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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/26/09  
**LAST UPDATED** 02/04/09    **HB** \_\_\_\_\_

**SPONSOR** McSorley

**SHORT TITLE** Domestic Partner Rights & Responsibilities    **SB** 12/aSPAC

**ANALYST** Moser

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI	NFI	NFI

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	NFI	NFI	NFI	NFI

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates HB 21  
 Conflicts with SB 144

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Attorney General (AGO)  
 State Personnel Office (SPO)  
 Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Amendment

The Senate Public Affairs Committee Amendment to Senate Bill 12:

- Modifies the definition of “domestic partner” to be an “adult regardless of physical behavioral or developmental disability.”
- Clarifies the procedures to be used for the dissolution, annulment or legal separation to be those found within Chapter 40 NMSA 1978.

- Require that certificates of domestic partnership must be submitted in person except when a properly executed special power of attorney is presented to the county clerk that includes a notarized statement authorizing a domestic partnership with the individual appearing in person.

### Synopsis of Original Bill

Senate Bill 12 would recognize domestic partnerships and provide domestic partners with the same legal obligations, responsibilities, protections and benefits under law as a spouse in a marriage. The bill also provides for district court jurisdiction to preside over the dissolution or legal separation of a domestic partnership, including the authority to distribute assets following the same procedures used for spouses in a marriage. The bill also recognizes domestic partnerships, civil unions and other “substantially similar” legal relationships entered into in other jurisdictions, except that common law marriage is specifically excluded.

For state income tax purposes, a domestic partner would be required to use the same filing status that is used on a federal income tax return filed in the same tax year, or would have been used if a federal income tax return had been filed in the same year. A domestic partner's income and earnings would not be treated as community property for state income tax purposes.

### **FISCAL IMPLICATIONS**

No financial impact

### **SIGNIFICANT ISSUES**

On the SPAC amendment the AGO notes that 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). <http://jurist.law.pitt.edu/paperchase/2007/07/massachusetts-oks-same-sex-marriage.php>

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. See, for example, *Kerrigan v. Comm’r of Public Health*, 289 Conn. 135, 957 A.2d 407 (2008); *Opinions of the Justices to the Senate* 440 Mass. 1201, 802 N.E. 2d 565 (2004); *In Re Marriage Cases*, 43 Cal.4th 757, 183 P.3d 384 (2008). 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. See, for example, *Anderson v. King County* 158 Wash. 2d 1, 138 P.3d 963 (2006); *Li v Oregon* 338 Or. 376, 110 P.3d 91 (2005). However, they remain subject to challenge under the Federal constitution, particularly on federal equal protection grounds.

Senate Bill 12 bill defines a domestic partner as an adult who has chosen to share another adult's life and who has established a domestic partnership. A domestic partnership is defined as a legal relationship that is not a marriage that two domestic partners establish with each other according to the requirements of the bill.

The bill does not repeal or adversely affect any other manner in which relationships between adults in New Mexico are recognized. SB12 clarifies that nothing in the Act is intended to provide any tax benefit if the benefit would conflict with the federal tax code and that a domestic partner will use the same filing status as is used on a federal income tax return. Earned income is not treated as community property for state income tax purposes.

The bill gives jurisdiction over proceeding related to domestic partnerships, including dissolution to the district court which is to follow the same procedures as are used for spouses in a marriage. It also clarifies that the jurisdiction granted is not intended to conflict with the Uniform Child-Custody Jurisdiction and Enforcement Act or the Uniform Interstate Family Support Act.

SB 12 establishes that a domestic partnership recognized in another jurisdiction will be recognized in NM as well and that nothing in SB12 interferes with the religious practice of any religious body.

The bill establishes procedures for the county clerk in providing an affidavit of domestic partnership and the procedure for obtaining a certificate of domestic partnership including paying a registration fee of \$25, having reached the age of majority, consenting to the jurisdiction of the district court and others.

Finally, the bill establishes a uniform affidavit and certificate of domestic partnership form.

The Public Employees Retirement Association of New Mexico administers retirement benefits payable under the Public Employees Retirement Act, NMSA 1978, Sections 10-11-1 *et seq.*, the Volunteer Firefighters Retirement Act, NMSA 1978, Sections 10-11A-1 *et seq.*, the Judicial Retirement Act, NMSA 1978, Sections 10-12B-1 *et seq.*, and the Magistrate Retirement Act, NMSA 1978, Sections 10-12C-1 *et seq.* Due to the community property nature of retirement benefits under New Mexico law, each retirement act is replete with references to a member's marital status, spouse and former spouse.

The PERA Act requires written spousal consent prior to the payment of benefits. See, e.g., NMSA 1978, Section 10-11-124(C) (requiring written spousal consent prior to refund of member contributions); NMSA 1978, Section 10-11-116(A) (requiring written spousal consent of retiring member's election of form of payment). In certain instances, retirement benefits themselves are payable based on an individual's status as a member's "surviving spouse," NMSA 1978, Section 10-11-14.5 (pre-retirement death benefits), or as a "former spouse" pursuant to a court order. NMSA 1978, Section 10-11-136. Similar provisions are contained in the Judicial, Magistrate and Volunteer Firefighter Acts which also entitle a member's "surviving spouse" to certain benefits. See e.g., NMSA 1978, Section 10-12B-14(A); NMSA 1978, Section 10-12C-13(A); NMSA 1978, Section 10-11A-7.

Under current law, an unmarried PERA member is free to designate any person as a refund and survivor beneficiary, however, such a designation requires the member to complete and file a designation form with the agency. In the case of a married member, a "surviving spouse" is

often automatically entitled to certain benefits by operation of law, even though the member has not filed a designation form.

PERA points out that SB 12 would require PERA to administer each of the various retirement acts provisions relating to a member's marital status, spouse or former spouse equally to domestic partners.

## **DUPLICATION**

This bill duplicates HB 21.

## **OTHER SUBSTANTIVE ISSUES**

According to the US Census 2000, 43,542 New Mexico households, or 11.3%, were unmarried couples. According to the Williams Institute, UCLA School of Law, New Mexico had 6,063 same-sex couples in 2005 (Those couples live in every county in New Mexico and constitute 1.2% of coupled households and 0.7% of all households in the state. Bernalillo County reported the most same-sex couples with 1,770 couples (0.80% of all county households), followed by Santa Fe County with 619 couples (1.18%), and Dona Ana County with 342 couples (0.57%).

The reports are available at:

<http://www.census.gov/prod/2003pubs/censr-5.pdf>

<http://www.law.ucla.edu/williamsinstitute/publications/NewMexicoCensusSnapshot.pdf> .

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Domestic partners will not entitled to the same protections and benefits as those afforded or recognized by the laws of the state to spouses, former spouses, widows or widowers, whether they derive from statute, administrative or court rule or regulation, policy, common law or any other source of civil or criminal law.

GM/mt