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## FISCAL IMPACT REPORT

SPONSOR Candelaria/ ORIGINAL DATE 1/23/19  
Rep Armstrong, D. LAST UPDATED 1/25/19 HB \_\_\_\_\_

SHORT TITLE Sex Designation on Vital Records SB 20/aSPAC

ANALYST Chilton

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$186.3	\$25.0	\$211.3	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)

Tax and Revenue Department (TRD)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment changes the terminology, but not the meaning of the bill, replacing the definition of “X”, which could be used in the “sex” field on certificates and reports from “For the purposes of this section, "X" means nonbinary, undesignated or other," to the following: “For the purposes of this section, “X” refers to a gender other than male or female gender.”

#### Synopsis of Original Bill

Senate Bill 20 makes changes to the Vital Records statute, Section 24-14-25 NMSA 1978, to make it less complicated and arduous to change sex designation on birth certificates. Current statute indicates that a person changing sex designation must prove with a physician’s statement that a surgical sex-change procedure had been done; with the proposed legislation, a statement signed under penalty of perjury by an individual indicating a change in that person’s gender identity would suffice. The new birth certificate would be issued with a designation of male, female, or X, at the individual’s direction. A new subsection G would be added to Section 24-14-25 NMSA 1978 to define “X” as “nonbinary, undesignated, or other.”

Further, if the sex indication on the birth certificate is changed using this methodology, the birth certificate is not to be marked “amended.” A new provision in Subsection C of the current bill would require that if the father’s name on a birth certificate were changed as a result of an

acknowledgment of paternity, that birth certificate would also not be marked “amended.”

If the person requesting the sex designation change also wishes a name change on the certificate, that would require a certified copy of a court order to do so. This does not represent a change in current law.

## **FISCAL IMPLICATIONS**

No appropriation is made.

DOH estimates that its initial cost to implement this legislation will be \$100 thousand with ongoing costs of \$25 thousand per year. DOH will need to make modifications to its electronic vital records system to either add an additional field to accommodate the new gender designation or to allow the “X” identifier for the existing field identifying the person’s sex. Additionally, there will be costs to train staff and modify existing forms or create new forms.

## **SIGNIFICANT ISSUES**

The Transgender Resource Center of New Mexico has produced a document covering current procedure, entitled “Name and Gender Change Guide for Residents of New Mexico (<https://static1.squarespace.com/static/5569e88ce4b06d83cf7ac8fc/t/588b9d9ebe6594d3ef22bc32/1485544886603/Namepercent26GenderChangeNMEng.pdf>)” The steps enumerated (and discussed in more detail are as follows:

To change one’s name:

1. Prepare “Petition for change of name.”
2. File that petition with the clerk of the District Court.
3. After the clerk has assigned the case to a judge, request a hearing date from the judge’s administrative assistant.
4. Publish notice of change in newspaper in your county or nearest county if there is no newspaper in your county.
5. Return to court on the day set aside for that.
6. File court’s order with clerk of court.
7. File the order for change of name with the county clerk
8. Use the court order to update legal name in all appropriate places, including for a revised birth certificate with the New Mexico Department of Vital Records.

To change the sex on the birth certificate

1. Submit birth certificate request form
2. Submit certified copy of court-ordered name change, if applicable
3. Submit signed statement from physician or facility indicating surgical procedure for sex reassignment has been performed.

DOH summarizes recent issues related to the content and intent of this bill:

SB20 proposes to change the legal requirements for sex designation on a birth certificate to align to a person’s gender identity. Currently, the law requires that a person requesting to change the sex designation on their birth certificate provide a written statement by a physician or institution that the person has had a surgical procedure to change their sex. SB20 would remove this requirement, and change “sex” to “gender identity.”

As a legal document, the sex designation on an individual’s birth certificate is relevant to changing the sex designation on other legal documents and identification records. As

such, it is beneficial to the person that the birth certificate be consistent with other legal documents and identification records.

SB20 is similar to a recent amendment to Section 207.05 of the New York City Health Code (<https://www1.nyc.gov/assets/doh/downloads/pdf/notice/2018/noa-amend-article207-section207-05.pdf>) as well as laws in California (<https://www.smithsonianmag.com/smart-news/california-becomes-first-state-introduce-gender-neutral-birth-certificates-180965343/>), which allow individuals to self-attest when changing their sex designation on their birth certificate, and allow individuals to use “X” as an additional sex designation gender option that is not exclusively female or male.” Oregon also allows individuals to self-attest when changing their sex designation on their birth certificate using a notarized form (<https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB2673>).

Of the 57 birth registration jurisdictions in the country, there are seven jurisdictions that have similar legislation as that being proposed in SB20. Some of these seven jurisdictions have restrictions on changing the gender of an individual if they are under the age of 18.

The Transgender Resource Center of New Mexico collaborated to introduce this bill.

In New Mexico, 0.7percent of adults surveyed in the 2016-2017 Behavioral Risk Factor Surveillance Survey identified as transgender. Additionally, 3.4 percent of high school students identify as transgender, genderqueer or genderfluid, and 2.9 percent are unsure of their gender identity. (NM YRRS Connections, September 2018. *Gender Identity*. Volume 5(4), [http://youthrisk.org/pdf/YRRS\\_Connections\\_Gender\\_September\\_2018.pdf](http://youthrisk.org/pdf/YRRS_Connections_Gender_September_2018.pdf)).

According to a 2015 national survey by the National Center for Transgender Equality (The Report of the 2015 U.S. Transgender Survey (2016), pages 81-91; <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>), “Of those who wanted to change the gender on their birth certificate, only an estimated 9percent were able to do so. Only 33percent had the gender they preferred on some or all of their IDs and records; of those who did, “they were most likely to be denied a gender marker change on their birth certificate (15 percent).” Among those who did not have any IDs/records with the gender they preferred, 41percent reported it was because the options of male or female do not fit their identity, an issue which may be at least partially resolved by the inclusion of an “X” option as proposed in SB20. Additionally, 25percent believed they were not allowed to change their records due to requirements such as needing a doctor’s note or verification of medical treatment for gender affirmation, a requirement that would be eliminated in SB20.

AOC noted, with respect to 2018 Senate Bill 184, that it would allow the person changing sex designation to pursue name change on the birth certificate as well, but only if that person wanted to do so. “This is significant in that the court-ordered name change process is expensive and lengthy,” according to AOC.

**RELATES** to 2017 Senate Bill 184, which did not pass. Senate Bill 184 made somewhat different changes in the requirements for changing sex designation on vital records.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Transgender individuals would still be required to complete the multi-step procedures outlined in order to change name and sex on the birth certificate, a medical provider's or facility's affidavit stating that a sex-change operation had been performed would be required, and the birth certificate would still be marked "amended."

LAC/jle/sb/gb