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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/09

SPONSOR Boitano LAST UPDATED _____ HB _____

SHORT TITLE Limit Grounds for Dissolution of Marriage SB 297

ANALYST Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate See Below	Indeterminate See Below	Indeterminate See Below	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AGO)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 297 would amend NMSA Section 40-4-1 to impose new requirements before a marriage may be dissolved on the basis of “incompatibility”.

The bill provides that unless both parties agree that incompatibility exists, or the District Court finds that domestic abuse has occurred and has entered an order (of protection) pursuant to the Family Violence Protection Act (NMSA Sections 40-13-1 et seq), the court may not decree a dissolution of marriage on the grounds of incompatibility if the wife is pregnant or there is a minor child in the custody of one or both parties.

The bill also provides that prior to entering a decree of dissolution of marriage in an action for divorce in which a minor child is in the custody of one or both of the parties, regardless of the grounds for divorce, the court shall require that the parties attend no less than six hours of counseling or relationship training or education provided by certain therapists listed in the bill. The costs of counseling shall be paid by the parties and may be allocated by the court.

FISCAL IMPLICATIONS

The AOC indicates that the changes proposed in SB 297 will greatly increase the work of the state's family courts. The bill adds a significant burden of additional trials as parties attempt to obtain a divorce decree based upon the other available statutory grounds. The bill also tasks the courts with referring parties to counseling prior to obtaining a divorce, including overseeing the parties' payment for these services.

SIGNIFICANT ISSUES

The AGO raises a number of concerns that this bill may be deemed unconstitutional and may also violate the "equal protection" clauses of the Fourteenth Amendment to the United States Constitution, and Article II Section 18 of the New Mexico Constitution.

The AGO points out the following:

- Recognizing that there is no fundamental constitutional right to a divorce, laws which hinder a person's right to marry (or re-marry) by prohibiting divorce in certain circumstances, or which prohibit certain persons from divorcing based upon pregnancy or child custody status, while freely granting others that right, might be deemed unconstitutional based upon several constitutional provisions. In support of this argument the AGO references case law established in *Boddie v. Connecticut*, 401 U.S. 371 (1971) and *Zablocki v. Redhail*, 434 U.S. 374 (1978).
 - In *Boddie v. Connecticut* the United States Supreme Court discussed the fact that judicial proceedings are the only method by which a party may seek a dissolution of marriage, and holding that in view of the basic position of the marriage relationship in our society and the state monopolization of the means for dissolving that relationship, due process of law prohibits a state from denying, solely because of inability to pay court fees and costs, access to its courts to indigents who, in good faith, seek judicial dissolution of their marriage.
 - In *Zablocki v. Redhail*, United States Supreme Court addressed the fundamental right to marry. Because this bill could have the effect of denying divorce in certain circumstances, it could be viewed as an unconstitutional impingement on their due process rights under *Boddie*, and on their fundamental right to "re-marry" under *Zablocki*.
- The bill raises concerns based upon the "Equal Protection" clauses contained in the Fourteenth Amendment to the United States Constitution, and Article II Section 18 of the New Mexico Constitution, since it differentiates pregnant spouses, and spouses having custody of minor children, from other persons with respect to their right to seek a divorce. The bill only requires that spouses having custody of minor children obtain counseling prior to divorce.

- The bill also raises concerns under the “Equal Rights Amendment” to the New Mexico Constitution, Article II Section 18. The AGO states that it appears to prevent a pregnant woman from being granted a divorce from her husband on the grounds of incompatibility and solely on the basis of her pregnancy, if he does not agree that incompatibility exists and no finding abuse and order of protection has been entered. Although the same prohibition would apply to her husband, it is the fact of her pregnancy that prevents the divorce. See *New Mexico Right to Choose v. Johnson*, 975 P.2d 841 (1998), overturning a state agency rule that singled out for less favorable treatment a gender-linked condition that is unique to women.

PERFORMANCE IMPLICATIONS

Both the AGO and the AOC indicates that the bill may cause a significant increase in the number of petitions filed for an “Order of Protection.” The AOC is concerned with the impact of this upon its increasing workload and capacity. The AGO also raises an issue that the impetus for petitioning the court may be, in many cases, to circumvent the counseling requirement imposed in Section C, rather than an actual need for protection from abuse.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico residents will continue to be able to petition the courts for dissolution of marriage on the basis of incompatibility regardless of pregnancy of the wife, or whether they have custody of minors.

GM/svb