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FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/11

SPONSOR Chavez, D. LAST UPDATED _____ HJR 8

SHORT TITLE Marriage Defined & Marriage Recognition, CA 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		\$104.0	NFI	\$104.0	Non- Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Secretary of State (SOS)
Attorney General (AGO)

SUMMARY

Synopsis of Bill

House Joint Resolution 8 proposes to amend the State Constitution to define marriage as between a man and a woman and to expressly bar the recognition of same sex marriages or civil unions from another jurisdiction.

FISCAL IMPLICATIONS

The Secretary of State (SOS) states that although the county clerk includes the proposed amendments in his/her proclamation, it is the responsibility of the State to pay for the costs associated with the publication per Section 1-16-11 NMSA 1978. The approximate cost per constitutional amendment is \$104,000. That estimate is used in the table above.

SIGNIFICANT ISSUES

The AGO comments:

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.

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).

RELATIONSHIP

Senate Joint Resolution 4 also proposes to amend the State Constitution to define marriage as between a man and a woman but does not propose to bar the recognition of same sex marriages from another jurisdiction. House Bill 162 proposes a statutory amendment that would bar the recognition of same sex marriages from other jurisdictions.

GH/bym