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BILL ANALYSIS

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Senate Bills 625 through 629 (as reported without amendment)

Senate Bills 661 and 662 (as reported without amendment)

Sponsor: Senator Nancy Cassis (S.B. 625)

Senator Gerald Van Woerkom (S.B. 626)

Senator Irma Clark-Coleman (S.B. 628)

Senator Wayne Kuipers (S.B. 629)

Senator Jason Allen (S.B. 627, 661, & 662)

Committee: Education

Date Completed: 1-12-04

### **RATIONALE**

The First Amendment to the U.S. Constitution states, in part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech...". Michigan's Constitution is more specific. Article I, Section 4 of the State Constitution of 1963 declares, "No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary...". Public acts governing State financial aid for higher education specifically prohibit the State from issuing scholarships or grants to students who major in theology, divinity, or religious education. Some people believe, however, that these prohibitions violate the "Free Exercise" clause of the First Amendment, and unconstitutionally restrict free speech.

Two current court cases speak to this issue. The first, *Davey v Locke*, involves a challenge to a State of Washington statute that prohibits the award of financial aid to a student who is pursuing a theology degree. Although the U.S. District Court for the Western District of Washington ruled in favor of the state, the U.S. Court of Appeals for the Ninth Circuit reversed that decision. The case presently is on appeal to the United States Supreme Court.

The second case involves a Michigan student, Teresa Becker, now a senior at Ave Maria College in Ypsilanti. Becker was awarded a Michigan Competitive Scholarship for \$2,750 per academic year. When she declared a

major in theology at the end of her sophomore year, the State withdrew the scholarship. Becker sued the State in the U.S. District Court for the Eastern District of Michigan. In July 2003, the Court determined that Becker's claims had merit and enjoined the State from enforcing the provisions prohibiting scholarships for religious studies, and ordered the State to place Becker's scholarship funds in escrow, pending the decision of the United States Supreme Court in *Davey v Locke*.

In light of this litigation, some have suggested that Michigan should permit students majoring in theology, divinity, or religious studies to receive financial aid from the State.

### **CONTENT**

**The bills would amend various acts to permit the State to award scholarship and grant money to college and university students enrolled in theology, divinity, or religious education programs.** Currently, students pursuing these studies are specifically prohibited from receiving financial aid from the State. The acts to be amended are described below.

#### **Senate Bill 625**

The bill would amend Public Act 102 of 1986, which provides for grants to part-time, independent students with financial need. In order to be eligible to participate in the grant program, a student must meet 11 criteria, one of which is that he or she may not be enrolled

in a program leading to a degree in theology or divinity.

### **Senate Bill 626**

The bill would amend Public Act 208 of 1964, which provides for a State competitive scholarship program to award scholarships to students with financial need and academic promise, based on their performance on a competitive exam. The Act specifies that an applicant awarded a scholarship is not restricted in the choice of his or her course of study, except that a scholarship award may not be made to a student enrolled in a program of study leading to a degree in theology, divinity, or religious education.

### **Senate Bill 627**

The bill would amend the Legislative Merit Award Program Act, which requires the Michigan Higher Education Assistance Authority annually to award \$1,000 scholarships to students based on their performance on a national examination and without regard to their financial circumstances. To be eligible, a student must enroll in a recognized postsecondary educational institution within four years after graduation from high school, and not be enrolled in a program of study leading to a degree in theology, divinity, or religious education.

### **Senate Bill 628**

The bill would amend Public Act 273 of 1986, which established the Michigan Educational Opportunity Grant (MEOG) Program to award up to \$1,000 per student per year to postsecondary schools to help eligible students meet educational expenses. A student enrolled in a program of study leading to a degree in theology, divinity, or religious education is prohibited from receiving an MEOG grant.

### **Senate Bill 629**

The bill would amend Public Act 313 of 1966, which provides for tuition grants to resident students enrolled in an independent, nonprofit college or university. The amount of the grant is based on financial need. A student enrolled in a program of study leading to a degree in theology, divinity, or religious education may not receive this tuition grant.

### **Senate Bill 661**

The bill would amend Public Act 105 of 1978, which provides for tuition differential grants to students enrolled in independent, nonprofit colleges or universities. A student enrolled in a program of study leading to a degree in theology or divinity is not eligible to receive a tuition differential grant.

### **Senate Bill 662**

The bill would amend Public Act 75 of 1974, which provides for reimbursement to approved independent, nonprofit colleges and universities for a certain amount for each degree they confer on their students. A degree conferred in theology, divinity, or religious education is excluded from this reimbursement.

MCL 390.1283 (S.B. 625)  
390.977 (S.B. 626)  
390.1304 (S.B. 627)  
390.1403 (S.B. 628)  
390.994 (S.B. 629)  
390.1274 (S.B. 661)  
390.1023 (S.B. 662)

### **BACKGROUND**

#### **Davey v Locke**

In this case, a Washington state college student sued the Governor and others for revoking a state-sponsored scholarship after he declared a major in Pastoral Ministries. Like Michigan, Washington statutorily prohibits the state from awarding financial aid to a student who is pursuing a theology degree. Washington's constitution also contains a "Blaine Amendment" (described below) that prohibits public money from being applied "to any religious worship, exercise or instruction, or the support of any religious establishment". Davey claimed that these prohibitions violated the Free Exercise and Free Speech clauses of the First Amendment, as well as state constitutional rights to equal protection under the law. In October 2000, the U.S. District Court for the Western District of Washington ruled in favor of the Governor of Washington, Gary Locke. Davey appealed to the U.S. Court of Appeals for the Ninth Circuit, which reversed the decision of the District Court. A two-judge majority held that the state's policy lacked neutrality; that the state had impermissibly deprived Davey of his scholarship; and that Washington's interest in

avoiding a Constitutional conflict is not a compelling reason to withhold scholarship funds from an eligible student. Governor Locke appealed to the U.S. Supreme Court in September 2003; the Court heard oral arguments in the case on December 2, 2003.

### Blaine Amendments

Some people contend that state prohibitions against public money for religious education have their roots in Roman Catholic and immigrant discrimination. In 1875, James G. Blaine, then Speaker of the U.S. House of Representatives, sought unsuccessfully to amend the United States Constitution to bar public aid to "sectarian" schooling. (Reportedly, "sectarian" was a euphemism for Catholic.) After this initiative failed, many states added similar language to their constitutions; 36 state constitutions now contain "Blaine Amendment" language. In fact, after James Blaine's amendment failed, Congress passed a law requiring that every state admitted to the union after 1876 place a provision in its constitution stating that it would maintain a public school system "free from sectarian control". In the U.S. Supreme Court opinion in the *Zelman v Simmons-Harris* (in which Ohio taxpayers sued the Ohio Superintendent of Public Instruction on the grounds that a Cleveland school voucher program violated the Establishment Clause because a vast majority of voucher participants enrolled in Catholic schools), Justice Breyer wrote in a dissenting opinion that Blaine amendments were indeed a backlash against Catholics seeking equal government support for private education in the 1870s. Justice Breyer noted that Catholics felt compelled to open their own schools as public schools openly required reading aloud from the Protestant bible, and Catholics who refused to do so were beaten or expelled.

Although Article I, Section 4 of Michigan's Constitution is sometimes referred to as a "Blaine Amendment", its language was part of the Michigan's Constitution of 1850, 25 years before James G. Blaine's proposed amendment.

### 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

Michigan's prohibitions against granting public money to students who major in theology, divinity, or religious education violate the First Amendment's Free Exercise clause. The State's statutes unfairly discriminate against students studying religion while rewarding those pursuing other subjects. In interpreting the First Amendment, the U.S. Supreme Court has ruled numerous times that the government must maintain neutrality toward religion. Michigan's statutes are not neutral.

Granting scholarship money to theology majors would not violate the First Amendment's Establishment Clause because theology is a specific academic pursuit, distinct from the ministry. (Most religions, including Catholicism, Judaism, and many denominations of the Protestant religion require a person to obtain a bachelor's degree and then perform graduate study at a seminary in order to become a cleric.) In the words of Teresa Becker, the theology major at Ave Maria who is suing the State of Michigan, "Theology affirms reasons and reveals to man his higher calling as a rational creature." As she further asserts, the study of theology is interwoven with and complements other subjects, especially United States history. Also, to ban theology and religious education from scholarship money is subjective: Many schools may offer majors in religious history or comparative religion, courses that cover similar ground as theology, but are not affected by the current law. Theology should not be singled out as a major undeserving of State support.

Furthermore, the bills would not violate the Establishment Clause because State scholarship money is issued to the student, not to the university; therefore, the student could theoretically spend the money on expenses other than religious instruction. (A \$2,750 annual scholarship barely covers one semester's room and board.) The U.S. Supreme Court established an important precedent for this principle in 2002 in the *Zelman v Simmons-Harris* case. The Court ruled that Cleveland's voucher system did not violate the Establishment Clause of the First Amendment in part because the vouchers were issued to the individual, not specifically to religious institutions. An individual, therefore, could choose to use the voucher at either a secular or a religious school. The same theory applies in this case. A student should have a choice to spend State

scholarship money on any course of study offered at a college or university.

**Response:** Courses in comparative religion and religious history do not concentrate on the teachings of a single religion, as theology tends to do. Instead, these courses cover a range of religious teachings and do not promote one tradition or system of beliefs over another. The State should not be in the business of funding instruction that favors one religion over another.

### **Opposing Argument**

The bills would violate both the Establishment Clause of the First Amendment and Michigan's constitutional prohibitions on State funding of religious training. A ban on State funding of religious teaching helps to guarantee freedom of thought by preventing the State from using a person's tax dollars to pay for the teaching of religious ideas that the person opposes. The U.S. District Court in Washington was correct when it ruled that Joshua Davey was not being denied his right to worship as he saw fit when the state of Washington revoked his scholarship; rather, he was being denied the opportunity to worship at taxpayer expense. A ban helps to ensure universal, free public education not under religious control.

Although it appears that the bills would affect a small minority, in fact they have wide-ranging implications for separation of church and State issues, including the school voucher issue. During oral arguments in the *Davey v Locke* case, Justice Sandra Day O'Connor and Justice David Souter suggested that a ruling that a state must subsidize religious education would have a major effect on the voucher debate. Such use would funnel public money away from public schools. The implications of this can be seen in Louisiana. In 1973, the state removed from its constitution language barring public funds for religious education. Reportedly, Louisiana has had to pay many millions in state aid to parochial schools, and its public school system is now underfunded and underperforming. To undo Michigan's protections against church-state entanglement would be both unconstitutional and costly.

**Response:** Public policy to benefit religion already occurs. For example, a certain level of contributions to mosques, synagogues, and churches is tax-deductible. Also, President Bush has implemented "faith-based" initiatives, which permit religious organizations to compete with secular organizations for

Federal funding of social and charitable work. It is hard to see how this type of government involvement has the effect of the government "establishing" religion. The same would hold true for granting a relatively small amount of scholarship money to a student pursuing a bachelor of arts degree.

### **Opposing Argument**

The bills are premature, since the U.S. Supreme Court has not yet decided *Davey v Locke*. That ruling will have an impact on the case of *Becker v Granholm* and, therefore, future Michigan law.

Legislative Analyst: Claire Layman

### **FISCAL IMPACT**

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

The State appropriations for most of these programs are included in the annual Higher Education appropriation act. The Legislative Merit Award Program, the Tuition Differential Program, and the General Degree and Allied Health Degree Reimbursement Programs have not been funded in the State budget since fiscal years (FYs) 1980-81, 1984-85, and 2002-03, respectively. For FY 2003-04, a total of \$109.6 million is appropriated for the financial aid programs affected by these bills. With the exception of the Dental Degree Reimbursement Program (in which the dollars are a grant to the University of Detroit-Mercy for its southeastern Michigan dental clinics), the funds for these programs are distributed primarily based on the amount of the State appropriation and the financial need of the student. The addition of theology and divinity as eligible programs for State financial aid grants would not require additional State appropriations, but depending on the number of newly eligible students, could lower the amounts available to currently eligible students.

Fiscal Analyst: Ellen Jeffries

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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.