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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Hamblen **ORIGINAL DATE** 02/24/23

BILL

SHORT TITLE Collection of Certain Demographic Data **NUMBER** Senate Bill 370

ANALYST Hitzman

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD Admin/IT	No Fiscal Impact	\$50.0	Indeterminate but minimal	\$50.0	Recurring	General Fund
WSD Admin/IT	No Fiscal Impact	\$750.0	Indeterminate but minimal	\$750.0	Recurring	General Fund
EDD IT	No Fiscal Impact	\$3.0	No Fiscal Impact	\$3.0	Recurring	General Fund
HSD Admin	No Fiscal Impact	\$11.1	\$11.1	\$22.2	Recurring	General Fund
HSD Admin	No Fiscal Impact	\$11.1	\$11.1	\$22.2	Recurring	Federal Funds
HSD IT	No Fiscal Impact	\$208.97	0.00	\$376.44	Nonrecurring	General Fund
HSD IT	No Fiscal Impact	\$418.03	0.00	\$754.56	Nonrecurring	Federal Funds
Other Agency Admin & IT	No Fiscal Impact	\$0 - \$750.0	\$0 - \$750.0	\$0 - \$1,500.0	Recurring	General Fund/Various
Total	No Fiscal Impact	\$0 - \$2,202.1	\$0 - \$772.0	\$3,478.4		

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Department of Public Safety (DPS)
 New Mexico Corrections Department (NMCD)
 Early Childhood Education and Care Department (ECECD)
 Administrative Office of the Courts (AOC)
 Tourism Department (NMTD)
 Economic Development Department (EDD)
 Aging and Long Term Services Department (ALTSD)
 Human Services Department (HSD)
 Department of Health (DOH)
 Workforce Solutions Department (WSD)
 Children, Youth and Families Department (CYFD)
 Public Education Department (PED)
 Higher Education Department (HED)

SUMMARY

Synopsis of Senate Bill 370

Senate Bill 370 (SB370) requires executive departments and public bodies—defined as an advisory board, commission, committee, agency, or entity created by the constitution or laws of New Mexico or any branch of government of the executive, legislative, or judicial branch of a state or local government that receives public funding—to collect voluntary self-identification information on sexual orientation and gender identity when collecting demographic data. The entities shall collect the data pursuant to federal programs or surveys and in accordance with guidelines issued by the Department of Health (DOH). The entities shall report to the Legislature the data collected and methods used and make the data publicly available, except for personally identifying information. The entity shall not report demographic data that would permit the identification of an individual or would result in statistical unreliability and can aggregate data at various levels to prevent this. The information collected may only be used for demographic analysis, coordination of care, quality improvement of services, conducting approved research, fulfilling reporting requirements, or guiding funding or policy decisions.

The effective date of this bill is October 31, 2023.

FISCAL IMPLICATIONS

The bill would likely require additional administrative or information technology (IT) support to ensure the needed data is collected and maintained publicly. The cost of this support is difficult to determine, but some agencies note the need for additional operating funds to support the provisions of SB370. Agencies may experience different levels of need depending on the extent to which agencies have electronic or automatic data collection and reporting processes in place.

For example, the Workforce Solutions Department (WSD) notes:

At present, not all WSD bureaus are paperless, nor can they immediately shift to a paperless system, and capturing the data would require manual input until the systems are electronic. The precise fiscal impact of adding such questions to our major data gathering programs is presently unknown but an estimate is \$750,000. Any ensuing litigation arising from privacy concerns could lead to additional fiscal impact on the agency. More investment may be required to address potential liability arising from the privacy concerns referenced below.

Similarly, the Corrections Department (NMCD) notes it “does not currently track self-identifying sexual orientation or gender identity in the current offender management system nor the replacement system, OMNI. It is estimated the administrative implications listed below would cost \$50,000 in contractual services to bring the OMNI system to compliance.”

The Economic Development Department echoes this concern, noting, “Prior to the first year of data collection, there may be costs related to changing software and online forms (estimated at \$3,000).”

The Human Services Department provides the following:

HSD estimates that it would require a 0.25 Full Time Equivalent (FTE) Management

Analyst-Operational position at a pay grade 60 to implement and maintain the provisions outlined in SB370, with a recurring cost of \$22,200 at 50% federal financial participation (FFP) in Medicaid matching funds. The cost breakdown would be \$11,100 in federal funds and \$11,100 in state general funds per state fiscal year.

Complete data collection of sexual orientation and gender identity information would require updates to HSD's eligibility system (ASPEN) to collect this information, to the online application for public assistance programs administered by HSD (YESNM), and to the Child Support Enforcement System (CSES) and Child Support web portal (eCSE). Changes to the streamlined paper applications are required. It is estimated that making the required system changes will take 20 weeks to complete at a total cost of \$1,131,000.00 (federal and state funds combined). Utilizing the cost allocation models applied to ASPEN and Child Support based on costs by program with associated levels of federal funding, the cost breakdown would be \$754,562.38 in federal funding and a state general fund cost of \$376,437.62.

The Higher Education Department (HED) also notes its need to support data collection at colleges statewide:

The NMHED collects data from all twenty nine (29) public colleges and universities in New Mexico, and each of these institutions may also need to modify their data systems, data collection forms, and reports in order to comply with the requirements of SB370.

However, HED did not provide an estimate of this cost.

The Administrative Office of the Courts (AOC) also notes, "Additional fiscal impact may be anticipated due to the need for comprehensive training on compliance requirements, and the best practices in data collection and uniform reporting." However, this amount is difficult to determine.

Other agencies note there would likely be a cost to implement the bill but did not provide an estimate: therefore, the analysis assumes up to a \$750 thousand cost for other agency implementation, administration, and IT needs, with the higher end of the range based on the highest cost estimate, which was provided by WSD. This estimate is speculative and could be higher if agencies find an increased cost to implement new collection and reporting systems or could be closer to \$0 if costs can be reasonably absorbed by existing budgets.

SIGNIFICANT ISSUES

The Early Childhood Education and Care Department (ECECD) notes:

Collection of voluntary, self-identified demographic data pertaining to sexual orientation and gender identity is best practice and is recommended by the Centers for Disease Control (CDC) and many other advisory bodies. According to the CDC, it is important for health care providers to collect this information because "without this information, lesbian, gay, bisexual, and transgender (LGBT) patients and their specific health care needs cannot be identified, the health disparities they experience cannot be addressed, and important health care services may not be delivered." ([Collecting Sexual Orientation and Gender Identity Information | For Health Care Providers | Transforming Health | Clinicians | HIV | CDC](#)).

To this end, the Aging and Long Term Services Department (ALTSD) notes:

Lesbian, gay, bi-sexual, transgender, and queer (LGBTQ) populations have distinct disparities in outcomes with issues such as sexually transmitted infections, health care access, and mental health¹. In New Mexico, recent collection of sexual orientation and gender identity (SOGI) with both the Youth Risk and Resiliency Survey (YRRS) as well as the Behavioral Risk Factor Surveillance System (BRFSS) have produced meaningful data interpretations leading to program recommendations specific to LGBTQ populations.² Thus, it is imperative state agencies collect sexual orientation and gender identity data so they may in turn better serve their clients' specific needs. However, gaps remain in data collection and understanding of LGBTQ population well-being, according to a 2020 report from the National Academies of Sciences, Engineering, and Medicine.³

Further, the Department of Health (DOH) notes:

According to the Guide for Collecting Data on Sexual Orientation and Gender Identity from the LGBTQIA+ Health Education Center, collecting data on sexual orientation and gender identity allows health centers to learn about the populations they are serving, and to measure the access to care and the quality of care provided to people of all sexual orientations and gender identities ([Fenway Institute, 2022](#)).

The Public Education Department (PED) notes, “The Institute of Medicine recommends the collection of sexual orientation and gender identity demographics in electronic health records and research studies. According to the Institute of Medicine, such data are essential for understanding the status and health needs of the Lesbian, Gay, Bisexual, and Transgender (LGBT) community.”

Further, DOH notes:

Federal surveys that ask respondents about their sexual orientation and gender identity have found that the lesbian, gay bisexual, or transgender (LBGT) community was hit harder by the economic impact of the COVID-19 pandemic, LGBT adults struggled more with mental health during the COVID-19 pandemic than non-LGBT adults, college students who identify as gender minorities have had more difficulty finding safe and stable housing, and the rate of violent crime victimization of lesbian or gay persons has been more than two times the rate for straight persons. (Recommendations on the Best Practices for the [Collection of Sexual Orientation and Gender Identity Data on Federal Statistical Surveys, 2022, whitehouse.gov](#)).

Health inequities and disparities that persist among sexual and gender minorities include frequent mental distress, depression, suicidal ideation, binge drinking, and smoking. ([Health and Disease among Transgender and Gender Non-Conforming Persons in New Mexico, 2019, nmhealth.org](#)).

DOH notes is has collected data showing 6.2% of the adult population is Lesbian, Gay, or

¹Connors, J., Casares, M.C., Honigberg, M.C., Davis, J.A. 2020. LGBTQ Health Disparities. In: Lehman, J., Diaz, K., Ng, H., Petty, E., Thatikunta, M., Eckstrand, K. (eds) The Equal Curriculum.

²VanKim NA, Padilla JL, Lee JG, Goldstein AO. 2010. Adding sexual orientation questions to statewide public health surveillance: New Mexico's experience. Am J Public Health. Dec;100(12):2392-6

³National Academies of Sciences, Engineering, and Medicine. 2020. Understanding the Well-Being of LGBTQI+ Populations. Washington, DC: The National Academies Press.

Bisexual (LGB) and 0.7% are transgender or nonbinary (TGNB). DOH has further found that “sexual minorities and gender minorities experience disparities compared with straight and cisgender individuals as a percentage of their respective overall populations:

Risk Factor	LGB (%)	Straight (%)	TGNB (%)	Cisgender (%)
Unemployed/Unable to Work	18.3	13.5	29.8	13.9
Binge Drinking	21.2	13.5	22.6	13.9
Current Smoking	20.1	14.8	20.8	15.1
Suicidal Ideation	16.0	3.1	16.5	7.0
Depression	38.7	16.7	31.5	17.9

Data Source: New Mexico Behavioral Risk Factor Surveillance System, 2019-2021

Further, PED noted the U.S. Census Bureau began collecting information on the sexual orientation and gender identity of respondents on the Household Pulse Survey (HPS) and “revealed that LGBT respondents were more likely than non-LGBT respondents to experience economic and mental health hardships during the COVID-19 pandemic.”

The details of the required reporting processes and formats is not provided for in the bill and would, presumably, be clarified by the DOH guidelines. For instance, WSD notes, “The questions posed to collect the voluntary information should be uniform ... so that the departments collect data which is sufficiently uniform to result in clear and accurate statistical analysis.”

WSD further notes, “DOH should also promulgate guidance on what level of participation would constitute ‘statistical reliability.’ For example, guidance may state that agencies with a voluntary identification rate of less than x% will be deemed statistically unreliable. Again, uniformity of interpretation of this concept is key to the data being useful.”

HSD echoes this concern, noting the bill does not specify the frequency at which agencies or public bodies need to report to the Legislature.

AOC notes, “Some of the mandated data collection entities serve vulnerable populations and different Institutional Review Board requirements may apply to the data collection and the legislation may not place enough emphasis on the limitations surrounding research involving human subjects and best practices.”

Currently, WSD and other agencies collect the required information from the U.S. Census Bureau, pursuant to Executive Order 2021-048. By this method, “WSD avoids conveying to individuals seeking employment or services that they need to disclose to WSD their sexual orientation or gender identity to become eligible for services or employment.” HED also collects this data, noting the agency worked to “add a new “gender” “field to the Electronic Data Editing and Reporting (eDEAR) system that collects data from institutions. These new fields are voluntary for spring 2023 reporting and mandatory starting in summer 2023.”

The New Mexico Tourism Department (NMTD) notes concerns with survey attrition if additional information is included: “Many surveys conducted by the department are intercept surveys, meant to be short ... to ensure high response rates. Demographic items that do not serve the purpose of the survey and that increase the response time may lead to survey attrition in some cases.”

EDD notes the program that will be most likely impacted is the Job Training Incentive Program (JTIP):

New Mexico businesses apply to JTIP when they are adding new jobs which require training and workforce development. JTIP reimburses the employer a portion of the training wages over a period of time while training takes place. It would be the responsibility of the employer to collect this data as described by the legislation. Since demographic data collection would be new for JTIP it is impossible to predict the possible reaction of participating businesses and trainees.

HSD notes the effective date makes it difficult for the department to meet the requirements: “SB370 as written would require that agencies begin the process of implementing sexual orientation and gender identity data collection by October 2023. HSD would not be able to meet this timeframe because of the scope of system changes that would be required.... The earliest that HSD would be able to implement SB370, with an appropriation to cover the SGF cost, would be May 2024.”

The Public Education Department notes uncertainty in the requirements for data collection regarding non-federal programs:

The second direction, to follow DOH guidelines, is not tied to a particular purpose or programs, as is the collection for federal programs, pursuant to federal guidelines. This would seem to indicate that *all* such data collection by PED and other affected agencies be done according to DOH guidelines, unless the collection is tied to a federal program.

Several agencies cited privacy concerns and how that can impact data availability and validity when it comes to statistical reporting. For example, HED noted:

Due to the need to protect the privacy of individual students called for in SB370, the Governor's executive, and the federal Family Educational Rights and Privacy Act (FERPA), very few reports will be able to include data that utilizes the new fields. Specific minimum cell sizes are not defined, but it is unlikely that many of the categories that define in detail sexual preference and gender identity will have a sufficient number of individuals, especially when the data is crossed by other variables of interest in the report, such as class level, age, and ethnicity, to be reported. This will result in either a large number of suppressed cells in reports, or the aggregation of specific categories into summary groups that have a large enough size to prevent the identification of individuals.

Further, HED notes potential conflict with definitions of gender identity at the federal level:

The National Center for Education Statistics (NCES)...specifies the reporting fields. Previously, NCES only collected “male” and “female” and they didn't permit a “prefer not to answer” or “other” category. NCES is discussing adding a new option to the sex field, “X”, for other. Institutions will need to determine how to summarize their data for reporting to [the Integrated Post secondary Education Data System] IPEDS, and state reports and federal reports may not match as closely in the future as they currently do.

PERFORMANCE IMPLICATIONS

DOH notes the collection of such data “could increase the affected agencies’ overall capacity to address health disparities in the population” because there is still more to be known about the particular disparities this population experiences in New Mexico. The collection of such

information is noted as “critical to identifying specific health care needs, addressing health disparities, and ensuring the delivery of important health care services ([CDC, Collecting Sexual Orientation and Gender Identify Information](#)).” Further, “Executive departments and public bodies systemically responsible for collecting the data can use the information to serve the same function as race and ethnicity data in population health management by enabling these agencies to identify health disparities within the population.”

ADMINISTRATIVE IMPLICATIONS

WSD notes “implementation will require the development of IT systems and training of staff. This should also be coupled with training on sensitivity and awareness of gender and sexual orientation issues.” ALTSD notes most of its programs and divisions collect the required data, but for those programs that do not, such as the Long-Term Care Ombudsman and Care Transition Programs at the department, ALTSD is “currently in the process of configuring these systems to do so.”

Agencies will need to be careful to ensure that any solicitation of this demographic information is known to be voluntary and not required for any condition of employment and receipt of services.

Many agencies will likely need to implement changes and updates to their information technology systems to support the required data collection and reporting requirements.

The Children, Youth and Families Department (CYFD) notes that, since the bill requires all state laws be following in data collection and disclosure, “CYFD will apply all children’s code provisions to any collected data. CYFD may need to develop procedures to ensure data is sufficiently aggregated and de-identified.”

TECHNICAL ISSUES

WSD notes “the bill, as written, could cause some constituents to be counted multiple times, depending on the interaction with the agency.” Additionally, “the bill does not discern what programs should be included and whether the agency should require contractors, such as sub recipients of federal dollars, to collect and report this information.”

The bill may also result in some constituents being counted twice depending on the interaction with the agency.

The bill provides that an “executive agency” includes

- Human Services Department
- Children, Youth and Families Department
- Department of Health
- Department of Public Safety
- Corrections Department
- Economic Development Department
- Tourism Department
- Workforce Solutions Department
- Aging and Long-term Services Department

- Public Education Department
- Higher Education Department
- Early Childhood Care and Education Department

However, the bill also applies generally to “public bodies,” including advisory boards, commissions, committees, agencies, or entities created by Constitution or laws of New Mexico, or any branch of state or local government that receives public funding. Therefore, it is unclear why the bill would call out individual entities applicable to the law when nearly any agency, board, commission, and local government entity would also be required to comply with SB370.

OTHER SUBSTANTIVE ISSUES

HED noted it will be collecting the data on a mandatory basis starting in summer 2023 to meet the requirements of Executive Order (2021-048); however, the provisions in SB370 require data collection to be voluntary, so it is unclear if requirements of the order would conflict with the provisions in SB370.

ALTERNATIVES

WSD notes the following:

It would also be clearer to provide an express exemption from IPRA for any information that could be used to tie a person’s individual information to their responses to these questions. This may help mitigate any potential chilling effect these questions may create for our constituents to the extent they may hesitate or decline to seek employment services or engage WSD to access our other services.

Further, WSD notes it “may not be an appropriate agency to include for this requirement, as we are not involved in coordination of care.” Similarly, NMTD notes, “Continuity/coordination of care is not a consideration for the department and does not factor into the decision to collect certain demographic data points. The data points chosen by the department are typically in service of understanding the target population for marketing efforts.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

WSD notes “should this bill not be enacted, the Department will still obtain this type of demographic information pursuant to the active Executive Order (2021-048).”

JH/al/hg/mg