

LFC Requester:**Joseph Simon**

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*

Original X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: February 1, 2024**Bill No:** SB 272**Sponsor:** Carrie Hamblen**Agency Name and** 305 – New Mexico**Code Number:** Department of Justice

Short Title: SEXUAL ORIENTATION
& GENDER
ORIENTATION DATA

Person Writing Analysis: Lawrence Marcus**Phone:** 505-537-7676**Email:** legisfir@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0	\$0	Non-recurring*	general
0	0		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	0	0		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0					

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis/Background:

This is a bill that requires twelve different “executive departments,” as well as state and local “public bodies” to collect voluntary self-identification information regarding sexual orientation and gender identity when it collects demographic information.

Section 1: This is the only substantive section of the bill. It requires that executive departments and public bodies include voluntary self-identification of sexual orientation and gender identity in the course of any collection of demographic data, either directly or through a contractor. It requires that this information shall be collected pursuant to federal guidelines when it collects the data for federal programs or surveys, and also in accordance with guidelines issued by the NM Department of Health.

The bill also requires executive departments or public bodies to report to the legislature the data collected and the methods used, and to make the data available to the public, except for personal identifying information. The bill forbids reporting data in a manner that would permit identification of individuals or result in statistical unreliability. It gives the executive department or public body the options of different levels of aggregation of the data (e.g., city level, census tract level, etc.) to “prevent identification of individuals, facilitate comparisons and identify disparities.” The bill also limits the type of uses for which the data can be used.

Section 2: Effective date of the bill is October 31, 2024

FISCAL IMPLICATIONS

The bill would have create some expense for every public body that conducts any sort of demographic data collection, as new categories would need to be included and new reports made available to the legislature and the general public.

SIGNIFICANT ISSUES

The definition of “public body” is substantially the same as the definition of “public body” in the NM Inspection of Public Records Act, N.M.S.A. § 14-2-6(G), which would include all executive

departments. Given the two definitions, the delineation of the twelve “executive departments” overlap and could result in confusion.

In addition, some further safeguards regarding privacy should be implemented. While the subparagraph regarding the obligation to provide data to the public excludes “personal identifying information, which shall be deemed confidential and shall not be disclosed,” the same exclusion does not apply to the data that is required to be reported to the legislature.

There are a couple of technical terms that are not defined in the statute. One is “personal identifying information.” This is a term used in HIPAA regulations. The bill should clarify whether the HIPAA definition, or a different definition should be used. The bill also contains the phrase “statistical unreliability.” All statistics contain some measure of uncertainty. The bill should define “unreliability” to denote the level of uncertainty that would make data statistically unreliable.

PERFORMANCE IMPLICATIONS

None likely.

ADMINISTRATIVE IMPLICATIONS

This bill would create new administrative requirements for all public bodies that collect demographic data.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

See the Diversity Act, S.B. 221, which includes provisions for the collection of demographic data for state employees.

TECHNICAL ISSUES

ALTERNATIVES

There are no real alternatives to this bill, other than the status quo.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo would remain.

AMENDMENTS

This resolution has not yet been amended. The DOJ proposes some suggestions above.