
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 677 **Hearing Date:** July 13, 2017
Author: Chiu
Version: July 5, 2017
Urgency: No **Fiscal:** Yes
Consultant: Brandon Darnell

Subject: Data collection: sexual orientation

SUMMARY

This bill expands the list of state entities currently required to collect voluntary self-identification information on sexual orientation and gender identity to include various education and employment-related state agencies and prohibits a local educational agency that administers the California Healthy Kids Survey to middle or high school pupils from removing a specific question regarding sexual orientation and gender identity.

BACKGROUND

Existing law:

- 1) Requires the Department of Health Care Services, the Department of Public Health, the Department of Social Services, and the Department of Aging to collect voluntary self-identification information on sexual orientation and gender identity, beginning no later than July 1, 2018. (Government Code § 8310.8)
- 2) Prohibits these state departments from reporting demographic data that would permit identification of individuals or would result in statistical unreliability and limits the use of the collected data by these state departments, as specified. (GC § 8310.8)
- 3) Makes legislative findings pertaining to the importance of collecting such data. (Chapter 565, Statutes of 2015)
- 4) Authorizes state entities to collect demographic information from other entities, under specified circumstances. §8310.8)

ANALYSIS

This bill expands the list of state entities currently required to collect voluntary self-identification information on sexual orientation and gender identity to include various education and employment-related state agencies and prohibits a local educational agency that administers the California Healthy Kids Survey to middle or high school pupils from removing a specific question regarding sexual orientation and gender identity. Specifically, this bill:

- 1) Adds the following state entities to the list of departments required to collect voluntary self-identification information on sexual orientation and gender identity:
 - a) The California Department of Education and the Superintendent of Public Instruction, except as it relates to the California Longitudinal Pupil Achievement Data System (CALPADS).
 - b) The Commission on Teacher Credentialing.
 - c) The Department of Fair Employment and Housing.
 - d) The Labor and Workforce Development Agency.
 - e) The Department of Industrial Relations.
 - f) The Employment Training Panel.
 - g) The Employment Development Department (EDD), except as it relates to the unemployment insurance program within the EDD.
- 2) Requires these entities to comply with the requirements of this bill as early as possible, but no later than July 1, 2019.
- 3) Prohibits a local educational agency that chooses to administer the California Healthy Kids Survey to middle or high school pupils from removing the following question from the survey:

“Which of the following best describes you? (Mark All That Apply.)

 - (A) Heterosexual (straight).
 - (B) Gay or Lesbian.
 - (C) Transgender.
 - (D) Not sure.
 - (E) Decline to respond.”
- 4) Authorizes state entities to collect data provided to a state department by third-party entities, including, but not limited to, private employers, that provide aggregated data to a state department.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author’s office, “the lack of comprehensive evidence on the well-being outcomes of LGBT communities essentially keeps LGBT disparities invisible to the state. AB 677 builds on good data collection practices by requiring education and employment related government agencies to collect voluntarily provided data on sexual orientation and gender identity

when collecting other demographic data. A comprehensive landscape of data incorporating the needs and trends of every community is imperative to reducing inequalities and ensuring that all Californians receive the care and services they need.”

2. **Collection of data.** State government agencies routinely collect demographic data on race, ethnicity, gender, and disability on a wide variety of state forms and surveys. The purpose of this data is to help better understand disparities in underserved communities and better tailor government services to fit the needs of those communities.

Prior to the passage of AB 959 (Chiu, Chapter 565, Statutes of 2015), California law was silent on demographic data collection based on sexual orientation or gender identity. This changed with the enactment of AB 959, which required the Department of Health Care Services, the Department of Public Health, the Department of Social Services and the Department of Aging to collect voluntary self-identification information on sexual orientation and gender identity.

This bill expands on that data collection by adding specified education and employment related government agencies to the list of agencies required to collect voluntary data on sexual orientation and gender identity.

3. **California Longitudinal Pupil Achievement Data System (CALPADS).** CALPADS was created to enable California to meet federal requirements delineated in the No Child Left Behind (NCLB) Act of 2001. CALPADS has been operational since 2009 and contains information on student demographics, program participation, grade level, enrollment, course enrollment and completion, discipline, and statewide assessment data. The student-level, longitudinal data in CALPADS enables the facilitation of program evaluation, the assessment of student achievement over time, the calculation of more accurate dropout and graduation rates, the efficient creation of reports to meet state and federal reporting requirements, and the ability to create ad hoc reports and responses to relevant questions. CALPADS provides local educational agencies (LEAs) with access to longitudinal data and reports on their own students, and it gives LEAs immediate access to information on new students, enabling the LEAs to place students appropriately and to determine whether any assessments are necessary.

However, budget language prohibits the CDE from adding additional data elements to CALPADS. Specifically, provision 13 of budget item 6110-001-0890 of the Budget Act of 2015 provides, in part, "As a further condition of receiving these [federal] funds, the SDE shall not add additional data elements to CALPADS, require local educational agencies to use the data collected through the CALPADS for any purpose, or otherwise expand or enhance the system beyond the data elements and functionalities that are identified in the most current approved Feasibility Study and Special Project Reports and the CALPADS Data guide v4.1."

4. **California Healthy Kids Survey (CHKS).** The CHKS is an anonymous, confidential survey of youth resiliency, protective factors, and risk behaviors. It is

administered to students at grades five, seven, nine, and eleven. It enables schools and communities to collect and analyze data regarding local youth health risks and behaviors, school connectedness, protective factors, and school violence. The California Healthy Kids Survey (CHKS) is part of a comprehensive data-driven decision-making process on improving school climate and student learning environment for overall school improvements. Additionally, the CHKS can be used by local educational agencies for purposes of their local control and accountability plans to help determine their goals and actions for the school climate state priority.

At the heart of the CHKS is a research-based core module that provides valid indicators to promote student engagement and achievement, safety, positive development, health, and overall well-being. In addition, there are supplementary modules to choose from at the secondary school level that ask detailed questions on specific topics. These include more in-depth questions on resiliency and protective factors; school climate; resiliency and youth development; social emotional health and learning; tobacco use; alcohol and other drug use; safety/violence; physical health; sexual behavior; after school activities; gang awareness; lesbian, gay, bisexual, and transgender school experiences; and military connected school. Local educational agencies can also customize their questions in a custom module targeting topics of local interest.

While the CHKS was at one time required as a condition of federal No Child Left Behind Act funding, it is now voluntary for most local educational agencies. The only local educational agencies currently required to offer the CHKS core module are those that receive Tobacco Use Prevention Education (TUPE) grant funding.

This bill would prohibit local educational agencies that choose to administer the CHKS to middle or high school pupils from removing a specific question related to gender identity and sexual orientation, which is part of the CHKS core module. However, according to data from the California Department of Education (CDE), for the two recent school years, 675 school districts administered the CHKS, but 83 (12.3 percent) did not report any data on the sexual orientation and gender identity question. Moreover, in 2016-17, even among TUPE recipients, which are required to ask that question, 18 school districts did not report data on that question.

The committee may wish to consider whether prohibiting local educational agencies from removing a specific question relating to sexual orientation and gender identity could have the unintended consequence of causing some local educational agencies to simply not administer the CHKS, and if that were the case, whether more information (tobacco use, alcohol and other drug use, safety/violence, physical health, sexual behavior, after school activities, gang awareness, etc.) would be lost than gained (additional sexual orientation and gender identity demographics). Conversely, *the committee may wish to consider* whether it should even be concerned if some local educational agencies choose not to administer the CHKS over simple demographic data.

5. **Question under revision?** According to CDE, it is currently in the process of revising the question at issue in this bill into two separate questions. *The author would like to amend the bill* to replace Section 2 of the bill with the following:

“If a local educational agency administers a voluntary survey that already includes questions pertaining to sexual orientation and gender identity, the local educational agency shall not remove those questions” **Staff recommends that the bill be amended** to reflect the author’s proposed amendment.

6. **Previous legislation.** AB 959 (Chiu, Chapter 565, Statutes of 2015) required the Department of Health Care Services, the Department of Public Health, the Department of Social Services and the Department of Aging to collect voluntary self-identification information on sexual orientation and gender identity, beginning no later than July 1, 2018, when collecting demographic data.

AB 532 (McCarty, Chapter 433, Statutes of 2015) required any state agency, board, or commission that collects demographic data to provide forms that offer respondents the option of identifying as “multiracial” and selecting one or more ethnic or racial designations.

AB 176 (Bonta, 2015) would have placed certain requirements regarding the collection of demographic data, by the state's public segments of postsecondary education and by state health-related departments, pertaining to tabulation categories of Native Hawaiian, Asian, and Pacific Islander groups. AB 176 was vetoed by Governor Brown.

SB 280 (Lieu, 2014) would have authorized, until January 1, 2015, the application form for insurance affordability program coverage to include additional voluntary questions on sexual orientation and gender identity or expression. SB 280 also would have required, effective January 1, 2016, the application form to include voluntary questions regarding demographic data categories, including race, ethnicity, primary language, disability status, sexual orientation, gender identity or expression and other categories recognized by the federal Secretary of the Department of Health and Human Services. SB 280 was held in Senate Appropriations.

SB 416 (Kehoe, 2011) would have required the statewide Health Interview Survey and the Behavioral Risk Factor Surveillance System to include specified information related to sexual orientation or gender identity. SB 416 was vetoed by Governor Brown.

AB 1088 (Eng, Chapter 689, Statutes of 2011) required certain state agencies to collect and tabulate data for additional major Asian groups, as listed, in order to better reflect the diversity of Asian American, Hawaiian, and Pacific Islander communities in California.

AB 1878 (Lieu, 2010) would have required all California agency forms that ask for demographic information to include sexual orientation or gender identity. AB 1878 was held in the Assembly Appropriations Committee.

AB 1281 (Portantino, 2009) would have enacted the California School Racial Equality Designation Act and required any state agency, board, or commission that directly, or by contract, collects demographic data on the race or ethnicity of pupils in any elementary or secondary school to provide written instructions for reporting racial information that specify that multiracial pupils may select 2 or more racial categories. AB 1281 was vetoed by Governor Schwarzenegger.

SB 26 (Simitian, 2007) would have enacted the “Ethnic Heritage Respect and Recognition Act of 2007” requiring any state entity that collects demographic data on the ancestry, ethnic origin, ethnicity, or race of Californians to provide forms that offer respondents the option of selecting one or more ethnic or racial designations. SB 26 was held in the Assembly Appropriations Committee.

SB 1615 (Simitian, 2006) would have enacted the “Ethnic Heritage Respect and Recognition Act” to require any state agency, board, or commission that directly or by contract collects demographic data, as soon as reasonably feasible and in no event later than January 1, 2014, to provide forms that offer respondents the option of selecting one more ethnic or racial designation according to specified federal standards. SB 1615 was held in the Senate Appropriations Committee.

AB 2324 (Chan, 2004), among other things, would have required each state program directly involved in furnishing information to, or rendering services to, the public to collect data regarding the race, ethnicity, and primary language of all participants, on a voluntary basis. AB 2324 was held in the Assembly Appropriations Committee.

SUPPORT

ACLU of California
APLA Health
California Latinas for Reproductive Justice
California Pan-Ethnic Health Network
California Teachers Association
Equality California
National Association of Social Workers, California Chapter

OPPOSITION

None received

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