



Legislative Council Staff

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Fiscal Note

Drafting Number:	LLS 23-0589	Date:	January 30, 2023
Prime Sponsors:	Rep. Frizell; Bradley Sen. Pelton B.	Bill Status:	House State Affairs
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Bill Topic: WOMEN'S RIGHTS IN ATHLETICS

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input checked="" type="checkbox"/> School Districts

The bill requires that any school sport in K12 or higher education be designated as either male, female, or coeducational. Students may only participate in a designated sport matching the biological sex at birth of the participating student. The bill increases state revenue and expenditures beginning in FY 2023-24.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

The bill requires that any interscholastic, intramural, or club athletic team, sport, or athletic event sponsored by a public school or district, an activities association, or a state supported institution of higher education be designated as:

- females, women, or girls;
- males, men, or boys; or
- coeducational or mixed.

Students may only participate in a designated extracurricular sport team matching the student's biological sex at birth. No governmental entity may file a complaint or take adverse action against a public school, an activities association, an institution of higher education, or their employees, for compliance with the bill's requirements. The bill also waives immunity for public entities for an action brought under the bill.

A student, a public school or district, an activities association, or an institution of higher education that suffers direct or indirect harm as a result of any violation of the bill has a private cause of action for judicial relief against the entity or individual causing the harm. A student who suffers retaliatory or other adverse actions from an accused public institution has the same private cause of action.

If a lawsuit is brought or a complaint filed against a public school or district, a state institution of higher education, or its employees, as a result of compliance with these requirements, the Department of Law must provide legal representation. In addition to the expenses of representation, the state must assume financial responsibility for any other expense related to the lawsuit or complaint, including attorney fees.

State Revenue

The bill may increase court filing fees to the trial courts in the Judicial Branch if additional civil cases are filed under the new cause of action created by the bill. Court filing fees are deposited to a variety of cash funds and are subject to TABOR. Any increase in revenue is assumed to be minimal.

State Expenditures

The bill may increase state costs in several areas, including providing representation to persons or organization who comply with the bill, increased workload in the courts from a new cause of action, waiving governmental immunity in cases of noncompliance with the bill, and other legal services costs. These impacts are described below.

Representation by the Department of Law. The bill increases state expenditures in the Department of Law by an indeterminate amount beginning FY 2023-24. The Department of Law must provide legal representation at no charge to any institution of higher education, public school, school district, or their employees or members who are subject to a lawsuit or complaint for compliance with this bill. Given that the number and timing of future lawsuits is unknown, and the fact that some entities and individuals may choose alternate representation, it is assumed that any costs to the Department of Law will be addressed through the annual budget process based on actual representation provided. Costs for representation will be paid from the General Fund.

Judicial Department. A cause of action is created for students or schools that suffer harm if there is noncompliance with the bill's requirements. This new cause of action increases workload for the trial courts in the Judicial Department to handle additional civil cases. The fiscal note assumes any increase in trial court caseload will be minimal and no change in appropriations is required.

Waiver of governmental immunity. The bill waives governmental immunity in cases where there is noncompliance with the provisions of the bill. If a state institution of higher education is found liable for noncompliance, this could increase the potential liability beyond what is allowed under current law.

Other legal service costs. The bill potentially increases legal service costs to the Department of Higher Education and state institutions of higher education to address how the bill interacts with federal requirements under Title IX of the Higher Education Act of 1972. Title IX protects people from discrimination based on sex in education programs or activities that receive federal financial assistance. The total cost of legal services provided to DHE and institutions cannot be estimated, as it will depend on future inquiries and legal actions. Any costs will be addressed, as necessary, through the annual budget process.

School District

The bill increases workload for school districts to adopt policies and procedures to ensure compliance with the bill's requirements, and to inform student athletes, parents, and the district community of new rules and procedures for participation in sports activities. School districts may have other legal costs associated with challenges to their policies. Schools may opt to have the Department of Law represent them in lawsuits based on their compliance with the law, which will allow them to avoid potential costs in these instances. Schools or school districts who are found noncompliant may have additional liability above current limits from the bill's waiver of governmental immunity in these cases.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State and Local Government Contacts

Higher Education

Judicial

Law

School Districts