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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/10

SPONSOR Espinoza LAST UPDATED _____ HJR 8

SHORT TITLE Marriage Defined, CA SB _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SJR 1
Relates to HB 121 & SB 183

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$104.0- \$500.0	\$0.0- \$500.0		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Joint Resolution 8 proposes to amend Article 20 of the Constitution of New Mexico by adding a new section to read:

Marriage in this state shall consist only of the union of one man and one woman.

The amendment shall be submitted to the people for approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

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 would 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

In the past the Secretary of State has indicated the cost for adding constitutional amendments to the ballot is \$104,000. It will be less for each amendment if other amendments are added to the ballot at the same.

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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SJR 8 duplicates SJR 1 and incorporates language identical to that contained in HB 121. The resolution also relates to SB 183, Domestic Partnerships.

DW/svb