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FISCAL IMPACT REPORT

SPONSOR Montoya/Herrell/
Gallegos, DM ORIGINAL DATE 01/19/18 LAST UPDATED _____ HB 76

SHORT TITLE Partial-Birth & Late-Term Abortions SB _____

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY18 | FY19 | FY20 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|-----------------------------|-----------------------------|-----------------------------|------------------------------|------------------|
| Total | NFI | Indeterminate, but small | Indeterminate, but small | Indeterminate, but small | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Identical to 2017 House Bill 220 and Senate Bill 183

Conflicts with 2018 House Bill 16

Related to House Bills 56 and 76

SOURCES OF INFORMATION

LFC Files

Responses Received From

SUMMARY

Synopsis of Bill

House Bill 76 amends the Partial-Birth Ban in Section 30-5A NMSA 1978, re-entitling it the “Late- Term and Partial-Birth Abortion Act, to extend the prohibition on partial-birth abortion to also include what it defines as late abortion. It defines late-term abortion (in Section 5) as the use of any method terminating a pregnancy with the “intent to destroy a viable fetus of twenty or more weeks gestational age.”

Section 5 of the bill establishes a legal presumption that “viability occurs at the twentieth week of pregnancy,” so that physicians performing an abortion at greater than twenty weeks gestation would need to show and document the proof in the woman’s medical record, using as evidence weight, gestational age, and lung maturity.

Section 6 of the bill would enact a civil penalty of at least \$500 and mandate that the medical and osteopathic boards revoke or suspend for at least one year the license of the physician performing either a late-term or partial-birth abortion.

There is a severability clause.

FISCAL IMPLICATIONS

The Administrative Office of the Courts indicates that there would be a small administrative cost for adopting new statutes such as envisioned in House Bill 76, and that the bill would have the potential to increase the number of cases brought before New Mexico courts, thereby increasing costs. However, as the number of partial birth and late-term abortions conducted in New Mexico is very low, the number of prosecuted cases under HB 76 would be very low.

SIGNIFICANT ISSUES

The Medical Board notes that the legislation would appear to limit “the Board’s decision-making powers in regards to discipline.” The bill would establish specific discipline for those found to have performed late-term or partial abortion, viz., a \$500 civil penalty and revocation of license or suspension of a license for at least one year, whereas the Medical Board in other instances determines the penalty to be applied.

AOC raises the following points, including regarding US Supreme Court decisions relative to the abortion issue:

1) Section 30-5A-5 NMSA 1978 provides a fourth degree felony penalty for performance of a partial-birth abortion, in violation of the Section 30-5A-3 NMSA 1978 prohibition. Section 30-5A-7 NMSA 1978, in contrast, provides a civil penalty and the revocation or suspension of a license to practice medicine for a physician found to have knowingly violated the Section 30-5A-6 NMSA 1978 prohibition against late-term abortions. While HB 76’s Section 30-5A-7(B) provides for the enforcement of the imposition of the civil penalty and the revocation of a license, the bill does not contain an appeal provision specific to the Act, nor make reference to any existing appeal provision currently in statute.

2) As noted in a brief entitled, “State Policies on Later Abortions,” (as of January 1, 2018) by the Guttmacher Institute, a leading research and policy organization committed to advancing sexual and reproductive health and rights in the United States and globally:

In its landmark 1973 abortion cases, the U.S. Supreme Court held that a woman’s right to an abortion is not absolute and that states may restrict or ban abortions after fetal viability, provided that their policies meet certain requirements. In these and subsequent decisions, the Court has held that

- even after fetal viability, states may not prohibit abortions “necessary to preserve the life or health” of the woman;
- “health” in this context includes physical and mental health;
- only the physician, in the course of evaluating the specific circumstances of an individual case, can define what constitutes

- “health” and when a fetus is viable; and
- States may not require additional physicians to confirm the attending physician’s judgment that the woman’s life or health is at risk in cases of medical emergency.

Although the vast majority of states restrict later-term abortions [New Mexico is one of seven states that do not ban later abortions], many of these restrictions have been struck down. Most often, courts have voided the limitations because they do not contain a health exception; contain an unacceptably narrow health exception; or do not permit a physician to determine viability in each individual case, but rather rely on a rigid construct based on specific weeks of gestation or trimester.

In contrast to the U.S. Supreme Court’s holdings, HB 76 permits a late-term abortion to be performed when necessary to preserve the life of a pregnant woman, only, whose life is endangered by a physical disorder, illness of injury, only. Also, HB 76 creates a legal presumption that viability occurs at the twentieth week of pregnancy. Even if the HB 76 restrictions on abortions pass constitutional muster, they will likely face legal challenges in the courts.

For additional information on states’ later abortion policies as of January 1, 2018, see http://www.guttmacher.org/statecenter/spibs/spib_PLTA.pdf

On the opposite side of the issue, Operation Rescue notes problems associated with late-term abortions, including some said to have occurred in New Mexico. (<https://www.operationrescue.org/about-abortion/late-term-abortion/>.)

CONFLICT with House Bill 16, which would decriminalize abortion.

RELATIONSHIP with House Bills 56 and 75, which would otherwise regulate abortion.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Late-term abortion would continue to be regulated as at present by Section 30-5A NMSA 1978, as modified by US Supreme Court decisions.

LAC/jle/sb