

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HB 390 (late-term abortion ban); HB 391 (parental notification of abortion); and SB 437 (physician admitting privileges for abortions)

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: Senate Bill 652 aims to regulate the provision of abortions in the state. It appears to be modeled after similar legislation enacted in various other states. See e.g., N.C. Gen. Stat. § 90-21.82 (2011 and as amended); Minn. Stat. § 145.4242 (2003 and as amended). Under SB 652, providers of abortions would be required by telephone or in person to provide a patient seeking an “induced abortion” with certain information at least 24 hours prior to an abortion procedure, including certain information apparently intended to deter induced abortions such as information related to alternatives to induced abortion medical assistance benefits that may be available for prenatal care, childbirth and neonatal care; the father’s child support responsibility; and the right to review certain educational materials that are to be made available by the Department of Health (DOH) on its web site. If the patient chooses to view the materials through another method, the materials must be mailed or e-mailed at least 72 hours before the induced abortion. When a medical emergency compels the performance of an induced abortion, the provider must inform the patient, prior to the abortion if possible, of the medical indications supporting the physician’s judgment that an abortion is necessary to avert the patient’s death or that a 24-hour delay will create serious risk of substantial and irreversible risk of a major bodily function, not including any psychological or emotional conditions. Prior to receiving a patient’s informed consent and prior to the administration of any medication in preparation for the procedure, SB 652 requires an abortion provider to offer the patient an obstetric ultrasound, along with a simultaneous verbal explanation of the ultrasound depiction, and obtain a written certification from the patient that ultrasound services and interpretation have been offered, and that all information required to be provided by SB 652 has been furnished. If the ultrasound image indicates fetal demise, the provider is required to inform the patient of that fact.

If enacted, Senate Bill 652 would require DOH within 90 days to promulgate and adopt regulations for the dissemination of information proscribed by the act in printed form and on its web site, including a listing of public and private agencies and services available statewide to assist a woman through pregnancy, upon childbirth and beyond; materials designed to educate the patient of the probable anatomical and physiological characteristics of the fetus at two-week gestational increments from onset to full term; and descriptions of the most commonly employed induced abortion procedures, the medical risks associated with the procedures, and the medical risks commonly associated with carrying a pregnancy to term. If an abortion provider has a web site, SB 652 requires that the provider’s web site to

provide a link to the informed consent materials on DOH's web site.

If enacted, SB 652 would impose certain reporting requirements on abortion providers, beginning September 1, 2015 and by September 1 of each year thereafter, relating to the number of patients provided with information required pursuant to provisions, the numbers of patients who elected to undergo an induced abortion, including under emergency circumstances, and the number of patients who elected to receive an ultrasound or a verbal interpretation of the ultrasound.

FISCAL IMPLICATIONS There are no fiscal implications to this office.

SIGNIFICANT ISSUES Before viability, "a state may not prohibit any woman from making the decision to terminate her pregnancy." Gonzales v. Carhart, 550 U.S. 124, 146 (2007), quoting Planned Parenthood of Eastern Pennsylvania v. Casey, 505 U.S. 833, 879 (1992). It also may not impose upon this right an undue burden, which exists if a regulation's "purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability". 550 U.S. at 146. On the other hand, "regulations which do no more than create a structural mechanism by which the State [] may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose." Id. However, because the Supreme Court's holding in Casey did not foreclose a facial challenge to abortion statutes in other states that are similar to those found constitutional in Casey, SB 652 may be challenged on the grounds that it places an undue burden on woman's right to obtain an abortion without interference. See Karlin v. Foust, 188 F.3d 446, 485 (1999). Thus, if this bill is enacted it is unclear whether it would be ruled constitutional by the New Mexico Supreme Court applying principles and provisions of the New Mexico State Constitution, including the due process and equal protection clauses of Art. II, Sec. 18.

PERFORMANCE IMPLICATIONS There are no performance implications to this office.

ADMINISTRATIVE IMPLICATIONS There are administrative implications to this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP Related to HB 390 (late-term abortion ban); HB 391 (parental notification of abortion); and SB 437 (physician admitting privileges for abortions)

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Status quo. As a matter of practice and law, licensed providers are required to obtain the prior informed consent of any patient upon whom they intend to perform any medical procedure, including an abortion procedure. Informed consent generally requires that the patient be told the general nature of her condition, the proposed treatment or procedure, the expected outcome, the material risks, and the reasonable alternatives to the treatment or procedure. Abortion providers routinely administer obstetric ultrasound and fetal heart tone tests to confirm the existence and length of pregnancy to determine whether an abortion may be safely performed and by what method.

AMENDMENTS