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FISCAL IMPACT REPORT

SPONSOR Komadina DATE TYPED 02/04/05 HB _____

SHORT TITLE Define Human Life & Death SB SJR 1CA

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 1 proposes to amend the New Mexico Constitution to define human life and death as follows:

Human life begins with conception and the onset of cell division and continues until the natural division of cells stops, which constitutes death.

SJR 1 will amend the New Mexico constitution to give a fetus the same rights as a person who cannot be deprived of life, liberty or property without due process of law. The bill also grants a fetus equal protection of the laws.

The amendment will be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called.

Significant Issues

The AGO provided the following:

In the reproductive rights context, this bill conflicts with a woman's fundamental right to privacy under the federal constitution. In 1973, the United Supreme Court determined that a woman's rights to seek an abortion in the first trimester of pregnancy was protected under the right of privacy contained in the United States Constitution. In *Roe v. Wade*, the Court specifically stated it was irrelevant, in determining the validity of Texas' abortion statute, that the state had adopted the theory that life began at conception. The Court stated, "we do not agree that, by adopting one theory of life, Texas may override the rights of a pregnant woman that are at stake." The Rhode Island legislature adopted a "conclusive presumption or finding of fact" that life begins at conception, which the state asserted survived constitutional challenge under *Roe*. Neither the federal district nor appellate court found this legal presumption to be sufficient to overcome the protection afforded in the federal constitution. As the Fifth Circuit noted, while the state could choose to assert or not assert its interest in fetal life, it could not "make its interest any more constitutionally robust and bind the U.S. Supreme Court or the Fifth Circuit court, to accord it more constitutional significance." Similarly, a provision in an Illinois statute that recognized a human being from the time of conception was found to have no substantive effect by the federal district court when it reviewed and struck down that state's abortion statute. Unless and until the federal constitutional protection afforded every woman in her first trimester is modified in the federal constitution or reinterpreted by the U.S. Supreme Court, language such as this proposed constitutional amendment would have no impact on that protection.

Additionally, this bill may create confusion with existing law concerning justifiable homicide, the imposition of capital punishment and other "unnatural" death-related matters, perhaps even health-care directives. This proposed constitutional amendment also defines when life ends as when "the natural division of cells stops, which constitutes death", its adoption might raise questions as to the continued validity of state laws addressing other matters involving "unnatural" death, including justifiable homicide, the imposition of capital punishment, and other existing law that may authorize or excuse a death that is not the result of natural causes. To this extent, a decision that is otherwise authorized under the Uniform Health Care Decisions Act to terminate life-sustaining treatment might be subject to challenge, depending on how one interprets the meaning of natural death in that

FISCAL IMPLICATIONS

The Secretary of State can handle the ballot requirements with existing resources.

In the event of a judicial challenge to this legislation, or any other statute, regulation or law which may be impacted, the AGO will have to commit resources.

DW/lg