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FISCAL IMPACT REPORT

SPONSOR Chavez, D. ORIGINAL DATE 02/16/11
LAST UPDATED _____ HB 162
SHORT TITLE Limit Recognition of Certain Marriages SB _____
ANALYST Haug

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 162 would make same sex marriages, civil unions, or other similar relationships that are valid in another state void in New Mexico. The provisions of the bill apply retroactively.

FISCAL IMPLICATIONS

House Bill 162 contains no appropriation and has no fiscal implications.

SIGNIFICANT ISSUES

The AGO comments:

The federal Defense of Marriage Act (“DOMA”) permits states to bar recognition of out-of-state same-sex marriages. 28 U.S.C. § 1738C. While many states have barred the recognition of such marriages, New Mexico has not. Under the current state of the law, valid same-sex marriages from another jurisdiction are likely valid in New Mexico. *See* AG Op. No. 11-01 (2011).

Thus, valid same-sex marriages from other jurisdictions may currently fall within the purview of New Mexico’s Community Property Act of 1973, NMSA 1978, Sections 40-

36-6 to -17. Therefore, changes in law that operate retroactively to require a recharacterization of property interests may be unconstitutional if those changes interfere with a vested property right. *See* N.M. Const. art. II, Section 18; *see also Landgraf v. Ulsi Film Prods.*, 511 U.S. 244, 265-279 (discussing retroactive application of statutes).

In addition, the bill's retroactive application provision may be challenged as an unconstitutional interference in family privacy. *See, e.g., Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (recognizing that while "the family itself is not beyond regulation in the public interest," there exists a "private realm of family life which the state cannot enter").

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 162 duplicates House Joint Resolution 8 which proposes to amend the constitution to the same effect. House Bill 162 is related to House Joint Resolution 7 and to Senate Joint Resolution 4.

GH/svb