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FISCAL IMPACT REPORT

SPONSOR <u>Montoya/Block/Martinez, A/Vincent/Duncan</u>	LAST UPDATED <u>03/15/2023</u>
	ORIGINAL DATE <u>02/27/2023</u>
SHORT TITLE <u>Women’s Sports Protection Act</u>	BILL NUMBER <u>House Bill 492</u>
	ANALYST <u>Chilton</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact					

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 7, House Bill 394 and House Bill 490, and House Memorial 57.

Sources of Information

LFC Files

Responses Received From

New Mexico Activities Association (NMAA)
Public Education Department (PED)
Department of Health (DOH)

No Response Received

Higher Education Department (HED)

SUMMARY

Synopsis of House Bill 492

House Bill 492 requires that school sports be restricted to those of the same biological sex; it bars transgender biological women from participating in women’s sports. The prohibition affects primary and secondary schools and institutions of higher learning, both public and private.

Section 1 of the act gives its name; section 2 establishes definitions.

Section 3 requires schools to designate each sports team as “male,” “female” or “coed,” based on the biologic sex of participants. Teams designated as “female” cannot allow biologic male members on the team, in the locker room, or in restrooms used by females.

Section 4 prohibits state or local agencies from permitting action against a school for complying with this act.

Section 5 allows a student who has been deprived of team membership or has suffered “direct or indirect harm” from a school’s violation of this act can bring action against the school. The same would apply to students reporting a school for violating the act – they too would be entitled to sue for damages if there were retaliation by a school, athletic organization, or state or local government. There would be a two-year statute of limitations, and monetary relief is specified.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

There is no appropriation in House Bill 492. No fiscal impacts, other than publication of new rules and dealing with potential litigation, are anticipated.

SIGNIFICANT ISSUES

Many U.S. states are discussing legislation to ban transgender women from participating in women’s sports in what appears to be a coordinated campaign which has resulted in legislation moving forward in approximately nine states this year. To this point only Idaho has passed a law in this regard, but there have been demonstrations against such laws being considered in at least Utah, South Dakota, and North Dakota this year. In March 2020, according to the National Conference of State Legislatures, then-U.S. Attorney General William Barr filed a statement-of-interest opposing Connecticut’s policy of allowing transgender persons to participate in the sports of the gender with which they identify. President Biden, shortly after taking office in 2021, withdrew federal support from that position.

As noted by DOH, “Transgender athletes’ participation in sports is controversial, and a focus on biological gender as outlined in this bill does not address the issues of equality in sports. HB492 would define sex as only male and female as determined at fertilization and revealed at birth. The bill asserts that sex-based biological differences are genetically determined and result in anatomical differences and distinct body types. The bill would use these definitions to address inherent differences between males and females in the context of sports by maintaining separate sex-specific high school sports teams.”

House Bill 304 would appear to apply only to transgender females, as transgender females are said to maintain an advantage in strength and speed for a period after receiving hormone treatment to effect transition from biologic sex and transgender males maintain a disadvantage in strength and speed for a period after their hormone treatment. The International Association of Athletics Federations and the International Olympic Committee have ruled that transgender females must have demonstrated testosterone levels below a specified level for 12 months before they can participate in female sports governed by those bodies. DOH indicates that a recent study in the *British Journal of Sports Medicine* indicates an advantage for transgender females persisting more than one year after onset of hormone treatment. In addition, DOH notes a possible height advantage in transgender women which would be helpful in sports such as basketball and volleyball.

In a recent review article authored by Bethany Jones at Loughborough University, Leicestershire, England, the author asserts, “We reviewed 31 national and international transgender sporting

House Bill 304 – Page 3 policies, including those of the International Olympic Committee, the Football Association, Rugby Football Union and the Lawn Tennis Association. After considering the very limited and indirect physiological research that has explored athletic advantage in transgender people, we concluded that the majority of these policies were unfairly discriminating against transgender people, especially transgender females. The more we delved into the issue, the clearer it became that many sporting organizations had overinterpreted the unsubstantiated belief that testosterone leads to an athletic advantage in transgender people, particularly individuals who were assigned male at birth but identify as female.” (This study was cited by the Department of Health: Jones BA, Arcelus J, Bouman WP, Haycraft E. Sport and transgender people: A systematic review of the literature relating to sport participation and competitive sport policies. *Sports Med.* 2007; 47:701. Available at www.ncbi.nlm.nih.gov/pmc/articles/PMC5357259.)

A recent study looking at transgender U.S. Army personnel but published in the British Journal of Sports Medicine, by authors Timothy A. Roberts, Joshua Smalley and Dale Ahrendt from Kansas City, Missouri and Fort Sam Houston, Texas shows some advantage in strength and speed for transgender females at one year after hormone treatment, but not two years from treatment, and corresponding disadvantages for transgender males for about the same period.

OTHER SUBSTANTIVE ISSUES

PED points out the following:

Schools complying with HB492 could face an Office of Civil Rights (OCR) case with the possibility of losing federal funding from the Department of Education due to Title IX sex discrimination. In the OCR Case No. 05-14-1055 from Palatine Illinois, a transgender female student was allowed to use the girls’ restroom, was listed as a female student, was addressed with appropriate pronouns, and was allowed to participate in girl sports; however, she was denied unrestricted access to the girls’ locker room. The “OCR concluded that the District violated Title IX because, for more than two school years, it has denied the student access to the girl’s locker rooms at her high school to change clothes for her athletics activities and for the mandatory physical education (PE) classes needed to satisfy the graduation requirements and receive a high school diploma. Instead, the District has offered the student only separate facilities to change clothes; these facilities are not comparable to those provided other students. As result of the District’s denial of access for the student to its girls’ locker rooms, the student has not only received an unequal opportunity to benefit from the District’s educational program, but has also experienced an ongoing sense of isolation and ostracism throughout her high school enrollment.”

According to the Centers for Disease Control and Prevention (CDC), high school sports can help adolescents achieve the recommended amount of daily physical activity and provide knowledge, attitudes and behavioral skills that are needed in order to adopt and maintain a physically active lifestyle. Furthermore, it reaches all children including those that are at risk for engaging in more sedentary types of behavior.

The social implications of school sports are significant for children, primarily due to the sense of belonging it provides. Being a member of a team provides the opportunity to develop leadership and cooperation skills, and shared experiences, including those that

encompass feelings of both success and loss, contribute to learning respect and bonding with others. Child Trends, a leading research organization focused on improving the lives of children and youth report, “Youth who say that they “probably will” or “definitely will” graduate from a four-year college are more likely than other youth to participate in school athletics. For example, in 2017, 58% of twelfth graders who planned to complete four years of college participated in high school athletics, compared with 39% of twelfth-grade students who did not have such plans.”

Participation in school sports can provide a sense of belonging, being part of a team or group, and interaction with your peers in a friendly manner. Students learn to consider the interests of teammates and practice mutual respect and cooperation. They work together, share time and other resources, take turns to play and learn to cope with success and failure as a team. These interactions facilitate bonding and lasting friendships with schoolmates, which can help make children more sociable and outgoing as they grow.

CONFLICT

Conflict with House Bill 7, which prohibits any state or local governing body from discriminating against any person related to his/her choice to undergo or not to undergo gender-affirming care.

RELATIONSHIP

Relates to House Bill 394, which prohibits teaching regarding gender-affirming care in schools; to House Bill 490, which requires parental consent for gender-affirming care; and to House Memorial 57, which asks the Legislature to take note of the importance of biologic sex.

As noted by NMAA, “HB492 mirrors current NMAA Bylaw 6.1-Note, which states, ‘Participant shall be defined as a student who represents his/her school for any period of time. A participant is any student who has an official role with an NMAA sanctioned program, including, but not limited to, managers, statisticians, team videographers, etc. **Participating students are required to compete in the gender listed on their original or amended birth certificate.**’”

TECHNICAL ISSUES

PED raises the following issues:

- HB492 provides for male, female and coed sports but does not address on which teams intersex individuals may participate. Estimates of the prevalence of intersex births vary widely from .018 to 1.7 percent (about as prevalent as red hair).
- HB492 also does not provide for how biological sex will be determined. Birth certificates in New Mexico can be updated as needed to reflect an individual’s gender, including gender non-binary; such updated birth certificates are treated as original, rather than amended certificates.

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