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DATE: March 6, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 147

RELATING TO: Same Sex Marriages

SPONSOR(S): Committee on Governmental Operations and Representatives Byrd & others

STATUTE(S) AFFECTED: Creates Unnumbered Section

COMPANION BILL(S): SB 272(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0

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I. SUMMARY:

In 1996 the United States Congress passed the "Defense of Marriage Act." This Act provides that no state is required to give effect to a relationship between persons of the same sex that is treated as a marriage under the laws of that state.

A recent court case in Hawaii, *Baehr v. Lewin*, has raised the possibility that same-sex marriages will become legally recognized in that state. This has placed other states in the position of having to decide whether to recognize same-sex marriages from other states, or whether to exercise the option afforded by the Defense of Marriage Act and not recognize such marriages. Constitutional issues of privacy, equal protection, and due process surround the debate concerning this issue.

CS/HB 147 provides that this state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any jurisdiction within, or outside the state of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location respecting either a same-sex marriage or a same-sex relationship treated as a marriage. Furthermore, this bill defines "marriage" to mean only a legal union between one man and one woman as husband and wife, and "spouse" applies only to a member of such a union.

The fiscal impact of this bill is indeterminate. See Section III, Fiscal Analysis & Economic Impact Statement, of this bill analysis.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Constitution and Statutes

The Florida Constitution provides a basic set of rights for all Florida citizens, but it does not directly address the issue of same-sex marriage. For example, Article I, Section 2, provides that “[a]ll natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, ...” and that “[n]o person shall be deprived of any right because of race, religion or physical handicap.” Article I, Section 9, provides that “[n]o person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself.” Finally, Article I, Section 23, provides a privacy right in that “[e]very natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein....”

Current Florida statutes describe and limit legal marriage to a union of one man and one woman, but do not specifically proscribe or endorse same-sex marriages entered into in other states or jurisdictions. Section 741.04, F.S., provides that a county court judge or clerk of the circuit court shall not issue a marriage license to otherwise qualified parties unless one of the parties is a female, and the other party is a male. In fact, the House Judiciary Committee Report on The Defense of Marriage Act, Page 3, July 9, 1996 (hereinafter “Judiciary Committee Report”), says that “[w]hile the laws of various states may differ in some particulars -- for example, with regard to minimum age requirements or the degree of consanguinity, and the like -- the uniform and unbroken rule has been that only opposite-sex couples can marry. No state now or at any time in American history has permitted same-sex couples to enter into the institution of marriage.”

Section 63.042(3), F.S., provides that no person eligible to adopt may adopt if that person is a homosexual. The constitutionality of this statute was challenged in *Cox v. State of Florida, Dept. of Health and Rehabilitative Services*, 656 So.2d 902 (Fla. 1995). The Florida Supreme Court upheld a district court finding that s. 63.042(3), F.S., was constitutionally sound (although the court did remand the case to complete the factual record with regard to an equal protection issue).

Developments in Hawaii concerning same-sex marriages

In 1990, two female homosexual couples and one male homosexual couple filed applications for marriage in Hawaii. The state denied their applications and the couples filed suit in state court challenging the denial as a violation of the Hawaii Constitution (*Baehr v. Lewin*, later styled as *Baehr v Miike*, 852 P.2d 44 (Haw. 1993)). After receiving an unfavorable judgement in the case, the couples appealed to the Hawaii Supreme Court.

In May, 1993, the Hawaii Supreme Court issued an opinion that the state's refusal to issue the marriage license violated the Equal Protection clause of the Hawaii Constitution which prohibits discrimination based on sex (the court interpreted the term "sex" as being synonymous with sexual orientation). The Hawaii Supreme Court remanded the case to the trial court for an evidentiary hearing, at which the state would be required to prove that it has a compelling interest for restricting marital status and the benefits and protections attendant to that status to unions between a man and a woman.

There were reports that homosexual couples were preparing to go, and homosexual organizations were preparing to assist in sending large numbers of same-sex couples to Hawaii to be married. Then, relying on hopefully favorable interpretations of the Full Faith and Credit Clause of the U.S. Constitution, the couples would return to their home states, where their marriages would be recognized as legal marriage unions (Lambda Briefing, Apr 19, 1996, page 2,3, and Judiciary Committee Report, page 7, note 20).

The U.S. Constitutional Full Faith And Credit Clause and the Defense of Marriage Act

The Full Faith and Credit Clause of the United States Constitution says, "[f]ull Faith and Credit shall be given in each State to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

In 1996 Congress passed the Defense of Marriage Act, which was signed into law by President Clinton (HR 3396 and SB 1999, amends Chapter 115 of title 28, U.S.C. adding section 1738C). It provides that "[n]o State, Territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship." The act also provides that "[i]n determining the meaning of any Act of Congress, or of any ruling, regulations, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or wife." Congress passed the Defense of Marriage Act in order to assist states which so desired to defend the institution of traditional marriage and to prevent an interstate legal morass which would result from conflicting state laws regarding the recognition of same-sex marriages (See Judiciary Committee Report, pp. 12-18).

Congress, during its Defense of Marriage Act deliberations, stated that States currently possess the ability to recognize same-sex marriage licenses issued in other States, but Congress also noted the evident disquiet in the various States as a result of the Hawaii situation. At a time of conflicting, and sometimes surprising judicial findings relative to related constitutional issues, and with leading homosexual rights organizations stating their intentions to press state-by-state litigation to nationalize same-sex marriage, many states have attempted to bolster their own public policy regarding traditional, heterosexual-only marriages with legislation (See Lambda Memorandum, ("Lambda will argue that there can be no 'public policy' exception to the claim that other States must give effect to the Hawaiian 'marriage licenses'")); see *also* Judiciary Committee Report, p. 9).

B. EFFECT OF PROPOSED CHANGES:

CS/HB 147 establishes a clear policy of non-recognition of same-sex marriages in Florida.

This bill provides that same-sex marriages or same-sex relationships treated as marriages in any jurisdiction, regardless of their location, are not recognized in Florida. This bill also provides that the state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any jurisdiction respecting a same-sex marriage or same-sex relationship treated as marriage, or a claim arising from such a marriage or relationship. Finally, CS/HB 147 also defines the term "marriage" to mean the legal union between one man and one woman only. This bill states that the term "spouse" may only apply to a member of such a union.

Opponents of this bill may argue that prohibiting same-sex marriage unfairly, and unconstitutionally discriminates against homosexuals. They assert that homosexuals are homosexual due to no choice of their own, and deserve the same opportunity as heterosexuals to be legally married. They claim a broader right of privacy or of intimate association; that the essence of this right is the private, intimate association of consenting adults who want to share their lives and commitment with each other; that same-sex couples have just as much intimacy and need for marital privacy as heterosexual couples; that laws which allow heterosexual, but not same-sex couples to marry infringe upon and discriminate against this, or any related fundamental right. They assert that any legislation limiting homosexual activity in fact, leads to a persistent, illogical fear of homosexuals ("homophobia"), even more discrimination, and persecution (See, e.g., Constitution Subcommittee Hearings, pp.136-37, 188-213; see also Judiciary Committee Report, Dissenting Views, p. 40). Advocates of same-sex marriage argue that courts should compel states to allow same-sex marriage just as the Supreme Court compelled states to allow interracial marriage in *Loving v. Virginia*, 87 U.S. 1817, 1824 (1967).

Opponents and proponents seem to agree to the favored legal status of traditional marriage; that it creates "the most important relation in life,...[has] more to do with the morals and civilization of a people than any other institution, and has always been subject to the control of the legislature." (quoting Justice Field in *Maynard v. Hill*, 125 U.S. 190, (1888))

Proponents of the bill may likely argue that a reasonable, "plain meaning" reading of the Florida and U.S. Constitutions reveals that this bill will not result in a deprivation of life, liberty, or a reasonable pursuit of happiness (See Judiciary Committee Report, pages 24 - 33). They may assert a belief that stability in a civilization is tied to the family unit, especially family units with both mother and father present. They disagree that legalization of same-sex marriages would stabilize such relationships. Not one jurisdiction United States has ever in its history (pending the resolution of the Hawaiian situation), acknowledged same-sex marriage (See, e.g., Constitution Subcommittee Hearings, p. 128-131).

Proponents of CS/HB 147 believe that clear and unambiguous legislation is necessary to preserve the traditional marriage, and thus the traditional family in Florida.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No. However, failure to pass this bill may increase the obligation of government to provide services or benefits to individuals in same-sex marriages if other states legalize same-sex marriages and if legally married same-sex persons assert their rights as married persons in Florida.

(3) any entitlement to a government service or benefit?

No. However, failure to pass this bill may result in increased entitlements to government services for same-sex married persons where the services and benefits were previously reserved for married persons of opposite sexes.

b. If an agency or program is eliminated or reduced:

This bill does not eliminate or reduce an agency or program.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Indirectly, yes. This bill will prevent same-sex married persons from receiving government services and/or subsidies which are currently reserved for married persons of opposite sexes.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Not any presently lawful activity, but depending on court decisions in other jurisdictions concerning the constitutionality of same-sex marriages, and the

possible litigation in Florida, this bill could eventually create governmental interference with activity which would be legal in other states.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

If other states legalize same-sex marriages, CS/HB 147 would render those marriages void in Florida.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides that marriages between persons of the same sex entered into in other jurisdictions or relationships between persons of the same sex which are treated as marriages in other jurisdictions will not be recognized in Florida for any purpose; further provides that Florida, its agencies and political subdivisions may not give effect to any public act, record, or judicial proceeding of any jurisdiction in Florida, the United States, or any other domestic or foreign jurisdiction, in any place or location, if such acts acknowledge same-sex marriages or treat such relationships as marriages; and further provides that the only acceptable "marriage" for purposes of interpreting any state statute or rule, is defined to be only a legal union between one man and one woman as husband and wife, and that the term "spouse" is defined as one member of the described "one man and one woman" union.

Section 2. Provides that the act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See "Fiscal Comments"

2. Recurring Effects:

See "Fiscal Comments"

3. Long Run Effects Other Than Normal Growth:

See "Fiscal Comments"

4. Total Revenues and Expenditures:

See "Fiscal Comments"

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See "Fiscal Comments"

2. Recurring Effects:

See "Fiscal Comments"

3. Long Run Effects Other Than Normal Growth:

See "Fiscal Comments"

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

See "Fiscal Comments"

2. Direct Private Sector Benefits:

See "Fiscal Comments"

3. Effects on Competition, Private Enterprise and Employment Markets:

See "Fiscal Comments"

D. **FISCAL COMMENTS:**

The fiscal impact of CS/HB 147, or its failure to pass, is difficult to assess with accuracy. If this bill does not pass, **and** if same-sex marriages become legal in other states, **and** if persons go to those other states to celebrate same-sex marriages, **and** if same-sex married persons successfully assert their rights as married persons in Florida, then there would be a fiscal impact on Florida. If numerous same-sex marriages are recognized in Florida, government services and benefits to traditional families and spouses would become available to same-sex families and spouses. However, staff could find no reliable data to assess the percentage of the population which would avail itself of same-sex married status if it were to become legal; nor could staff accurately assess the additional demand on particular programs that newly legalized same-sex married persons would generate.

Proponents of this bill maintain that any material financial impact caused by recognition of same-sex marriage may unduly strain increasingly limited state resources.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Two amendments were adopted. The amendments clarified that Florida would not recognize any relationship entered into in any jurisdiction, place or location, which are treated as marriages. The committee voted to make the bill and amendments into a committee substitute.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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