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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/07

SPONSOR Vaughn LAST UPDATED _____ HB HJR2

SHORT TITLE Defines a Recognized, Valid Marriage as Between One Man and One Woman SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB395

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Joint Resolution 2 proposes amending Article 20 of the New Mexico Constitution to define marriage as the union of one man and one woman only and to deny any right or claim to marriage between persons of the same sex. If the resolution passes, the proposed amendment would be submitted to New Mexico voters for approval or rejection at the next general election or at any special election called for that purpose prior to the next general election.

SIGNIFICANT ISSUES

This amendment appears to be intended to prohibit same-sex marriages from being performed or recognized in New Mexico.

NMSA 1978, Section 40-1-4 grants comity to marriages valid in other states. In its entirety, it provides:

“All marriages celebrated beyond the limits of this state, which are valid according to the laws of the country wherein they were celebrated or contracted, shall be likewise valid in this state, and shall have the same force as if they had been celebrated in accordance with the laws in force in this state.

Thus, under current New Mexico law, same-sex marriages validly performed in another state or may be recognized in New Mexico. By advisory letter dated February 20, 2004, the Attorney General previously opined that the performance of same-sex marriages in New Mexico was not authorized under the then current status of the law.

OTHER SUBSTANTIVE ISSUES

The Attorney General’s Office notes that if HJR 2 passes and New Mexico voters subsequently approve the proposed amendment, same-sex marriages validly performed in another state or country would not be recognized in New Mexico. HJR 2 may invite opponents to challenge it on the grounds that it encompasses more than one subject, in violation of N.M. Constitution, Article IV, Section 16. Opponents may argue that HJR 2 attempts to “logroll” several amendments into one, as it not only defines marriage but also arguably may be interpreted to prohibit same sex marriages, civil unions, and domestic partnerships, and prohibit the state from conferring benefits on domestic partners. While such a challenge was unsuccessful in Arizona, we do not know how New Mexico courts would view a similar challenge if brought here.

In Arizona Together v. Brewer, the Arizona Supreme Court examined whether Proposition 107, a constitutional amendment proposed by voter initiative, complied with the separate amendment rule of Article 21, Section 1 of the Arizona Constitution. Proposition 107 proposed amending the Arizona Constitution by defining marriage and prohibiting the state and its political subdivisions from creating or recognizing a legal status for unmarried persons similar to that of marriage. Opponents argued that Proposition 107 not only would define marriage, but also could (1) prohibit same-sex marriages, (2) prohibit civil unions and domestic partnerships, and (3) prohibit the state and its political subdivisions from conferring benefits and rights on domestic partners. See 2007 WL 80728, at 1. The Arizona Supreme Court agreed with a lower court decision that Proposition 107 constitutes a single amendment after analyzing the proposition under its “common purpose or principle” test. See id. at 6. The Arizona Supreme Court held that the provisions in Proposition 107 shared both topicality and interrelatedness and were sufficiently related to a common purpose or principle that the proposal could be said to “constitute a consistent and workable whole on the general topic embraced, that, logically speaking . . . should stand or fall as a whole.” See id. at 23 (internal quotations omitted).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 395

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