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FISCAL IMPACT REPORT

SPONSOR	<u>Brown, Jones, Vincent, Reeb, Montoya</u>	LAST UPDATED	<u>02/27/2023</u>
	Importance of Biological Males and	ORIGINAL DATE	<u>02/27/2023</u>
SHORT TITLE	<u>Females</u>	BILL NUMBER	<u>House Memorial 57</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	No fiscal impact	No fiscal impact		

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

Relates to House Bill 394, to House Bill 490, and to House Bill 492.

Sources of Information

LFC Files

Responses Received From

Office of the Attorney General (NMAG)
New Mexico Activities Association (NMAA)
Human Services Department (HSD)

No Response Received

Department of Health (DOH)
Public Education Department (PED)
Children, Youth and Families Department (CYFD)
Regional Education Cooperatives (REC)
Albuquerque Public Schools (APS)

SUMMARY

Synopsis of House Memorial 57

House Memorial 57, in its “whereas” section, takes note of the following:

1. Male and female are the only two biological sexes.
2. Sex is determined at fertilization and genetically determined.
3. Biological sex determines body type.
4. The U.S. Supreme Court, in *U.S. v. Virginia*, stated there are inherent differences between male and female.
5. Males generally have greater strength and endurance, resulting from higher levels of testosterone than females.

6. Courts have opined that boys have physiologic advantages over females in sports (case law from Rhode Island and Illinois is cited).
7. Testosterone suppression does not negate the benefits of higher levels of testosterone in biologic males.

Therefore, the memorial asks the House of Representatives to recognize the advantages that a transgender female would have if allowed to participate in women's/girls' sports, which may deny female athletes of chances for adulation, scholarships, and other benefits of participation in female-only sports.

FISCAL IMPLICATIONS

As this is a memorial, there is no appropriation in House Memorial 57. There is no fiscal impact.

SIGNIFICANT ISSUES

HSD notes the following: “A primary premise of this memorial is that there are only two sexes that follow a binary of strictly male and female. However, there are more than two sexes, falling along a spectrum that included individuals who identify as non-binary. Nonbinary people are nothing new. People whose gender is neither male nor female use many different terms to describe themselves, such as nonbinary, genderqueer, agender, bigender, and gender fluid. Non-binary people are not confused about their gender– nonbinary identities have been recognized for millennia by cultures and societies around the world. <https://www.gendergp.com/non-binary-people-in-history/> In many Native American communities, there are two-spirit individuals who are considered neither men nor women; they occupy a distinct, alternative gender status.” <https://www.ihs.gov/lgbt/health/twospirit/>

Approximately 20 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 from participating in the sports of the gender with which they identify.

House Memorial 57 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.

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 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. Beyond one year, then, it would appear that these data would invalidate the last “whereas” statement in the memorial, stating that testosterone suppression does not obviate the advantages of higher testosterone levels.

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.

As noted by NMAA, this statute would conflict with its 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.**”

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 Bill 492, which bans transgender females from women’s/girls’ sports.

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