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## FISCAL IMPACT REPORT

SPONSOR Sharer ORIGINAL DATE 02/15/11  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Marriage Defined, CA SJR 4  
ANALYST Haug

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$104.0	NFI	\$104.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HJR 7

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Secretary of State (SOS)

Attorney General (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Joint Resolution 4 proposes to amend the Constitution incorporating language regarding “Marriage in this state shall consist only of the union between one man and one woman.”

### 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 states:

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.

## Senate Joint Resolution 4 – Page 2

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.4<sup>th</sup> 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.

### **DUPLICATION**

Senate Joint Resolution 4 and House Joint Resolution 7 are duplicates.

GH/svb