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FISCAL IMPACT REPORT

SPONSOR Rawson DATE TYPED 3/15/05 HB _____

SHORT TITLE Abate Certain Divorce Actions Upon Death SB 1020/aSJC

ANALYST McSherry

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

SUMMARY

Synopsis of SJC Amendment

Senate Judiciary Committee Amendments to Senate Bill 1020 delete entirely the original bill's Section 1, which was "37-2-4. WHAT ACTIONS ABATE. This amendment results in no change to the statutory section.

The amendments also restores the, originally stricken, language regarding proceedings should one party die, and allowing the court to permit spouse and children of a marriage to receive support as if the descendent had survived.

A provision is added through the amendments for an exception to the current statute providing that proceedings in dissolution of marriage, separation, annulment or paternity cases would not continue should one of the parties file a notice of abatement in district court or if the parties have reconciled and ended their separation.

Synopsis of Original Bill

The amended bill proposes to introduce language to NMSA Section 40-4-20 providing an exception to language which requires courts to proceed in domestic relations cases upon the death of a party, and provides that should a party of a dissolution or marriage, separation, annulment or

paternity proceeding die, that the set provisions for continuation of the proceeding would not continue should the parties to the proceeding file a notice of abatement in a district court, or if the parties have reconciled and ended their separation.

Significant Issues

Under current law, if a spouse dies during a domestic relations action, the court may continue to divide community property and debts, award spousal and child support, and address paternity issues; the amended bill would not change this situation but provides specific exception provisions: parties filing a notice of abatement or reconciliation and ending separation.

It is unclear how the parties of a domestic relations action could file a notice of abatement of the action if one of the parties has died. It may be the intention that the notice of abatement be filed by “one of the parties?”

It is unclear how the parties of a domestic relations action could reconcile or end their separation should one of them be deceased.

It is unclear what the bill’s effect would be on property transferred upon death of the deceased spouse outside of probate (joint tenancy, trusts, etc.), which could then become unattainable by the surviving spouse, in the case of a filing in district court, or reconciliation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Special provisions for abatement would not exist for cases of domestic relations action should one party die and notice of abatement is filed in district court, or the parties have ended their separation.

POSSIBLE QUESTIONS

1. How would reconciliation and end of separation be determined in a domestic relations action with one of the parties being deceased?

EM/njw:yr