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**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Click all that apply:

Original Amendment ___
Correction ___ Substitute ___

Date 2025-02-21

Bill No: SB459

Sponsor: Block, John
Short PROTECTION OF
Title: WOMEN'S SPORTS ACT

Agency Name
and Code NMHED
Number: _____

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

Senate Bill 459 (SB459), the Protection of Women's Sports Act, defines terms related to sex and gender; requires equal athletic opportunities for males and females; requires designation of athletic teams, sports, athletic competitions, and athletic events as for males, females, or as coeducational; prohibits males from competing for, against, or with teams designated for females; allows males to participate as practice players on female teams; and provides private causes of action.

The New Mexico Higher Education Departments's (NMHED) analysis of this bill focuses on the higher education implications of the proposed legislation. Additional insight may be obtained from other agencies' analyses.

FISCAL IMPLICATIONS

SB459 does not provide an appropriation.

SIGNIFICANT ISSUES

SB459 defines sex as "a person's immutable biological classification as male or female," explicitly distinguishing it from gender identity by stating the term "does not include or synonymize the concept of gender identity." The law uses this biological classification as the

defining criterion for segregating athletic participation, requiring male and female teams, sports, and competitions to be separated by sex. Eligibility is determined by the sex listed on a participant's birth certificate, provided the designation was originally documented at or near the time of birth. The legislation specifically prohibits individuals classified as male from competing on teams, in sports, or at events designated for females. However, it permits males to participate as practice players on female teams under the condition that their involvement does not displace female athletes by claiming roster spots, competitive opportunities, scholarships, or school-sponsored sporting opportunities.

SB459 could affect athletic teams, sports, athletic competitions, and athletic events offered at New Mexico public higher education institutions (HEIs). SB459 requires the designation of athletic teams, sports, athletic competitions, or athletic events as for males, men or boys; as for females, women or girls; or as coeducational. If HEIs are not distinguishing between male, female, and coeducational athletic offerings, then they will need to clarify those. Further, if HEIs are allowing males to participate in female athletics, then they will need to discontinue that allowance.

A key concern with SB459 is that HEIs adhering to federal guidance, state laws, or institutional policies regarding the recognition of transgender students' identities "particularly in athletic participation" risk having these established frameworks overridden by the legislation. This creates potential conflicts for HEIs striving to provide equitable environments for transgender students, as the bill's biological sex-based eligibility criteria could restrict their ability to accommodate inclusive athletic programming. Specifically, HEIs that recognize gender identity in sports participation or maintain policies aligning with transgender-inclusive practices may face limitations in structuring team rosters and competitions, inadvertently marginalizing transgender athletes. SB459, by its own wording, speaks to sex as the defining feature for determining who can participate in female sports, not gender identity.

SB459 introduces potential equity concerns by mandating that participants prove their biological female status for athletic eligibility while imposing no equivalent requirement for males to verify their sex a disparity that could disproportionately burden female athletes and raise constitutional "equal protection" considerations. The legislation further lacks clarity regarding procedural implementation, particularly for HEIs. Students rarely carry physical birth certificates to college, raising questions about how HEIs will verify sex designations documented "at or near the time of birth," as stipulated by the bill. This omission leaves institutions without clear guidelines for confirming eligibility, potentially forcing them to develop ad hoc verification systems that may conflict with existing state and a federal nondiscrimination protections or institutional inclusivity policies.

SB459 requires that HEIs that offer, operate, or sponsor intercollegiate athletics which provide equal athletic opportunities for both sexes. However, the bill is unclear as to what counts as equal athletic opportunities. If this is meant to say that any athletic offering for one sex must be available for the other, then HEIs may be required to increase their athletic offerings, both in terms of the sport or event offered but also in terms of the level of competition. For instance, if an HEI offers competitive intercollegiate female soccer, SB459 may require that the institution offer competitive intercollegiate male soccer, a program that it may not currently offer. Team

sports often require a minimum number of participants, especially for competitive team sports, so offering new athletics may require more than just starting a new team or sport. It is also unclear if coeducational sports can stand in for single-sex sports regarding equal athletic opportunities.

SB459 prohibits NMHED, as a governmental entity, from considering a complaint against, opening an investigation into, or taking adverse action against an HEI for complying with this act.

SB459 provides private causes of action related to the requirements and prohibitions in this act. Students, faculty, or staff at HEIs who suffer or who will suffer direct or indirect harm resulting from a violation of this act may bring a private cause of action for injunctive relief, compensatory damages, and legal fees against the violating entity. Further, HEIs that may suffer or will suffer direct or indirect harm as a result of a violation of this act may also bring a private cause of action against the violating entity. Lastly, individuals, teams, or athletic programs at HEIs who are retaliated against for reporting a violation of this act may also bring a private cause of action against the retaliating entity. The phrase "or will suffer direct or indirect harm" is unclear in terms of its scope. For example, if an HEI has an athletic offering for females but not for males, that appears to violate this act, but finding perfect parity in all offerings could be challenging.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

HEIs may need additional staffing and funding to accommodate both monitoring of compliance with this act and development of new athletic offerings to remain in compliance with this act.

SB 459 may require public educational institutions to add additional athletic opportunities to one or the other sex to provide equal athletic opportunities.

SB 459 may require public educational institutions and the NMHED to be out of compliance with the New Mexico Human Rights Act (28-1-1 through 15 NMSA 1978).

SB 459 may violate constitutional equal protection rights as it requires females, women, or girls to prove that they are biologically female but it does not require males, men, or boys to prove that they are biologically male.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

2025 House Bill 185, also titled the Protection of Women's Sports Act, looks similar to SB459 and was last sent to the House Consumer & Public Affairs Committee with referrals to other committees.

2023 House Bill 492, the Women's Sports Protection Act, included, in part, prohibiting males from participating in female athletic offerings, and it was postponed indefinitely.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

Individual HEIs or athletic associations could adopt requirements and prohibitions similar to those in SB459.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There will not be a Protection of Women's Sports Act that prohibits males from participating in female athletic offerings, requires equal athletic offerings, and provides private rights of action for violations of this act.

AMENDMENTS

N/A