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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/2009

SPONSOR Stewart LAST UPDATED _____ HB 256

SHORT TITLE Freedom of Choice Act SB _____

ANALYST Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(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

House Bill 256 establishes the Freedom of Choice Act to ensure that the state respects the equal and fundamental right of privacy of each individual to make personal reproductive decisions. The Act prohibits the state from interfering with the right to obtain and use contraceptives; and prohibits the state from denying or interfering with a woman's choice to have an abortion prior to viability, or at any time if the woman's physician determines it is necessary to protect the woman's health or life, except as provided under NMSA 1978, Section 30-5A-3 (barring partial birth abortions).

Additionally, the state is prohibited from discriminating against the exercise of the provisions set forth in the Act or in the regulation or provision of benefits, facilities, services or information.

HB 256 specifically provides that a physician or other health care provider may terminate or assist in terminating a pregnancy as permitted by the Act and the laws of the state governing physicians and health care providers.

The bill also prohibits the state from adopting regulations that would restrict or undermine the Act's provisions or purposes, including regulations that would interfere with a health care provider's ability to provide reproductive services. HB 256 prohibits state regulations from restricting or undermining the provisions or purposes of the Act. An adopted regulation is valid only if, among other requirements, the regulation is the least restrictive of the available alternatives on a female's right to have an abortion, a person's use of contraceptives or a physician's, pharmacist's or other health care provider's ability to provide medical or abortion services.

HB 256 repeals Sections 30-5-1 through 30-5-3 NMSA 1978, governing criminal abortion and persons and institutions exempt from performing or participating in abortions.

FISCAL IMPLICATIONS

None

SIGNIFICANT ISSUES

The *Freedom of Choice Act* (H.R. 1964/S. 1173) is a bill which did not pass in the 110th Congress and has not yet been reintroduced in the 111th Congress. The proposed bill "declares that it is the policy of the United States that every woman has the fundamental right to choose to bear a child; terminate a pregnancy prior to fetal viability; or terminate a pregnancy after viability when necessary to protect her life or her health. It prohibits a federal, state, or local governmental entity from denying or interfering with a woman's right to exercise such choices; or discriminating against the exercise of those rights in the regulation or provision of benefits, facilities, services, or information. Provides that such prohibition shall apply retroactively. It also authorizes an individual aggrieved by a violation of this Act to obtain appropriate relief, including relief against a governmental entity, in a civil action." (Congressional Research Services (CRS) Summary of H.R. 1964.)

The AOC indicates that it is probable that an argument against the federal Act would be that it violates constitutionally protected religious freedoms in that it would require those opposed to abortion and birth control on religious grounds to perform them or to prescribe them, respectively.

The AGO provides that House Bill 256 repeals statutory provisions that criminalize abortions other than those that are medically justified. Thirty-five years ago, in State v. Strance, 84 N.M. 670 (Ct. App. 1973), the New Mexico Court of Appeals held the provisions unconstitutional to the extent they conflicted with the U.S. Supreme Court decisions in Roe v. Wade, 410 U.S. 113 (1973) and Doe v. Bolton, 410 U.S. 179 (1973). This rendered the provisions largely unenforceable and ineffective.

House Bill 256 also prohibits regulations that interfere with a woman's ability to choose freely reproductive services for her individual situation. This essentially codifies the N.M. Supreme Court's decision concluding that the state may not, consistently with the state constitution's equal rights amendment, refuse to fund medically-necessary abortions for indigent women. See New Mexico Right to Choose/NARAL v. Johnson, 126 N.M. 788 (N.M. 1998), cert. denied, 526 U.S. 1020 (1999).