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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/13
 SPONSOR Ivey-Soto/Cook LAST UPDATED 02/18/13 HB _____
 SHORT TITLE Marriage License Cleanup SB 299/aSPAC/aSJC
 ANALYST Geisler

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Clerks’ Affiliate—New Mexico Association of Counties
 Attorney General’s Office (AGO)
 Department of Health (DOH)

SUMMARY

Synopsis of SJC Amendments

The Senate Judiciary Committee amendments to Senate Bill 299 clarify language on restrictions on marriage of minors by adding “upon request of a parent or legal guardian of the person” as a prerequisite for district court authorization of a marriage license for a minor.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 299 clarifies language in the bill. On page 3, line 14, amendment one clarifies that retired judges, in addition to active judges may have the authority to solemnize contracts of marriage. On page 3, line 24, amendment two clarifies that in addition to Indian tribes, Indian Nations and Pueblos have the authority to solemnize marriage. On page 5, line 18, amendment three deletes “annulment” from the subsection title as the section deals with prohibited marriages being declared void.

Synopsis of Original Bill

Senate Bill 299 (SB 299) proposes amending statutes relating to marriage to provide greater clarity of language and also imposes new responsibilities on certain officials.

FISCAL IMPLICATIONS

No fiscal impact has been identified.

SIGNIFICANT ISSUES

This bill is brought on behalf of the Clerks' Affiliate—New Mexico Association of Counties and is designed to update the statutes to address common issues faced by county clerks in New Mexico.

Key changes include clarifying that Social Security numbers (which are collected pursuant to federal law) are not placed on the marriage application, are provided to HSD and no one else, and may be disposed of after 1 year. The bill also codifies the in-person requirement most county clerks observe when issuing a marriage license. The bill cleans up language related to marriages by minors and clarifies that both living parents must agree to the union, while permitting a judicial override, if needed. The bill also cleans up language relating to prohibited marriages.

SB 299 also permits the county clerk to re-issue marriage documents when the County Clerk makes an error on the documents and it provides that the medical clearance language on the application form shall not be printed until the Secretary of Health issues new regulations. Of note, SB 299 adds language clarifying that a marriage ceremony following obtainment of a New Mexico marriage license shall occur in New Mexico.

SB 299 amends Section 40-1-2, governing the solemnization of marriage, to define “solemnization” to mean the joining in marriage before witnesses by means of a ceremony. It further clarifies that contracts of marriage may be solemnized by a person who is an ordained member of the clergy or who is an authorized representative of a federally recognized Indian nation, tribe or pueblo, irrespective of the sect or rites and customs the person may practice.

The Attorney General's Office (AGO) notes that SB 299 deletes prior statutory guidance establishing that children of void marriages are deemed legitimate with rights of inheritance. As amended, NMSA 1978, Section 40-1-9 would provide no direction as to the status of children born from void marriages or their rights to inheritance. If the will of the legislature is to afford such children the same status and rights as legitimate children, it should explicitly provide or deny them. Also the AG notes that the use of social security numbers as contemplated in SB 299 raises concerns about adequate safeguards concerning such information. Perhaps the Legislature should specifically address the confidentiality of social security number confidentiality in the bill and accord such information the same protections found elsewhere in law. Because of the burgeoning problem of identity theft and the possible usefulness of social security number information to those who engage in such misconduct, this is an issue requiring careful vetting.

ADMINISTRATIVE IMPLICATIONS

The changes proposed in Senate Bill 299 should improve the efficiency of county clerks by eliminating confusion over certain requirements relating to marriage licenses.

AMENDMENTS

The AGO provided the following:

SB 299 consistently expands language referring to Indian tribes to include Indian nations, tribes or pueblos. However, the reference to Indian tribes at page 3, line 24 is not so expanded. It would be advisable to strike the word “tribe” and insert the words “nation, tribe or pueblo” immediately after.

On page 5, line 22, SB 299 contemplates allowing certain person to initiate a cause of action, and declaring a marriage void when a marriage between relatives within the prohibited degrees or between persons under the prohibited ages occurs. The descriptive title of Section 40-1-9 refers to annulment, and the cause of action authorized there under is therefore presumably for annulment, but the language is not explicit. To clarify, it would be helpful to add the phrase “for annulment” immediately after the phrase “cause of action” at page 5, line 22.

As amended by SB 299, NMSA 1978, Section 40-1-7 (section 5 on page 5), certain incestuous marriages are declared void. The language of this section implies that marriages between a parent and child are deemed incestuous and declared void, as alluded to by reference to marriages between “relations and children.” For the sake of clarity, it would be advisable to explicitly state that marriages between a parent and a child are included within those marriages deemed incestuous and deemed void.

GG/svb:blm