationships that are based on mutual respect and affection, and are free from violence, coercion, and intimidation;
 - (iii) Health care and prevention resources;
 - (iv) The development of meaningful relationships and avoidance of exploitative relationships;
 - (v) Understanding the influences of family, peers, community, and the media throughout life on healthy sexual relationships; and
 - (vi) Affirmative consent and recognizing and responding safely and effectively when violence, or a risk of violence, is or may be present with strategies that include bystander training;
- (c) “Medically and scientifically accurate” means information that is verified or supported by research in compliance with scientific methods, is published in peer-reviewed journals, where appropriate, and is recognized as accurate and objective by professional organizations and agencies with expertise in the field of sexual health including but not limited to the American college of obstetricians and gynecologists, the Washington state department of health, and the federal centers for disease control and prevention; and
- (d) “Public schools” has the same meaning as in RCW 28A.150.010.

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Complete Text

Engrossed Senate Joint Resolution No. 8212

BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON, IN LEGISLATIVE SESSION ASSEMBLED:

THAT, At the next general election to be held in this state the secretary of state shall submit to the qualified voters of the state for their approval and ratification, or rejection, an amendment to Article XXIX, section 1 of the Constitution of the state of Washington to read as follows:

Article XXIX, section 1. Notwithstanding the provisions of sections 5, and 7 of Article VIII and section 9 of Article XII or any other section or article of the Constitution of the state of Washington, the moneys of any public pension or retirement fund, industrial insurance trust fund, ((or)) fund held in trust for the benefit of persons with developmental disabilities, or fund to provide for long-term care services and supports may be invested as authorized by law.

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of this constitutional amendment to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state.

--- END ---

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