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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Block/Tobiassen **ORIGINAL DATE** 02/21/2025

BILL

SHORT TITLE Protection of Women’s Sports Act **NUMBER** Senate Bill 459

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact		

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

Nearly identical to House Bill 185 (HB185).

Sources of Information

LFC Files

Agency Analysis Received from the Following, Regarding HB185

- Regional Education Cooperatives (RECA)
- New Mexico Highlands University (NMHU)
- Higher Education Department (HED)
- New Mexico Independent Community Colleges (NMICC)
- New Mexico Commission on the Status of Women (CSW)
- Public Education Department (PED)

Agency Analysis was Solicited but Not Received From

- Albuquerque Public Schools (APS)
- New Mexico Athletic Association (NMAA)

SUMMARY

Synopsis of Senate Bill 459

Senate Bill 459 (SB459) requires that participation in single-sex school sports be restricted to those of the same biological sex assigned at birth. The prohibition affects public primary and secondary schools and institutions of higher learning, as well as private athletic clubs.

The bill requires that equal athletic opportunities to be offered to each sex, including single-sex teams and that schools designate teams as “male,” “female” or “coed,” based on the biologic sex of participants. Teams designated as “female” cannot allow a player designated at birth as biologically male, although the player could practice with the team.

The bill prohibits a governmental entity, a licensing or accrediting organization, or an athletic association from considering a complaint, investigating, or acting against a public school complying with the act. However, it allows a student who has suffered “direct or indirect harm” from a school’s violation of this act to bring action against the school or athletic organization. The same would apply to individuals, teams, or athletic organizations reporting an entity for violating the act. There would be a one-year statute of limitations.

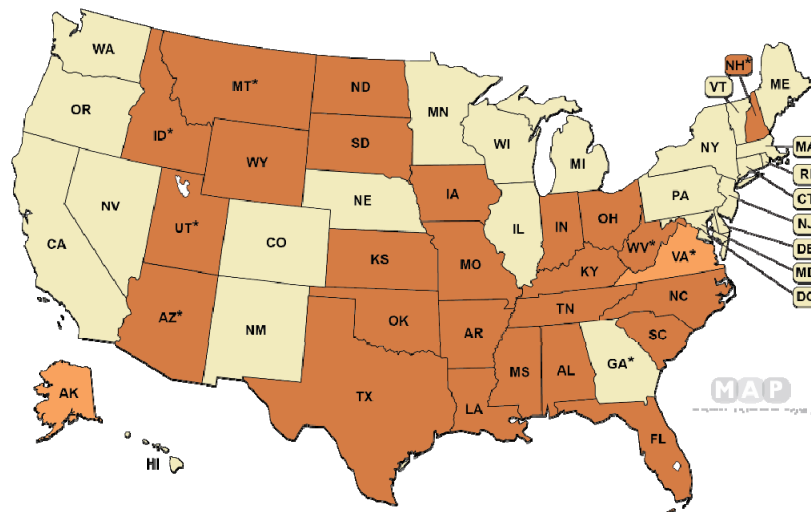
This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

No costs are identified for Senate Bill 459, other than the cost of issuing regulations, the cost of litigation, and, as identified by the Higher Education Department (HED), the possibility that schools and colleges might be required to initiate new sports teams to give equal opportunities to males and females. In addition, New Mexico Highlands University raises the concern the provisions of Senate Bill 459 might cause the following effect: “The university will need to implement a system for verifying the biological sex of athletes, which may create logistical and privacy concerns that may require changes or updates to internal record-keeping systems.”

SIGNIFICANT ISSUES

Many U.S. states have passed (dark brown on the map below) or are discussing (light brown) legislation to ban transgender women from participating in women’s sports. The Public Education Department (PED) points out the high incidence of recent legislation being introduced, and in some instances passed, in other states.



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. The matter has been discussed frequently during the last presidential campaign and in many other venues.

PED raises the following concerns about this legislation affecting the academic success and mental health of transgender individuals:

A hostile school climate affects the academic success and mental health of LGBTQI+ students, and a vast majority (86.3 percent) of LGBTQI+ students experienced harassment or assault based on their personal characteristics, including sexual orientation, gender expression, and gender. New Mexico Youth Risk and Resiliency 2015 Report on LGBT Youth, published in 2017, indicates:

- 15.1 percent of high school students identify as lesbian, gay, bisexual, or unsure (LGBQ).
- LGBQ youth are (13.7 percent) more likely to live in uncertain housing than straight youth (4.3 percent).
- LGBQ youth were three times as likely to have been forced to have sex (18.3 percent) or experienced dating violence (21.3 percent), and twice as likely to be bullied (31 percent) than straight youth (5.6 percent, 6.6 percent, and 15.7 percent, respectively).

The bill appears to be focused on transgender females because of a perceived advantage in strength and speed, although physical advantages also exist among players designated at female at birth. The Department of Health (DOH) indicates 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. Notably, 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 review of eight research articles on 31 sports policies, Bethany Jones of Loughborough University, Leicestershire, England, asserts, “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.”

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.

The New Mexico Commission on the Status of Women argues the more important issue is a lack of equal access to school funding for women’s sports and the lack of sports funding in public schools more generally:

Most kids in NM are not going to be professional athletes, they just want to have fun and have an activity to be a part of. Our schools are already underfunded for sports, and we are concerned that there will not be funding available to have separate team access so the girls’ teams will lose the funding they currently have.

The libertarian think-tank the Cato Institute in an article¹ published in 2022 acknowledges the question of transgender women competing against cisgender women is “complex and polarizing,” and suggests some who oppose transgender competitors fear its impact on Title IX rights prohibiting sex-based discrimination. The article concludes:

The overarching question concerns what constitutes *fair competition* in individual sports. This analysis reveals that the salient issue is less about transgender women competing against cisgender women than the competitive advantage that nature confers upon the former as a result of their birth sex that is not completely offset through hormonal therapies. ... [F]airness may demand a further partitioning of athletic competition in which transgender women compete only against one another rather than against cisgender women.

ADMINISTRATIVE IMPLICATIONS

HED notes the following:

SB459 may require public educational institutions to be out of compliance with the Human Rights Act (28-1-1 through 15 NMSA 1978). SB459 may [also] violate equal protection 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.

PED makes similar points, adding that the need to prove “biologic sex” raises logistical and privacy concerns.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Almost identical to House Bill 185, except that Senate Bill 459 adds one paragraph (Section 7B) punishing athletic entities if they fail to observe the provisions of this act. SB459 also adds several definitions: “boy,” “man,” “woman,” “girl” and “gender identity.”

TECHNICAL ISSUES

The New Mexico Independent Community Colleges points out the following: “It is unclear if the ‘athletic clubs’ are any athletic clubs in the state or if it refers to athletic clubs at a public educational institution. Similarly, it is unclear if an ‘athletic association’ refers to public athletic associations or all athletic associations in New Mexico.”

PED notes:

The bill fails to address the New Mexico Vital Statistics Act, which was amended in 2019 to permit changes in designated gender. That amendment addressed Section 24-14-25 NMSA 1978, which was amended to permit changes of gender to an applicant’s birth certificate – or their designation as non-binary – upon receipt of a signed statement by the individual applicant, their parent or guardian.

LAC/SL2/hj

¹ <https://www.cato.org/regulation/fall-2022/transgender-athletes-fair-competition-public-policy>