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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/10

SPONSOR Espinoza LAST UPDATED \_\_\_\_\_ HB 121

SHORT TITLE Marriage Defined SB \_\_\_\_\_

ANALYST Wilson

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
<b>Total</b>		\$1.0-\$5.0			Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 121 relates to SB183, HJR 8 and SB 146

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 121 states marriage in New Mexico shall consist of the union between one man and one woman.

### FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws

and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## **SIGNIFICANT ISSUES**

The AGO provided the following:

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.

It is almost certain that a statutory or constitutional restriction of marriage to specific genders will 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. 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. However, they remain subject to challenge under the federal constitution, particularly on federal equal protection grounds.

## **COMPANIONSHIP/ RELATIONSHIP**

HJR 8 and SJR 1 propose an amendment to the New Mexico Constitution incorporating language identical to that contained in HB 121.

SB 146 will enact new laws governing marriage licenses.

SB183 enacts Domestic Partnerships

DW/mew