

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(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

House Bill (“HB”) 205 proposes to enact the Women’s Bill of Rights (the “Act”), which would create statutory definitions for the following terms: sex, male, female, man and woman. Presumably, HB 205 seeks to create definitions of sex that are biologically based and separate and distinct from definitions of gender.

HB 205 defines “Sex” as “a person's objective or fixed biological categorization of either male or female as observed or clinically verified at birth; ‘sex’ does not mean gender.” “Male” is defined as “a person who has had, will have through biological development or would have but for a developmental anomaly, genetic anomaly or accident, the reproductive system that at some point produces sperm.” “Female” is defined as “a person who has had, will have through biological development or would have but for a developmental anomaly, genetic anomaly or accident, the reproductive system that at some point produces ova.” HB 205 also lists definitions for the terms “equal,” “boy,” “girl,” “man,” and “woman” but does not otherwise reference these terms within the proposed Act.

Significantly, HB 205 would create a provision that any New Mexico policy, program or statute that prohibits discrimination on the basis of sex would be construed as forbidding unfair treatment of females and males in relation to similarly situated member of the opposite sex. Presumably, the Act would cause sex discrimination to be based solely off of biologically-based definitions of sex. HB 205 would allow certain state and public institutions to create single-sex environments with respect to (1) prisons and detentions centers, (2) athletic facilities and locker rooms, (3) athletic competitions, (4) institutions of higher education, (5) living facilities, (6) bathrooms, (7) domestic violence shelters, and (8) rape crisis centers.

HB 205 also re-defines how public schools, school districts, state agencies, or political subdivisions shall collect certain vital statistics data, requiring these institutions to report every natural person in a data set as either male or female. HB 205 does not otherwise prevent the collection of additional data points other than sex.

FISCAL IMPLICATIONS

No major fiscal impacts noted, however, there could be some financial impact incurred by data

collecting institutions to adjust their data collection practices.

SIGNIFICANT ISSUES

HB 205 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 HB 205, 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 HB 205. Other state policies, programs, and statutes would similarly have altered interpretations and applications.

HB 205 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 HB 205. 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.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

Data collection by state agencies, public health institutions, and public schools would be significantly affected by HB 205. During data collection by public institutions would need to delineate between someone who identifies as one specific sex and whether that person has the biological characteristics of that sex as defined by HB 205. This task may prove to be difficult and intrusive, and again, would give limit the rights of a person who objects to this inquiry to bring a claim for sex discrimination. Additional efforts may be needed to alter data sets and collection tools to account for these revised definitions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

No major technical issues noted. However, HB 205 would define the terms “equal,” “boy,” “girl,” “man,” and “woman” without otherwise making these terms operative within the proposed Act. That juxtaposition could be construed to mean that the definitions of these terms in HB 205 govern the meaning of those terms in other unrelated statutes. In short, HB 205 may create universal definitions, which could have unintended consequences.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Interpretations of sex discrimination will remain unchanged under the Human Rights Act.

AMENDMENTS

None at this time.