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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

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**SECTION I: GENERAL INFORMATION**

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

**Date Prepared:** 2/13/25 *Check all that apply:*  
**Bill Number:** HB 380 Original  Correction   
 Amendment  Substitute

**Sponsor:** Rep. Rod Montoya **Agency Name and Code:** AOC  
**Short Title:** Women's Safety & Protection Act **Number:** 218  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(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**

Synopsis: HB 380 enacts the “Women’s Safety and Protection Act,” to prohibit a state agency or other arm of the state from prohibiting distinctions between the sexes with respect to athletics, correctional facilities, juvenile detention facilities, domestic violence shelters or other accommodations where biology, safety or privacy are implicated that result in separate accommodations that are substantially related to the important government interest of protecting the health, safety and privacy of individuals in such circumstances.

HB 380 designates sleeping quarters and multiple occupancy restrooms or changing rooms for the exclusive use of females and males in domestic violence shelters, public schools, correctional facilities and juvenile detention facilities. Additionally, HB 380 requires each facility to “provide a reasonable accommodation to a person who is unwilling or unable to use a multiple occupancy restroom or changing area designated for that person's sex,” and describes what a reasonable accommodation may include and shall not include. HB 380 also lists circumstantial exceptions under which a person of the opposite sex may enter a multiple occupancy restroom, changing room or sleeping quarter designated for the opposite sex.

HB 380, with regard to domestic violence shelters, public schools, correctional facilities and juvenile detention facilities, provides that nothing in the Act shall be construed to prohibit a specified facility from adopting policies necessary to accommodate persons protected pursuant to the federal Americans with Disabilities Act of 1990.

#### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and potential actions for violations of the law, as well as challenges to the law. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

#### **SIGNIFICANT ISSUES**

- 1) As with other so-called “bathroom bills” and their ilk, restricting transgender people’s access to specified spaces with an expectation of privacy – in HB 380, sleeping quarters and multiple occupancy restrooms or changing rooms in domestic violence shelters, public schools, correctional facilities and juvenile detention facilities – challenges to the constitutionality of the law as a violation of the Equal Protection Clause and federal Title IX can be anticipated.

The Congressional Research Service (CRS) reported that, as of January 2023, appellate courts were split on how constitutional protections apply, with the Courts of Appeals for the Seventh and Fourth Circuits having ruled that school policies prohibiting bathroom access consistent with a transgender student’s gender identity can violate their right to equal protection of the laws, while the full Eleventh Circuit recently upheld such a school policy against an equal protection challenge. The CRS notes a similar division

among the circuits has arisen with respect to whether such policies violate Title IX of the Education Amendments of 1972. ([https://uscode.house.gov/view.xhtml?req=\(title:20%20section:1681%20edition:prelim%20OR%20\(granuleid:USC-prelim-title20-section1681\)&f=treesort&edition=prelim&num=0&jumpTo=true\)](https://uscode.house.gov/view.xhtml?req=(title:20%20section:1681%20edition:prelim%20OR%20(granuleid:USC-prelim-title20-section1681)&f=treesort&edition=prelim&num=0&jumpTo=true)) )

The CRS notes that

Courts reviewing challenges to governmental classifications based on sex review those policies under a searching inquiry known as intermediate scrutiny where the classifications allegedly deny equal protection. The appellate courts that have reviewed challenges to public schools’ bathroom policies have applied this standard of review, although courts have taken different positions on the precise reason that intermediate scrutiny applies. Some courts take the view that these policies are subject to heightened scrutiny because they classify based on sex. An alternative position is that transgender individuals are a distinct “quasi-suspect class” for equal protection purposes. Further, appellate courts, in a series of split decisions, have divided as to whether and when intermediate scrutiny is satisfied in bathroom access cases

<https://crsreports.congress.gov/product/pdf/LSB/LSB10902#:~:text=The%20Fourteenth%20Amendment's%20Equal%20Protection,classifications%20allegedly%20deny%20equal%20protection.>

- 2) In 2016, a rash of so-called “bathroom bills” were introduced in at least 16 states, and in March 2016, North Carolina became the first state to restrict access to public restrooms according to the sex listed on people’s birth certificates. While many conservative groups promoted these bills, it was noted that a conservative group seemed to be particularly influential in putting bathroom bills on the agenda: a network of lawyers called Alliance Defending Freedom. (ADF) See <https://www.motherjones.com/politics/2016/04/alliance-defending-freedom-lobbies-anti-lgbt-bathroom-bills/> .

In June of 2024, the Louisiana governor signed that state’s “Women’s Safety and Protection Act”. The sponsor of the legislation acknowledged receiving writing assistance from the ADF. See, *Specious women’s safety arguments for ‘bathroom bill’ appeal to toxic masculinity*, Louisiana Illuminator, April 2024, <https://lailluminator.com/2024/04/23/bathroom-bill/> . The ADF has described the Louisiana WSPA as a bill that preserves designated women’s spaces for women. “The bill focuses on spaces where women are most vulnerable to compromised privacy and safety—such as changing rooms, sleeping quarters, and restrooms—and requires public schools, correctional facilities, and domestic violence shelters to protect these spaces based on sex.” (<https://adfmedia.org/press-release/louisiana-governor-signs-bill-protect-womens-privacy-safety> ) According to ADF Senior Counsel Matt Sharp:

States have a duty to protect the privacy, safety, and dignity of women and young girls. Yet certain advocacy organizations—and even the Biden Administration through its recent Title IX rule—are demanding states to tear down the long-standing tradition of having distinct facilities for men and women. This radical

social experiment, which especially harms children and women fleeing abusive situations, flies in the face of common sense and even the plain language of Title IX and other federal laws. Letting men into women’s spaces—whether at public schools, correctional facilities, or domestic violence shelters—is an invasion of privacy and a threat to their safety. We commend Louisiana Rep. Roger Wilder, Sen. Beth Mizell, and the entire legislature for passing this critical bill with bipartisan support, and Gov. Landry for signing it into law. Protecting women from inappropriate exposure to men is not only legal, but also an important duty of the officials in charge of watching over their safety.

Id.

While the Southern Poverty Law Center (SPLC) lists the ADF as an anti-LGBTQ designated hate group, ([https://www.splcenter.org/resources/extremist-files/alliance-defending-freedom/?gad\\_source=1](https://www.splcenter.org/resources/extremist-files/alliance-defending-freedom/?gad_source=1) ), the ADF calls the SPLC “a discredited and scandal-ridden group”. (<https://adflegal.org/setting-the-record-straight/> )

Louisiana House Bill No. 608, enacting that state’s Women’s Safety and Protection Act, states that a purpose of the bill is “to clarify and reconcile the meaning of sex, male, female and related terms in state law,” and goes on to define the following gender-related terms: “boy,” “girl,” “man,” “woman,” “male,” “female,” “mother,” “father” and “sex,” among other terms. <https://legis.la.gov/legis/ViewDocument.aspx?d=1381914>

HB 380 does not define the terms listed above, but it does, as does the Louisiana law, designate sleeping quarters and multiple occupancy restrooms or changing rooms for the exclusive use of females and males in domestic violence shelters, public schools, correctional facilities and juvenile detention facilities. Additionally, unlike the Louisiana law, HB 380 requires each facility to “provide a reasonable accommodation to a person who is unwilling or unable to use a multiple occupancy restroom or changing area designated for that person's sex,” and describes what a reasonable accommodation may include and shall not include. HB 380 also lists circumstantial exceptions under which a person of the opposite sex may enter a multiple occupancy restroom, changing room or sleeping quarter designated for the opposite sex.

See also, *Transgender Bathroom bills are back, gaining traction after past boycotts*, National Public Radio, May 2024, <https://www.npr.org/2024/05/06/1249406353/transgender-bathroom-bill-republican-states>, *Transgender bathroom bills are back. Does the nation care?*, NBC News, February 2024, <https://www.nbcnews.com/nbc-out/out-politics-and-policy/transgender-bathroom-bills-are-back-nation-care-rcna137014>, *Bathroom Bills Are Back – Broader and Stricter – In Several States*, KFF Health News, February 2024, <https://kffhealthnews.org/news/article/state-bathroom-bills-sex-definitions-transgender-trans/> and *Bans on Transgender People Using Public Bathrooms and Facilities According to Their Gender Identity*, Movement Advancement Project, February 2025, [https://www.lgbtmap.org/equality-maps/nondiscrimination/bathroom\\_bans](https://www.lgbtmap.org/equality-maps/nondiscrimination/bathroom_bans) (providing a map and a listing of state and territory bans).

- 3) HB 389 does not provide a penalty for violation of the Act, nor an enforcement mechanism, nor a private right of action for injunctive relief, protective order, writ of mandamus or a prohibition, or declaratory relief to prevent or curtail a violation, or actual damages, attorney fees and costs.

See Louisiana's 2024 HB 608, Section 65 at <https://legis.la.gov/legis/ViewDocument.aspx?d=1381914>.

- 4) 2024's HB 205, enacting the "Women's Bill of Rights Act," like Louisiana HB 608, previously discussed, did define gender-related terms, and permitted the state or political subdivisions and instrumentalities to provide environments designated for one sex exclusively, where the single sexes are not similarly situated.

In the FIR for HB 205, the New Mexico Attorney General noted

HB205 could have an impact on how sex discrimination is interpreted under the New Mexico Human Rights Act (NMSA 1978, § 28-1-1 et seq.). The Human Rights Act currently prohibits any person, employer, employment agency or labor organization from discriminating against any person on the basis of sex. See § 28-1-7. Under HB205, a claim for sex discrimination would only be applicable if a person is discriminated against in relation to a member of the opposite sex, as defined by biologically based sex characteristics. A person who identifies their sex as female but does not have the biological sex characteristics stated under the act may have their claim for sex discrimination fail under the provisions of HB205. Other state policies, programs, and statutes would similarly have altered interpretations and applications.

HB205 would also draw biological distinctions of sex with respect to public institutions, dormitories and, importantly, athletic competitions, and allow public institutions to create single-sex environments that might exclude certain individuals who may not fall within the biologically based definitions of male or female under HB205. Further, an individual who is denied the ability to participate in an athletic competition would not have the ability to bring a lawsuit for sex discrimination based on the prohibitions created in the Act.

See <https://www.nmlegis.gov/Sessions/24%20Regular/firs/HB0205.PDF>

#### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

#### **ADMINISTRATIVE IMPLICATIONS**

See "Fiscal Implications," above.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

#### **TECHNICAL ISSUES**

#### **OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

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

**AMENDMENTS**