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FISCAL IMPACT REPORT

SPONSOR Rainaldi ORIGINAL DATE 02/27/07
LAST UPDATED 3/01/07 HB _____
SHORT TITLE Marriage Defined SB 816/a SPAC
ANALYST Hanika Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$.1 see narrative	recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth & Families Department (CYFD)

Administrative Office of the Courts (AOC)

Public Employees Retirement Association (PERA)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment strikes all language relating to same sex marriages.

Synopsis of Original Bill

Senate Bill 816 seeks to define a valid marriage in New Mexico as being between one man and one woman. The bill also states that a same sex marriage which is valid and enforceable in another jurisdiction shall not be valid and enforceable in New Mexico.

FISCAL IMPLICATIONS

Any additional fiscal impact on the judiciary will be proportional to challenges to this law. There will also be a minimal administrative cost for statewide update, distribution and documentation of any statutory changes.

SIGNIFICANT ISSUES

Senate bill 816 will require that New Mexico not recognize a same sex marriage that is valid in another jurisdiction. This provision is likely to face constitutional challenges under both the state and federal constitutions on various legal theories. At some point in the future this topic will become subject to judicial review and the issue will be decided by the New Mexico Supreme Court or the United States Supreme Court, or both.

PERFORMANCE IMPLICATIONS

CYFD believes the bill's prohibition against recognizing same sex marriages that are valid in other states conflicts with NMSA 1978, Section 40-1-4 which provides, "All marriages celebrated beyond the limits of this state, which are valid according to the laws of the country wherein they were celebrated or contracted, shall be likewise valid in this state, and shall have the same force as if they had been celebrated in accordance with the laws in force in this state."

With the passage of the federal Defense of Marriage Act in 1996, a marriage was explicitly defined as a union of one man and one woman for the purposes of federal law. However, the Defense of Marriage Act does not prevent individual states from defining marriage as they see fit; indeed, most legal scholars believe that the federal government cannot impose a definition of marriage onto the laws of the various states by statute.

ADMINISTRATIVE IMPLICATIONS

The Public Employees Retirement Association of New Mexico notes that due to the community property nature of retirement benefits under New Mexico law, each retirement act is replete with references to a member's marital status, spouse or former spouse. In certain instances, the PERA Act requires written spousal consent prior to the payment of benefits. In other instances, retirement benefits themselves are payable based on an individual's status as a member's "surviving spouse or as a "former spouse" pursuant to a court order.

The current state of the law is unclear as to whether PERA is required to obtain spousal consent and pay benefits to an individual based upon a same sex marriage which is valid and enforceable in another jurisdiction. To date, PERA has not received any requests to pay benefits based upon a same sex marriage.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HJR 2 Marriage Defined, CA; and, Duplicates HB 395

TECHNICAL ISSUES

The bill is unclear whether the term "jurisdiction" is intended to be limited to another state or includes foreign countries.

OTHER SUBSTANTIVE ISSUES

The legalization of same sex-marriages across Canada has raised questions about U.S. law, due to Canada's proximity to the U.S. and the fact that Canada has no citizenship or residency requirement to receive a marriage certificate (unlike the Netherlands and Belgium). Canada and the U.S. have a history of respecting marriages contracted in either country. At present, same-sex marriages are recognized nationwide in the Netherlands, Belgium, Spain, Canada and South Africa. Same-sex marriage conducted abroad is recognized in Israel.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo will continue pending any future change mandated by the courts.

AHO/mt