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FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/2009

SPONSOR Sharer LAST UPDATED _____ HB _____

SHORT TITLE Contractual Common Household Act SB 144

ANALYST Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to SB 12. HB 21

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		1.0	1.0	1.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Personnel Office (SPO)

Administrative Office of the Courts (AOC)

Educational Retirement Board (ERB)

SUMMARY

Synopsis of Bill

Senate Bill 144 creates common contractual households, which are defined as “the exclusive union of two adults to maximize domestic benefits and commit to shared domestic responsibilities.” Contractual common household forms are to be filed with the county clerk with a \$25.00 fee.

Section 3 establishes a presumption that common household members are competent to enter into contracts to receive benefits available to each of them separately including: inheritance; retirement, health, pension and survivor benefits; and property. The bill grants common household members a privilege not to testify against each other, declares them competent to act as medical decision-making surrogates for each other, allows them to purchase property jointly; assume “parentage” duties; and makes them subject to nepotism restrictions.

Section 4 provides that the Act does not affect existing child custody, visitation, or parenting agreements nor does it legitimize a child born into or adopted into a contractual common household. Section 4 also prohibits incestuous sexual relationships.

Section 5 addresses the disposition of property and defines separate and joint property.

Section 6 defines separate and joint debt.

Section 7 provides that a person shall enter no more than one contractual relationship at a time.

Section 8 places jurisdiction over dissolution or legal separation of common household members in the district court. The district court is to “apply the relevant contract provisions” for dissolution of a contractual common household.

Section 9 creates forms for filing a contractual common household.

FISCAL IMPLICATIONS

The AOC indicates that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The AOC indicates that there may be a conflict between sections 3(D) and 4. Section 3(D) appears to allow common household member to assume all “duties of parentage” for children born or adopted into a common contractual household. However, section 4 states that the Act does not “legitimize” a child born or adopted into a contractual common household. If a common contractual household member were to adopt a child and assume “all duties of parentage” would the child not be “legitimate?”

The Act allows a common household member to designate a debt as a separate debt. It does not appear to give members the right to designate property as separate property after the formation of the contractual common household.

The AOC further questions if the definition of joint property includes property held as joint tenants and as tenants in common?

The ERB indicates that the enactment of SB 144 would not present significant issues. The ERB currently allows members to name non-spouses as beneficiaries, subject to certain age-related requirements of the Internal Revenue Code. SB 144 will not affect this.

The ERB further states that current law, however, does not address what if any interest a common household member has in the retirement benefits of an ERB member in the event that the relationship is ended. Under New Mexico community property law, a non-member spouse has an interest in an ERB member spouse's retirement benefit. In the event of a divorce, the district court can award a non-member spouse part of the retirement benefit. SB 144 provides that common household members can obtain "joint property" but does not define such property any further. It is not clear whether "joint property" would be subject to the same laws, whether statutory or through common law that is afforded community property. ERB statutes allow for a division of community property upon a legal separation or divorce, it is not clear that ERB's statute would allow for a division of "joint property." *Section 22-11-42(B) NMSA 1978.*

ADMINISTRATIVE IMPLICATIONS CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 21 and SB 12 (Domestic Partner Rights & Responsibilities) address the same subject matter as SB 144. If all are enacted, there could be a potential conflict in their application. However, enactment of each also could be treated as creating separate, non-conflicting forms of non-martial relationships.

ALTERNATIVES

ERB suggests that SB 144 should be amended to include a legal framework for dissolving contractual common households. The bill should be amended as follows:

ADD TO SECTION 5:

“C. Joint property under the Contractual Common Household Act shall be subject to the same legal status afforded under New Mexico law community property, regardless of whether such status derives from statute, administrative or court rule or regulation, policy, common law or any other source of civil or criminal law. The district court shall have jurisdiction over any proceeding relating to contractual common household, including dissolution, legal separation, and division of joint property and shall follow the same procedures as are used for spouses in a marriage.”

GM/mt