

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

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| Drafting Number: LLS 11-0753 | Date: May 26, 2011 |
| Prime Sponsor(s): Sen. Steadman | Bill Status: Postponed Indefinitely |
| Rep. Ferrandino | Fiscal Analyst: Bill Zepernick (303-866-4777) |

TITLE: CONCERNING AUTHORIZATION OF CIVIL UNIONS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

| Fiscal Impact Summary | FY 2011-2012 | FY 2012-2013 |
|--|---------------------|---------------------|
| State Revenue | | |
| <u>Total</u> | <u>\$92,000</u> | <u>\$57,500</u> |
| Cash Funds | | |
| Colorado Domestic Abuse Program Fund | 80,000 | 50,000 |
| Vital Statistics Records Cash Fund* | 12,000 | 7,500 |
| Local Revenue | | |
| Fees Retained by County Clerks** | \$28,000 | \$17,500 |
| State Expenditures | | |
| <u>Total</u> | <u>\$17,218</u> | <u>\$4,104</u> |
| General Fund | 2,680 | |
| Cash Funds | | |
| Vital Statistics Records Cash Fund* | 10,976 | 4,104 |
| Multiple Cash Funds (CBMS) | 299 | |
| Federal Funds | 3,263 | |
| FTE Position Change | 0.2 FTE | 0.1 FTE |
| Effective Date: The bill was postponed indefinitely by the House Judiciary Committee on March 31, 2011. | | |
| Appropriation Summary for FY 2011-2012: See State Appropriations section. | | |
| Local Government Impact: See Local Government Impact section. | | |

* Revenue is higher than expenditures to account for costs shown in the Expenditures Not Included section.

** This is local revenue that is set in state law.

Summary of Legislation

The bill authorizes civil unions in Colorado and sets forth the rights, responsibilities, and requirements of persons entering a civil union. **Enactment of the bill is conditional upon HB 11-1033 becoming law and generating General Fund savings greater than the General Fund costs of this bill, as shown in the final fiscal notes for both bills.**

Two persons, regardless of gender, who are not related by blood, are not married to or in a civil union with another person, and are over the age of 18 may enter into a civil union. The bill sets the fees and procedures to obtain a civil union license from a county clerk and to petition the court for the dissolution, invalidation, and legal separation of a civil union. The Department of Public Health and Environment (DPHE) is required to create all necessary forms for civil union licenses and certificates.

The bill grants persons in civil unions the same benefits, protections, and responsibilities under law as granted to spouses and specifies that persons in a civil union are covered under the statutory definitions of dependent, spouse, next of kin, family, immediate family, and other terms in law indicating a familial or spousal relationship. The bill applies the laws of domestic relations (i.e., divorce, child custody, property division, child support, etc.) to persons in civil unions.

The bill applies the benefits, protections, and responsibilities of spouses to parties to civil unions in several areas, including, among other things, estate law; workers' compensation benefits; torts and causes of action based on spousal status; probate law; adoption law; group benefit plans for state employees; Public Employees' Retirement Association (PERA) benefits; access to domestic abuse programs and protections; victim compensation; emergency medical care and visitation; visitation in correctional and other types of facilities; end-of-life care and other issues relating to medical care; access to life and health insurance policies as a dependent by a party to a civil union; and others. The bill also outlines the privileged relationship between persons in a civil union and rules for testimony and examination of persons in a civil union against the other person.

The bill specifies judicial jurisdiction over civil union cases and recognizes same-sex unions from other states as civil unions in Colorado, regardless of the name used for the relationship in the other state (marriage, domestic partnership, etc.). The Department of Revenue is required to convene a committee to examine issues related to the tax treatment of persons in civil unions and to make recommendations. Under the bill, persons in a civil union cannot file a joint state income tax return.

State Revenue

The bill is expected to increase state cash fund revenue by \$92,000 in FY 2011-12 and by \$57,500 in FY 2012-13. This revenue is from fees paid by persons obtaining civil union licenses and is distributed to several funds and agencies. The fee for a civil union license is estimated to be \$30. Of this amount, \$27 is set in the bill and \$3 is assumed based on fees collected by DPHE for marriage licenses and allowed under the bill to support vital records operations at the state level. Based on this fee, it is assumed that \$7 will be retained by counties, \$3 will go to the Vital Statistics Records Cash Fund in the DPHE, and \$20 will go to the Colorado Domestic Abuse Program Fund in the Department of Human Services (DHS). Table 1 provides a breakdown of this revenue by fund and agency, and the section below discusses the fee impact and estimated number of civil unions.

Fee impact on individuals and families. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. The fees created by this bill are discussed below.

Civil union license fees. As mentioned above, the total fee for a civil union license is expected to be \$30. The fiscal note assumes that **4,000 couples will enter a civil union in FY 2011-12 and 2,500 will enter a civil union in FY 2012-13.** The first-year total includes 3,000 same-sex couples and 1,000 opposite-sex couples, and the second-year amount includes 1,500 same-sex couples and 1,000 opposite-sex couples. The number of same-sex civil unions is based on the number of civil unions that have occurred in other states, adjusted by population. The number of opposite-sex civil unions represents people who would not have married otherwise. Based on the fee and population assumptions, Table 1 provided an overview of the fee impact from civil union licenses.

| Table 1. Fee Revenue under SB11-172 | | | |
|--|------------------------|----------------------------|-----------------|
| Fund / Agency | Number Affected | Portion of \$30 Fee | Revenue |
| <i>FY 2011-12</i> | | | |
| Colorado Domestic Abuse Program Fund (DHS) | | \$20 | \$80,000 |
| Vital Statistics Records Cash Fund (DPHE) | 4,000 | 3 | 12,000 |
| Fees Retained by County Clerks | | 7 | 28,000 |
| STATE TOTAL | 4,000 | \$23 | \$92,000 |
| LOCAL TOTAL | | \$7 | \$28,000 |
| <i>FY 2012-13</i> | | | |
| Colorado Domestic Abuse Program Fund (DHS) | | \$20 | \$50,000 |
| Vital Statistics Records Cash Fund (DPHE) | 2,500 | 3 | 7,500 |
| Fees Retained by County Clerks | | 7 | 17,500 |
| STATE TOTAL | 2,500 | \$23 | \$57,500 |
| LOCAL TOTAL | | \$7 | \$17,500 |

Court fees. The bill also sets docket fees for filing petitions for dissolution of a civil union, declaration of invalidity of a civil union, legal separation, or declaratory judgement concerning the status of a civil union. In these types of cases, the petitioner is charged \$230 and the respondent is charged \$116. Revenue from these fees are distributed to various funds according to current law, including the Performance-based Collaborative Management Incentive Cash Fund, the Colorado Children's Trust Fund, the Judicial Stabilization Fund, the General Fund, and several others. Fee revenue for dissolution of civil unions and similar cases is not expected to be significant in the first several years after the bill is implemented. Also, it is unknown how many cases will result. Therefore, the exact amount of revenue and its distribution cannot be estimated.

State Expenditures

The bill increase costs by a total of **\$17,218 and 0.2 FTE in FY 2011-12**, mostly from cash fund sources, but also includes a one-time cost of \$2,680 from the General Fund. Cash fund expenditures and subsequent years are increased by **\$4,104 and 0.1 FTE in FY 2012-13**. The bill could result in other costs and savings, as discussed below, but these have not been estimated. Table 2 and the discussion below provide an overview of costs included in the fiscal note.

| Table 2. Expenditures and Funding Sources Under SB11-172 | | |
|---|------------------------|-----------------------|
| Cost Components | FY 2011-12 | FY 2012-13 |
| Personal Services (DPHE) | \$7,760 | \$3,879 |
| FTE (DPHE) | 0.2 | 0.1 |
| Operating Expenses (DPHE) | 3,216 | 225 |
| CBMS Modifications (DHCPF / DHS) | 6,242 | 0 |
| <u>TOTAL</u> | <u>\$17,218</u> | <u>\$4,104</u> |
| <i>Funding Sources</i> | | |
| General Fund | 2,680 | 0 |
| Vital Statistics Records Cash Fund | 10,976 | 4,104 |
| Old Age Pension Cash Fund | 295 | 0 |
| Children's Basic Health Plan Trust | 4 | 0 |
| Federal Funds | 3,263 | 0 |

Department of Public Health and Environment. The bill increases costs in the DPHE by \$10,976 and 0.2 FTE in FY 2011-12, and by \$4,104 and 0.1 FTE in subsequent years. These costs are paid from the Vital Statistics Records Cash Fund and are for staff to review civil unions records submitted by county clerks, follow-up on any problematic records, and in the first year, develop forms and procedures. Operating costs include some minor computer system changes in the first year and printing costs for civil union certificates.

Colorado Benefits Management System (CBMS) modifications. The Department of Health Care Policy and Financing (DHCPF) and DHS will have one-time costs of \$6,242, including \$2,680 from the General Fund, to modify CBMS. These modifications are required so that workers in county departments of social services can account for the income and resources of all persons in civil unions when determining eligibility and calculating benefits for public assistance programs. Although CBMS currently has the capacity to track information on spouses, creation of a same-sex civil union category is required because the eligibility criteria of some federal programs do not recognize same-sex relationships.

Judicial Branch. The bill could increase workload in the courts from cases involving civil unions, primarily cases for the dissolution of a civil union. Caseload is not expected to increase until several years after civil unions are authorized. Because the number of cases to dissolve a civil union are anticipated to be a small percentage of all marriage and civil unions in the state, the increase in

workload to the courts from these cases is expected to be minimal. Any increase in staff required by the courts in out-years will be handled through the annual budget process and costs offset by docket fees.

Department of Revenue. The bill authorizes the Department of Revenue to convene a task force to examine the tax treatment of persons in civil unions. This task is expected to take less than 200 hours of staff time and can be absorbed within existing resources; no new appropriation is required.

Other potential costs. Allowing people to enter into civil unions could result in costs in several areas by extending certain benefits to a party in a civil that are not currently allowed under state law. Several examples of potential costs include:

- **Medicaid** — Adding a family member through a civil union could result in additional persons becoming eligible for Medicaid. Any impact is assumed to be minimal and is not estimated.
- **Colorado Works** — Depending on household status and the exact benefits offered by a county, a party to a civil union could receive some benefits under the Colorado Works program. However, any increase in costs is assumed to be minimal and would be absorbed in county block grants.
- **Senior Homestead Property Tax Exemption** — The bill could have a small, long-term effect on state expenditures on the senior homestead property tax exemption. When people who are eligible for the senior homestead property tax exemption die, their surviving spouse may continue to claim the exemption, even if they do not meet the 10-year residency requirement. Civil unions will increase the number of surviving spouses that can continue claiming the homestead exemption who would not have been able to under current law. However, the number of persons 65 and older in civil unions that qualify for the exemption and then die leaving a surviving spouse cannot be predicted, and the number in the initial year will be very small. Also, the legislature is not currently funding the exemption, so any potential impact would not occur until FY 2012-13.
- **Workers' compensation** — A party to a civil union may be entitled to surviving spouse benefits in the event of a workplace death. Any increase, which is assumed to be minimal, would be covered through rates charged to employers.
- **State group health and dental insurance** — Civil unions involving state employees could result in more employees covering a spouse and other dependents through state group insurance. However, because state law already allows same-sex domestic partners to access health and dental insurance through a state employee, any increase is expected to be minimal.
- **PERA** — A party to a civil union may be entitled to certain retirement and insurance benefits as a surviving spouse under PERA. However, any impact of such benefits will not have an actuarial impact on the PERA liability as persons can currently designate a same-sex beneficiary under current law.

Potential savings. The bill could result in savings to the state, primarily by making some persons ineligible for public assistance such as Medicaid by increasing household income beyond the eligibility threshold by adding a family member through a civil union. However, data is not available on the income and benefit status of persons likely to enter into a civil union and potential savings cannot be estimated. In addition, becoming ineligible for public assistance could be a disincentive for some people to enter into a civil union, which is another effect on potential savings that cannot currently be calculated. The fiscal note assumes that any savings to Medicaid and other public assistance programs, if realized, will be accounted for through the annual budget process.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 3.

| Table 3. Expenditures Not Included Under SB11-172* | | |
|--|-------------------|-------------------|
| Cost Components | FY 2011-12 | FY 2012-13 |
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$1,420 | \$710 |
| Supplemental Employee Retirement Payments | 351 | 207 |
| TOTAL | \$1,771 | \$917 |

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government Impact

The bill increases costs and workload for county clerks to process license applications for civil unions, but also increases fee revenue to cover these costs. In the first year, county clerks will also have one-time costs for computer programming, form development, training, and other tasks to implement civil unions in Colorado. Workload for processing civil unions is expected to be highest in the first year, and then level off over time. Some county clerks may require temporary staff to handle the workload in the first year. It is estimated that counties will receive a total of \$28,000 in fee revenue in FY 2011-12 and \$17,500 in FY 2012-13. Exact costs and revenue to the counties depend on the number of civil unions formed.

State Appropriations

The bill requires the following appropriations for FY 2011-12:

- \$10,976 and 0.2 FTE to the DPHE from the Vital Statistics Records Cash Fund;

- \$2,312 to the DHCPF (\$1,148 from the General Fund, \$4 from the Children's Basic Health Plan Trust, \$5 from the Old Age Pension Cash Fund, and \$1,155 from federal funds), of which the whole amount is reappropriated to the DHS; and
- \$6,242 to the DHS (\$1,532 from the General Fund, \$290 from the Old Age Pension Cash Fund, \$2,108 from federal funds, and \$2,312 from reappropriated funds from the DHCPF), of which the entire amount is reappropriated to the Governor's Office of Information Technology.

Departments Contacted

Corrections
Health Care Policy and Financing
Judicial
Law
Personnel and Administration
Regulatory Agencies

Education
Human Services
Labor and Employment
PERA
Public Health and Environment
Revenue