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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/12

SPONSOR Chavez, D. LAST UPDATED _____ HJR 22

SHORT TITLE Marriage Defined, CA SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$104.0				General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Children, Youth & Families Department (CYFD)

SUMMARY

Synopsis of Bill

House Joint Resolution 22 proposes an amendment to article 20 of the constitution of New Mexico to define marriage as the union of one man and one woman and to provide that New Mexico does not recognize marriages, civil unions or similar relationships entered into by persons of the same sex in another state or foreign jurisdiction.

The amendment proposed by this resolution shall 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 for that purpose.

FISCAL IMPLICATIONS

The SOS reports that in accordance with Section 1-16-4 NMSA 1978, upon receipt of the certified proposed constitutional amendment or other question from the Secretary of State, the county clerk shall include it in the proclamation to be issued and shall publish the full text of each proposed Constitutional amendment or other question in accordance with the constitution of New Mexico.

Although the county clerk includes the proposed amendments in the clerk's proclamation, it is the responsibility of the State to pay for the costs associated with the publication per Section 1-16-13 NMSA 1978, including printing samples of the text of each constitutional amendment in both Spanish and English in an amount equal to ten percent of the registered voters of the state. There are currently 1.7 million registered voters in the state. Voters whose election mail is returned as undeliverable will be sent the proper notice under federal law in 2012, and if they do not vote in the next two federal elections, may be purged in 2015. Under these timelines, the voter roll is expected to increase until the purge in 2015.

The SOS reports that in 2010, the publication cost was \$520,000 for 5 constitutional amendments, or approximately \$104,000 per amendment. Although the SOS is continually seeking ways to reduce publication costs, it believes the 2010 figure is a reasonable projection for 2012 costs, given the increasing number of voter registrations.

SIGNIFICANT ISSUES

The AGO provided the following:

New Mexico's marriage law does not mention gender, but NMSA 1978, Section 40-1-1 defines marriage as a civil contract between contracting parties.

The lack of a specific law defining marriage based upon gender led the State of Massachusetts Registry of Vital Records to issue instructions that New Mexico residents of the same sex may obtain marriage licenses in Massachusetts where same gender marriages are legal.

It is almost certain that a statutory or constitutional restriction of marriage to specific genders would be challenged in court.

Courts in other states have recently invalidated statutes and common law rules that explicitly limited marriage to a male and a female as unconstitutional. The statutes were invalidated on equal protection, privacy and due process grounds arising from state constitutions with provisions similar to the New Mexico Constitution.

Some states have amended their constitutions to exclude same gender couples from marriage rights or from equal protection for marriage interests. These provisions have withstood state law challenges to gender restrictions for marriage. However, they remain subject to challenge under the federal constitution, particularly on federal equal protection grounds.

The federal Defense of Marriage Act (DOMA) permits states to bar recognition of out-of-state same-sex marriages. While many states have barred the recognition of such marriages, New Mexico has not. Under the current state of the law, valid same-sex marriages from another jurisdiction are likely valid in New Mexico.