UCLA
Other Recent Work

Title
Supporting Families, Saving Funds: A Fiscal Analysis of New Jersey's Family Equality Act

Permalink
https://escholarship.org/uc/item/3j23c3bd

Authors
Badgett, M.V. Lee
Sears, Brad
Goldberg, Suzanne

Publication Date
2003-11-01

eScholarship.org Powered by the California Digital Library
University of California

SUPPORTING FAMILIES, SAVING FUNDS:

A Fiscal Analysis of New Jersey's Family Equality Act

NOVEMBER 2003

M. V. Lee Badgett, Ph.D.
Dept. of Economics, University of Massachusetts Amherst
Institute for Gay and Lesbian Strategic Studies

R. Bradley Sears, J.D.
UCLA School of Law
University of California, Los Angeles
Williams Project on Sexual Orientation Law and Public Policy

with
Suzanne Goldberg, J.D.
Rutgers School of Law-Newark

SUPPORTING FAMILIES, SAVING FUNDS:
A Fiscal Analysis of New Jersey's Family Equality Act

EXECUTIVE SUMMARY

This study, co-authored by the Institute of Gay and Lesbian Strategic Studies (IGLSS) and UCLA's Williams Project on Sexual Orientation Law and Public Policy, estimates the impact of the "Family Equality Act" (FEA) (Assembly Bill No. 3743) on New Jersey's budget. If enacted, the FEA would create a new registered domestic partner status for couples in New Jersey and would give registering couples a number of legal rights and responsibilities. Registration would be open to same-sex and different-sex couples who live together and meet other qualifications based on mutual support, caring, and commitment.

Using data from Census 2000 and from other states with similar policies, as well as data on state revenues and expenditures, we conclude that

THE FAMILY EQUALITY ACT WILL HAVE A POSITIVE IMPACT ON NEW JERSEY'S STATE BUDGET OF OVER $55 MILLION EACH YEAR.

The positive effects of the FEA from lower state expenditures will outweigh any negative fiscal impacts. The only significant fiscal effects of the FEA will be on 1) expenditures for state public benefits programs, 2) expenditures for state employee benefits and 3) revenues from the transfer inheritance tax. We find that the savings from means-tested benefit programs will far outweigh any increased expenditures for state employee benefits and any loss in inheritance tax revenues. We estimate, conservatively, that the net impact of the FEA on New Jersey's budget will be over $55 million in savings each year.

THE FAMILY EQUALITY ACT WILL REDUCE STATE EXPENDITURES ON PUBLIC BENEFITS.

The FEA's requirement of joint responsibility for basic living expenses will reduce the State's public assistance expenditures. Under the FEA, domestic partners must agree to be responsible for a partner's basic living expenses. This requirement may allow the State to use a partner's assets and income to determine eligibility for state-funded public assistance programs. We estimate that fewer applicants will qualify for Work First New Jersey/Temporary Assistance to Needy Families and for Medicaid. The savings to the State will be between $46 and 92 million, depending on the number of couples who register as domestic partners.

THE FEA WILL INCREASE THE COSTS OF PROVIDING STATE EMPLOYEE BENEFITS.

The FEA requires the State to cover state employees' domestic partners as spouses for purposes of providing health care benefits and retirement and survivor benefits. We estimate that the additional cost to the State's health insurance expenditures will be $7 million. The Act's impact on making additional persons eligible for survivor benefits will be quite small and easily absorbed.

THE FEA WILL REDUCE REVENUES FROM THE STATE'S TRANSFER INHERITANCE TAX.

Under the FEA, domestic partners would not pay transfer inheritance taxes on property inherited from their partners. This provision will lead to a decrease in inheritance tax revenues for the State. Using the most conservative assumptions available, we estimate that the FEA will result in a loss of transfer inheritance tax revenues of $4.3 to $8.6 million each year.

SUPPORTING NEW JERSEY'S FAMILIES WITH THE FEA WILL SAVE THE STATE MONEY.

The New Jersey Family Equality Act's net impact on New Jersey's budget will be a positive impact of over $55 million in savings each year. The FEA not only provides support for many New Jersey families, it saves the State money.

1. Introduction

The "Family Equality Act" (FEA) (Assembly Bill No. 3743) is under consideration in the legislature in the State of New Jersey. The Act would create a new registered domestic partner status for couples in New Jersey, where those partnerships are defined as "important personal, emotional and economic committed relationships." The FEA seeks to strengthen the material support for people in such couples by giving partners certain rights and responsibilities.

This analysis assesses the fiscal impact of providing those rights and responsibilities through the Family Equality Act. Our best estimate is that the net effect of the FEA on the state budget would be a savings of over $55 million each year.

The FEA amends New Jersey law to grant a number of rights and benefits to domestic partners. Some may have a positive fiscal effect, reducing expenditures or increasing tax revenues; some may have a negative fiscal effect, increasing expenditures or reducing tax revenues; and some are likely to have no fiscal impact at all:

Provisions with no fiscal impact:

- *Access to courts for dissolution:* The FEA gives partners access to the Superior Court if a partnership is dissolved. However, it is our understanding that unmarried couples whose relationship ends already use the Civil Division of Superior Court to adjudicate disputes about property. Therefore, we expect no net additional staff would be necessary as a result of the FEA.[1]

- *Protection from discrimination based on domestic partner status:* The FEA makes illegal discrimination in employment, housing, credit, or public accommodations based "domestic partnership." We assume that there will be no fiscal impact on the state as a result of this provision of the FEA.

- *Administrative costs:* The State will record and track domestic partnerships, as it does other important life events. We assume that any additional net costs of adding "domestic partnerships" to the existing function will be zero over time. The start-up costs are also likely to be quite small.[2]

- *Hospital visitation rights:* Health care facilities must give domestic partners visitation rights when a partner is in the hospital. This provision would have no fiscal impact.

- *Health care proxies:* Domestic partners would be able to make decisions for incapacitated partners. This provision will have no fiscal impact.

- *Right to claim a personal exemption for a partner:* The FEA allows a taxpayer to claim an addition-

al $1000 personal exemption for a domestic partner who does not file separately. Since the FEA does not allow for filing jointly, this provision is only useful when a partner is not filing an income tax return, i.e. those whose partners have no taxable income. However, the number of new exemptions claimed is likely to be quite small. Currently if a non-filing partner meets the IRS criteria for being a "dependent," a situation that is likely when a partner has no taxable income, then the taxpayer can already claim an exemption on a New Jersey tax return. (Some dependent partners would qualify as an "other dependent," which allows for a larger exemption of $1500.) Therefore, we assume that the fiscal impact from this provision of the bill is negligible.

- *Health care contracts in the State must offer dependent coverage to covered persons for a domestic partner if the health care provider can change the premium:* While this provision would affect employers in the State to some extent (probably a very small extent, since employers are allowed to charge employees the cost of domestic partner coverage), the provision would not obviously have a fiscal impact.[3]

Provisions with a fiscal benefit:

- *Joint responsibility for basic living expenses:* Domestic partners must agree to be responsible for a partner's basic living expenses. This requirement may result in lower state expenditures, since the State could use a partner's assets and income to determine eligibility for state-funded public assistance programs.

Provisions with a fiscal cost:

- Exemptions from transfer inheritance taxes: Domestic partners would not pay transfer taxes on property inherited from a partner. This provision may lead to lower tax revenues for the State.

- Access to state employees' spousal health and retirement benefits: The FEA will result in additional enrollees and survivors, creating a potential cost to the State.

This analysis will estimate the impact of the last three provisions mentioned. We draw on the best available data to provide actual estimates of the impact of each provisions on the state budget. The estimates related to each provision will allow us to calculate the net impact of the Family Equality Act on the state budget.

2. How Many Couples Will Register as Domestic Partners?

One of the most important factors that will determine the fiscal impact of the New Jersey Family Equality Act is the number of people signing up a domestic partner. While this number is difficult to estimate precisely, data from the United States 2000 Census plus the experience of several states with similar policies will provide some idea of the order of magnitude of new partnership registrations.[4]

In estimating this figure, it is helpful to start with the pool of couples who meet the requirements for a domestic partnership under the FEA:

a) Both persons have a common residence;
b) Both persons agree to be jointly responsible for each other's basic living expenses during the domestic partnership;
c) Neither person is married in a marriage recognized by New Jersey law or a member of another domestic partnership;
d) Both persons have chosen to share each other's lives in a committed relationship of mutual caring;
e) Both persons are at least 18 years of age;
f) Both persons file jointly an Affidavit of Domestic Partnership….

In addition, individuals who have been in a prior domestic partnership that was terminated must wait at least 180 days before entering into another.

However, not all couples who meet those criteria will necessarily register as domestic partners. The choice to enter a legally binding relationship such as marriage or domestic partnership involves many considerations for couples. At the very least, the decision is likely to include weighing the symbolic value of public and legal recognition of the relationship, the particular rights and responsibilities implied by the legal status of domestic partnership, and any other possible legal options for the relationships (such as marriage for different-sex couples).

Therefore, to estimate the number of domestic partner registrations, we proceed in two steps. In the first step, we estimate the pool of people who meet three of the basic eligibility requirements: sharing a residence, being over 18, and being unmarried. For estimation purposes, we do so for same-sex and different-sex couples using Census 2000 data for New Jersey[5]. The second step involves predicting how many of those couples will meet the joint responsibility and committed caring requirements and will be willing to file an affidavit of domestic partnership. For the second step we draw heavily on the experience of other states that have offered a domestic partner-like status to some couples and of states providing domestic partner health benefits for state employees.

The first group of couples will be *different-sex couples* who have chosen not to marry but would

like to register as domestic partners. Census 2000 suggests that 134,714 cohabiting different-sex couples live in New Jersey. These are couples who could marry but have chosen not to do so for some reason. It is hard to predict how many would register as domestic partners, since no other state offers such an option to these couples.[6] Therefore, we derive estimates from other information for particular segments of the analysis. For instance, we have estimates from other states of the number of different-sex domestic partners who might register to get benefits through their partner's state employment. In other cases, we assume that the registration experience is similar to that of the next group considered, same-sex couples.

The second group is cohabiting *same-sex couples* who are not allowed to marry and are likely to find the domestic partner option attractive. Census 2000 found 16,604 same-sex unmarried partner households in New Jersey. Two other states, California and Vermont, have provided a legal registration process for same-sex couples that is less comprehensive than marriage but provides more rights and responsibilities of marriage than does the FEA. In California, so far 22% of the state's same-sex unmarried couples are registered. In Vermont, the number of in-state civil unions accounts for 44% of that state's same-sex unmarried partners. The second and third columns of Table 1 show how many registrations would occur in New Jersey if 22% (3,653) or 44% (7,306) of same-sex couples registered.

Table 1: Estimates of number of domestic partner registrations

Couples	Total (Census 2000)	California 22%	Vermont 44%
Different-sex	134,714	29,637	59,274
Same-sex	16,604	3,653	7,306
Total	151,314	33,290	66,580

For the purpose of our analysis, a precise estimation of the percentage of unmarried couples registering as domestic partners under the FEA is not required for us to conclude that the FEA will have a positive impact on New Jersey's budget. The effects that we analyze are, for the most part, off-setting. In other words, if more unmarried couples register than we estimate, savings in state benefits will increase to off-set any additional costs for providing state employee benefits and any additional loss in inheritance tax revenues. Conversely, if less couples register than we estimate, then both the savings and the costs of FEA will decrease.

3. Fiscal Savings to State Expenditures on Public Assistance Programs

New Jersey funds several public benefit programs that provide assistance to low-income individuals and families. Work First New Jersey/Temporary Assistance to Needy Families[7] (WFNJ/TANF) and Supplemental Security Income[8] provide cash grants. Medicaid, NJ FamilyCare, and NJ KidCare provide health insurance. The federal government also provides funding for these programs.

Eligibility for these programs is means-tested, i.e. eligibility depends on the individual's and family's income and assets. When an applicant is part of a married couple, the spouse's income and assets are included in the eligibility determination. Currently, regulations for these public assistance programs do not require the state or federal government to take into account a domestic partner's income and assets.[9]

The Family Equality Act requires that domestic partners "agree to be jointly responsible for each other's basic living expenses during the domestic partnership." Furthermore, FEA defines "jointly responsible" as agreeing to provide the basic living expenses for a partner who is unable to do so for himself or herself.[10] Since under FEA domestic partners must take on financial responsibility for one another, the State's need to provide assistance to individuals in registered domestic partnerships will diminish. By taking into account domestic partners' financial responsibility for each other, some people in such partnerships will become ineligible for public benefits.

After the passage of the FEA, the State will have the discretion to re-write the regulations for determining whose income and assets count in determining eligibility for WFNJ/TANF, SSI and Medicaid. For WFNJ/TANF (and, therefore, for individuals qualifying for Medicaid because they receive TANF), the State determines the eligibility standards, and can amend them to require the State to take into account a domestic partner's income and assets in determining the eligibility of an individual or family.

For SSI and Medicaid, the federal government determines the generally applicable eligibility standards, and states have more limited discretion in developing their own standards and procedures. Because of the federal Defense of Marriage Act (DOMA), the State may not be able to simply redefine the term "spouse" in eligibility requirements to include same-sex domestic partners, and possibly may not even be able to consider different-sex domestic partners as spouses.[11]

However, in assessing eligibility for Medicaid it is likely that the State will be obligated to take into account the resources of domestic partners under state and federal regulations requiring it to consider the resources of third parties who are legally liable for health care costs. Medicaid is a provider of last resort,[12] and federal and state law require the State to assure that Medicaid recipients utilize all other resources, i.e. third parties, available to them to pay for all or part of their medical care needs before turning to Medicaid.[13]

Third parties are entities or individuals who are legally responsible for paying the medical claims of Medicaid recipients.[14] They include any "individual who has either voluntarily accepted or been assigned legal responsibility for the health care" of a Medicaid applicant or recipient.[15] Examples of third parties in federal and state Medicaid manuals include absent and custodial parents. In addition, state and federal law require that the incomes of the sponsors of immigrants must be considered when determining an applicant's eligibility.[16]

To estimate the size of this potential impact of the FEA, we again draw on data from Census 2000 for New Jersey. The Census asks respondents to report the amount of income from various sources, and the publicly available data specifies the amount of income that respondents report having received from Supplemental Security Income (SSI) and from "public assistance or welfare payments from the state or local welfare office" in 1999.[17] Therefore, we can add up the total paid to individuals in same-sex and different-sex unmarried couples, the couples identified earlier as being most likely to enter into domestic partnerships.

Unfortunately, neither the Census nor other datasets can tell us how many people in possible domestic partner couples are enrolled in Medicaid or NJ KidCare/FamilyCare. Therefore, we assume that the share of state expenditures for potential domestic partners in those programs is the same as for TANF.[18]

Table 2 presents our calculations from the census for each kind of program and for each kind of couple. In 1999, 2.3% of people in same-sex couples and 1.4% of people in different-sex couples received any SSI income, totaling just over $26 million.[19] Similarly, 1.7% of people in same-sex couples and 2.6% of people in different-sex couples received public assistance, totaling roughly $21 million. Our projections of State spending on health insurance for low-income people and families suggest that the State spends as much as $270 million per year on the three health programs for people in unmarried couples.

Enacting the FEA will not eliminate the State's need to pay the total of $300 million in assistance to these couples, however. As discussed earlier in the report, not all unmarried partner couples are likely to register as domestic partners, for a variety of reasons. However, previous research has demonstrated that receipt of welfare payments is not a serious disincentive to marry, since payments have little effect on the probability of recipients marrying.[20] Those findings suggest that public assistance income will also not be a significant deterrent to partner registration. Nevertheless, for reasons not necessarily connected to public assistance, some couples with one party receiving welfare will not register. Based on the experience in California and Vermont, we predict that 22% to 44% of such couples will register.

Furthermore, some couples may continue to qualify for benefits after registering. In 1999, 0.9% of people in married couples received SSI payments according to the Census, and 0.6% received some form of public assistance.

To estimate the impact of the FEA on the State's welfare expenditures, therefore, we estimate how much of the $300 million is received by couples who are likely to register as partners and then lose eligibility. We make several adjustments:

- First, we assume that 22-44% of couples will register.
- Second, we assume that the same proportion of people in domestic partnerships will retain eligibility and will therefore continue to receive these benefits as do people in married couples.
- We also take into account inflation since 1999 to bring the estimate into 2002 dollars.[21]
- And finally, we take into account the state share of SSI spending, which was 11.7%.[22]

Depending on the proportion of couples who register, the State could save $50 to 100 million in public assistance expenditures, as shown in Table 3.[23] The savings will be somewhat less if the State can only take into assess eligibility based on domestic partners' resources for WFNJ/TANF and Medicaid. As a lower bound, adding the estimates of current spending on WFNJ/TANF and Medicaid suggests that the state will save from $46.2 to 92.4 million if the FEA is enacted.

Table 2: Public assistance for people in partnerships

	Same-sex Partners	Different-sex Partners	Unmarried Partner Total
SSI	$ 6,054,115	$ 22,135,900	$ 28,190,015
Public assistance	$ 2,140,401	$ 20,624,180	$ 22,764,581
Medicaid[24]	$ 23,459,488	$ 226,047,678	$ 249,507,166
NJ KidCare, FamilyCare[25]	$ 1,917,240	$ 18,473,874	$ 20,391,114
Total by couple type	**$ 31,654,004**	**$ 268,807,758**	**$ 300,461,762**

Proportions of individuals in couples receiving assistance

SSI	2.3%	1.4%
Public assistance	1.7%	2.6%

Table 3: Estimates of state savings in public assistance programs

	Partner registration rate	All programs	WFNJ/TANF only	WFNJ/TANF and Medicaid only
Same-sex	22%	$ 4,192,430	$ 318,607	$ 3,810,643
	33%	$ 6,288,645	$ 477,911	$ 5,715,965
	44%	$ 8,384,860	$ 637,214	$ 7,621,287
Different-sex	22%	$ 45,769,808	$ 3,544,167	$ 42,389,379
	33%	$ 68,654,712	$ 5,316,250	$ 63,584,068
	44%	$ 91,539,616	$ 7,088,333	$ 84,778,758
Total	22%	$ 49,962,238	$ 3,862,774	$ 46,200,022
	33%	$ 74,943,357	$ 5,794,161	$ 69,300,034
	44%	$ 99,924,476	$ 7,725,547	$ 92,400,045

4. Fiscal Impact of Treating Domestic Partners of State Employees Equally

The State of New Jersey currently provides certain fringe benefits to its employees that also cover legal spouses. In particular, the State subsidizes health insurance benefits for spouses and provides certain retirement-related benefits and death benefits to the spouses of employees and retirees. The New Jersey Family Equality Act will make state employees' registered domestic partners eligible for those spousal benefits. As a result, the number of people covered by the State's policies will rise, as will the total cost of providing those benefits. However, applying realistic estimates of the number of new domestic partners covered in the context of the State's current expenditures reveals that the increase in costs will be small relative to current spending: $7 million, or roughly 0.7% of current spending on health care benefits.

Health and dental benefits for active employees

The State Health Benefits Program (SHBP) includes medical coverage, prescription drug coverage, and dental coverage through a variety of plans. Employees (active employees and, in some cases, retirees) and their legal spouses and children are covered by the state plan. These benefits are funded by employee contributions and by state contributions.

We use two methods to estimate the number of domestic partners who would enroll. First, Census 2000 allows us to calculate the number of people who are in same-sex or different-sex partnerships who also report being state employees.[26] According to the Census, there were 1,468 state employees reporting a same-sex unmarried partner and 7,732 reporting a different-sex unmarried partner. If 22% or 44% register as domestic partners, as in California or Vermont respectively, then 2,024-4,048 state employees will have domestic partners.

However, not all of these registered partnerships would result in new family members for the State to cover. Some partners of state employees will have insurance coverage through their own employers or another source, and still others may prefer not to incur the increase in taxable income that will result, since the IRS considers the employer share of benefits for domestic partners to be taxable income of the employee.

An alternative estimate that takes those factors into account uses the fact that the neighboring New York State government has offered domestic partner benefits to its employees since 1995. According to their Division of Employee Benefits, approximately 1% of their employees have signed up a partner.[27] One-quarter of partnered employees have same-sex partners, and three-quarters have different-sex partners. In 2002 the SHBP covered 106,766 active employees,[28] so an experience similar to New York State would mean that 1,068 employees would add a partner to their coverage. This estimate is likely to be closer to the actual experience of the State and is consistent with Census figures.

We estimate the additional cost of covering these partners and their children by predicting the State's increase in benefits cost (using monthly rates for 2003) for each new partner and partner's children.[29] The analysis requires knowing what kind of coverage categories the employees are currently in and which categories they will move to when their partners become eligible, since it is the category of coverage that determines the State's contribution. We must make several reasonable assumptions to proceed:

a) Employees with domestic partners are distributed across the different plans in the same proportion as are current employees.

b) Twenty-five percent of newly covered partners will be same-sex partners (267 people) and 75% will be different-sex partners (801 people).

c) State employees with domestic partners will already have covered children in the same proportion as those in Census 2000. In Census 2000, 10.1% of New Jersey residents who are state employees with same-sex partners have one child under 18 living at home, and another 10.1% have more than one child. The comparable figures for different-sex partners are 17.7% and 16.6%, respectively.

d) The State's bill for payroll taxes (7.65% of payroll for social security and Medicare benefits) will also rise for each new partner added, since the value of domestic partner benefits is considered taxable income in most cases.

e) State employees receiving partner benefits will pay state income tax on the value of the domestic partner benefits, at a rate of 5.525%. That rate is the marginal tax rate for someone filing as single for 2002 with the median salary of full-time state employees, which was $40-45,000 per year.[30]

To illustrate how these assumptions work, consider the following example. In 2002, 57.4% of state employees were enrolled in the NJ Plus health care plan. Therefore, we assume that 57.4% of the 267 employees who will enroll a same-sex partner are in the NJ Plus plan. There are four kinds of category changes that we predict:

(1) From the Census, we assume that 79.7% of employees and 79.7% of partners have no children and will therefore move from the "Single" coverage category to the "Member & Spouse" category, adding $300.93 per month to the state's cost (the difference between the State's contribution for single coverage and for "Member & Spouse" coverage).

(2) We assume that 20.2% of partners will bring children, so those employees will move from single to "Family" coverage.

(3) Also from the Census, we assume that the 10.1% of those employees with one child and with a same-sex partner will move from the "Parent & Child" category to the "Family" category.

(4) Finally, 10.1% of those state employees with a same-sex partner have more than one child in the home, so we assume that those employees are already in the "Family" coverage category, which means that adding a partner will not add to the State's required contribution.

Applying these assumptions to all 1,068 employees who are predicted to add a partner to the three State Health Benefits Programs results in a total increase in state contributions of $3.9 million for active employees, as shown in Table 4. Performing similar calculations results in an estimated increase for the state contributions to the prescription drug benefit of $1.3 million and to the dental plan of $134,000.

Health benefits for retirees

The SHBP also provides health benefits for qualifying retirees, including state employees and teachers. In 2002 the State paid all of the coverage cost for 66,316 employees.[31] The state pays 50-80% of the cost of coverage for an additional 3,469 retirees.

Retirees have several plans to choose from, so again we assume that the distribution of new domestic partners is proportionate to the existing distribution of retirees across the different plans, and we assume that 25% of the partners are same-sex and 75% are different-sex.

We simplified some of the assumptions used for active employees, however. In particular, we assumed that adding a partner meant simply moving from the single category to the member and spouse category. We also assumed that 1% of retirees would be or would have been partnered, but that the proportion of dependents covered to retirees would be the same as for existing retirees. In 2002, each retiree had on average 0.61 dependents, so we similarly assumed that every ten partners would only result in six newly covered partners. In other words, we assume a lower take-up rate for partner benefits among retirees, which is consistent with the lower take-up rates among partners of California state retirees, for instance.[32] Finally, for those retirees with partial subsidies from the state (mainly public safety retirees), we assume that the State pays 65% on average.[33]

The rate structure is somewhat more complicated for retirees, since the rates depend on whether one, both, or no covered persons are covered by Medicare. If all retirees with partners were on Medicare and their partners were on Medicare, the estimated increase in state costs is $1.3 million. The most expensive scenario for the State would be if neither partner were on Medicare, in which case the State's costs would rise by $2.8 million. If the couples have mixed statuses, the increases fall in between.

Since we do not know how these couples would look, we take the average of the two extreme figures as our estimate, or $2.06 million.

Summary of additional expenditures on health-related benefits

The final step in estimating the costs to the state on health benefits programs is to account for a partially offsetting increase in state income taxes. Since the IRS considers employer payments for benefits that go to partners to be taxable income, the state employees who add partners will pay for that privilege. As noted earlier, a state employee with a salary in the middle of the state's salary range, $40-45,000 per year, would be in the 5.525% tax bracket if filing as single. We assume that, on average, state employees will be paying taxes at that rate on the value of the State's contribution. This returns approximately $412,000 to state coffers, as shown in Table 4.

The net cost to the State from all programs, then, is approximately $7 million. To put this in perspective, in 2002 the State's total benefit expenses for all three programs amounted to $921 million,[34] so adding domestic partners would increase costs by 0.7%.[35]

Table 4: Estimated cost of benefits for state employees' domestic partners

	Same-sex	Different-sex	Subtotal
Medical benefits	$ 1,033,320	$ 2,901,933	$ 3,935,253
Increase in enrollment	267	801	
Prescription benefits	$ 358,075	$ 975,850	$ 1,333,925
Increase in enrollment	267	801	
Dental benefits	$ 32,506	$ 101,914	$ 134,420
Increase in enrollment	237	710	
Retiree Health Care	$ 516,234	$ 1,548,701	$ 2,064,935
Increase in enrollment	107	320	
Subtotal	$ 1,940,135	$ 5,528,399	$ 7,468,534
Income tax offset	$ 107,192	$ 305,444	$ 412,636
Net cost	**$ 1,832,943**	**$ 5,222,955**	**$ 7,055,897**

Survivor benefits for retirees

The State of New Jersey has five defined benefit pension funds that are specifically required by the FEA to treat domestic partners in the same way as spouses are now treated:

- Teachers' Pension and Annuity Fund (TPAF)
- Public Employees' Retirement System (PERS)
- Police and Firemen's Retirement System (PFRS)
- State Police Retirement System (SPRS)
- Judicial Retirement System (JRS)

A potential fiscal impact arises because the FEA will make domestic partners eligible for any survivor or death benefits currently going to spouses.

Depending on their retirement system, state employees receive several different kinds of benefits that would go to survivors upon the death of the employee. We consider the impact of the FEA on each kind of benefit.[36]

(1) Group life insurance: On the death of an active (i.e. non-retired) employee or a retired employee, the employee's beneficiary receives a life insurance payout. The State pays for a group life insurance policy for all state employees who are members of a retirement system. Employees may designate any person as the beneficiary of that policy. Therefore, an employee may already designate a domestic partner as beneficiary, so the FEA changes nothing and results in no additional costs to the state for life insurance provision.[37]

(2) Return of member contributions: In two systems (TPAF and PERS), if an active employee dies, the member's contributions are paid to a named beneficiary. Since that beneficiary could be a domestic partner, the FEA again changes nothing and results in no additional cost to the state.

(3) Optional survivor pensions: In three retirement systems (TPAF, PERS, and JRS), retiring members may opt for a "joint and survivor" benefit at retirement, which involves taking reduced payments so that a survivor can continue a payment after the retiree's death.[38] Retirees have eight different options for structuring the joint and survivor payments. In each case the survivor can be either a spouse or a non-spouse, although in some options a non-spouse survivor must be within a particular age range of the retiree. Since a domestic partner could already be designated as a survivor, the FEA should have no affect on the state's liability in these systems.

(4) Job-related accidental death survivor benefits: When an employee dies from an accident suffered while performing job duties, spouses may be eligible for a survivor benefit of an annual pension. The accidental death pension is a proportion of the employee's final salary and varies across the five plans. For eligible spouses (until they remarry) the pension ranges from 25% in the JRS, to 50% in the TPAF and PERS, to 70% for police and firefighters (both PFRS and SPRS). If there is no spouse, or if the spouse remarries, then children of the employee would receive a benefit.[39] If there are no children, the dependent parents of the employee would receive a smaller pension. If there are no spouses, children, or dependent parents, then in the three systems that have statutory survivor benefits (see below), the employee's pensions contributions would be paid to a named beneficiary. The FEA would require the retirement funds to pay the same pension to a domestic partner in the case of the accidental job-related death of an employee, which could increase the state's pension costs.

However, for several reasons the new eligibility of domestic partners is likely to have virtually no impact on the state's expenditures related to accidental death benefits. First and foremost, these deaths

are extremely rare, and the likelihood of an employee with a partner experiencing a qualifying accidental death is even smaller since we predict that only 1% of employees have registered partners. In Fiscal Year 2002, for instance, only 4 such deaths occurred among the more than 44,000 members of the Police and Firemen's Retirement System,[40] which is made up of employees in the most hazardous occupations. Second, some employees with domestic partners do have children or dependent parents who would receive benefits under current law, lessening the impact of giving pensions to domestic partners. Third, when an employee has no spouse or other qualified dependents, the employee's beneficiary – who could now be a domestic partner – would receive the employee's pensions contributions, again lessening the additional costs possible under the FEA. For these reasons, we assume that any increase in the state's pensions expenses from providing an accidental death pension to a domestic partner would be zero.

(5) Statutory survivor benefits for active and retired employees: Members of three retirement systems (JRS, PFRS, and SPRS) receive a statutory death benefit that goes to a spouse, to children, or to surviving parents, in that order of priority. Spouses stop receiving benefits if they remarry and children stop receiving benefits when they turn 18 or 24 (depending on their enrollment status in high school or college).[41] When an active employee dies in these systems, if no such qualified survivor exists, a named beneficiary receives the deceased member's pensions contributions. Making domestic partners eligible for such benefits would increase the liabilities of the pension system since more people would be eligible for a survivor benefit.

Unlike in the case of the accidental death survivor benefit, the likelihood of some domestic partners becoming eligible for such benefits is almost certain. Assessing the cost to the pension system, and therefore to the state, of this expansion in coverage depends on several factors: (1) the number of domestic partners who will receive a pension as the result of the FEA; (2) the difference in the partner's pension when compared with pre-FEA payments to other possible survivors or to a named beneficiary; and (3) the share of the higher pension fund costs that will be paid by the state.

While each factor is difficult to estimate with precision, we can get an idea of the potential order of magnitude. We can predict the number of newly covered partners receiving a survivor benefit by assuming (as in the health insurance analysis) that 1% of employees have a registered partner who would become eligible for a statutory survivor benefit. In that case, then the number of survivors receiving these death benefits would increase by approximately 1%, as well. In the most recent available data, 121 beneficiaries of state employees receive "active members' death benefits" and 657 beneficiaries received "retired members' death benefits."[42] An increase of 1% results in benefits being paid to an additional 8 people, a conservative estimate that may overestimate the number of new beneficiaries, since employees with domestic partners might have children or parents who already qualify. The "average annual allowance" paid to those individuals was $22,931, again an overestimate of the additional cost for each new beneficiary since a smaller benefits might already be paid out. The total additional expenditures for all three systems would be $179,776 per year. However, this estimate

is likely to be too high, since some employees with partners will have children or dependent parents who would not receive benefits if a domestic partner qualified.

The final question is who would pay for the additional $180,000 (or less) per year.[43] Retirement benefits are funded by contributions of employees, contributions of the State as employer, and net investment returns from the system's reserves. According to the Employee Benefits Manual, essentially, the employer is responsible for filling the gap between the funds needed to meet the retirement system obligations and those available from employee contributions and investment earnings on system assets.[44]

In 1997 the State sold bonds that were used to cover the unfunded liabilities in the State's pension funds. Since then, in most of the last five years the State has not made contributions into any of the pension funds, as the system's current assets exceeds liabilities. Each of the three relevant pension funds is more than fully funded, with funded ratios of 101.8% (JRS), 100.9% (PFRS), and 112.5% (SPRS). In this context, and remembering that the estimated new partner pensions are likely an overestimate, this FEA-related potential increased liability of $180,000 per year across the three systems is unlikely to result in an increase in the State's contribution to the retirement systems.

5. State's Loss of Tax Revenues from the Transfer Inheritance Tax

The New Jersey Family Equality Act will impact the amount of revenues that the State collects from its transfer inheritance tax. We estimate, conservatively, that the FEA will annually decrease revenues from the transfer inheritance tax by $4.3 to $8.6 million.

The New Jersey transfer inheritance tax is not paid by the estate of the deceased, but rather by the individuals who actually receive property from the estate. The rate and amount of the tax depends upon the beneficiary's relationship to the decedent. A spouse, child, grandchild, parent, and grandparent of the decedent are all considered Class A beneficiaries and pay no transfer inheritance tax. On the other hand, distant relatives and friends of the decedent are considered Class D beneficiaries and subject to a taxation rate of 15% on any bequest between $500 and $700,000 and a rate of 16% for any amount in excess of $700,000.[45] Under current law, an unmarried partner of a decedent would be considered a Class D beneficiary and subject to the consequent transfer inheritance tax rate.

The FEA changes this taxation structure by making domestic partners equivalent to spouses, Class A beneficiaries exempt from the transfer inheritance tax.[46] This change will result in a reduction of revenues from the transfer inheritance tax to the extent that those who would register as domestic partners under the FEA are currently leaving bequests to their partners.

Estimating the FEA's precise impact on inheritance tax revenues is difficult. In addition to the difficulties with estimating the number of unmarried couples registering as domestic partners under the FEA, such couples will vary in terms of the size of their estates, the extent that they currently choose to leave all or part of their estates to their partners, the other beneficiaries to their estates, and the measures they take to mitigate the taxation of transfers to their partners. Accordingly, we estimate the impact of the FEA on inheritance tax revenues using the most recent and reliable aggregate data available about unmarried, cohabitating couples, and the most conservative (tax generating) assumptions about them.

Mortality of Domestic Partners

To determine the FEA's impact on inheritance tax revenues, we first must estimate the number of individuals in registered domestic partnerships under the FEA who will die each year. To do so, we first double the number of unmarried, cohabitating same and different sex couples in New Jersey counted in Census 2000 (16,604 and 134,714, respectively)[47] to determine the number of individuals in those couples. We then use New Jersey's annual age-adjusted death rate (.0085)[48] to estimate the mortality rate for individuals in these couples.

Next, we reduce our estimates to account for the fact that the majority of people die intestate. We remove them from our analysis because the FEA will not have any impact on the inheritance tax paid

by such decedent's beneficiaries. Domestic partners are not currently included in New Jersey's intestate succession,[49] and the FEA does not alter that. Thus, an intestate decedent's partner would not receive any inheritance and would have no inheritance tax liability under current law or under the FEA.

Accordingly, we remove from our analysis an estimate of the percentage of people who will die intestate. Studies estimate that between 50% to 80% of Americans die intestate.[50] We chose the conservative estimate of 50% in order to account for several variables that are difficult to quantify. On reason for using a conservative estimate is that wealthier individuals are more likely to have a will.[51] Thus, the estates that generate the largest inheritance taxes will most likely be estates of decedents who have a will. These decedents (of course, since no part of the estate will pass to the partner of an intestate decedent) are more likely to leave money to their partner, who will then have to pay inheritance tax. In other words, many of those dying intestate will have smaller estates which generate a smaller proportion of inheritance tax revenues.

However, this bias is offset by several factors. First, the very reason that people with larger estates are more likely to have a will is because they are seeking to reduce or eliminate death taxes. For these persons, a will is one component of estate planning intended to preserve the value of their estate and minimize federal and state death taxes. For example, individuals in unmarried couples have a number of ways of reducing inheritance taxes, including leaving some or all of their estates to Class A beneficiaries, purchasing life or estate tax insurance policies, and creating irrevocable trusts or otherwise making in vivo transfers to their partners.

In addition, several characteristics about unmarried couples indicate that they are less likely to have a will than the average person. Individuals in unmarried, cohabitating couples are, on average, younger and less wealthy than married individuals.[52] Younger persons, unmarried persons, and persons with smaller estates are more likely to die intestate.[53] In short, by using the lower estimate of 50% for individuals in unmarried couples who die intestate, we off-set the fact that wealthier individuals are more likely to have wills.

Next, as explained above, we take into account that not all unmarried couples will register as domestic partners. Based on this analysis, we estimate that between 283 and 566 individuals in a registered domestic partnership with wills will die each year.

Table 5: Estimated Registered Domestic Partners, with a Will, who will Die Annually.

	Individuals in Unmarried Couples	Dying Annually	Dying with a Will	22% Register	33% Register	44% Register
Same-Sex	33,208	282	141	31	47	62
Different-Sex	269,428	2290	1145	252	378	504
Total	**302,636**	**2572**	**1286**	**283**	**425**	**566**

Median Transfer Inheritance Tax for Surviving Unmarried Partners

Next, we must estimate the median tax that is currently being paid by decedents' surviving unmarried partners. For this analysis, we use the median net worth of households in the United States from the 2001 Survey of Consumer Finances.[54] We do not use the median net worth for all couples, but instead the median net worth for couples falling into five percentile groups in terms of net worth. This allows us to capture the fact that, depending on the size of the decedent's estate, some surviving unmarried partners will pay no inheritance tax while others will pay a great deal. We then divide the median household net worth for each percentile group by two, assuming that unmarried couples roughly share the assets and liabilities in their households.[55]

Next, we reduce the estimated value of these estates by the three primary sets of deductions to the inheritance tax: 1) unpaid debts of the decedent, 2) probate expenses, and 3) funeral expenses.[56] The first set of deductions, debts, are already accounted for in our analysis by our use of median net worth to estimate the decedent's estate. For the second set of deductions, we use estimates of the average cost to probate an estate in the United States, 2% to 10% of the value of the estate.[57] Since New Jersey is a probate friendly state, we use 5% of the value of the estate as an estimate of the average probate cost.[58]To estimate funeral expenses we use the current average cost of an adult funeral in the United States, $5180.[59]

In order to determine the decedent's bequest to his or her unmarried partner, we next take into account two common types of bequests that do not generate inheritance taxes, those to the decedent's children and charities.

Many of the couples that will register as domestic partners under the FEA have children: 30% of households with unmarried same-sex couples in New Jersey have children under 18 present in their households and 41% of households with different-sex couples.[60] Overall, approximately 40% of unmarried couples (same and different sex) couples in New Jersey have children under 18.[61] Some individuals in these couples will leave all or a portion of their estate to their children.

It is difficult to estimate how many individuals will bequeath all or a share of their estate to their children. Studies of married couples reveal a majority of married testators, 50% to 85%, leave everything to their surviving spouse, even when they have surviving children.[62] However, unmarried couples probably leave bequests to their children at higher rates than married couples. This is likely because doing so will avoid New Jersey's transfer inheritance tax and, for some, the federal estate tax. In addition, individuals in such couples have a greater incentive to transfer assets directly to their children because their surviving partner, in many cases, will have no legally recognized relationship and consequent obligation to care for such children.

For our analysis, we make the conservative assumption that only 10% more individuals in

unmarried couples will make bequests to their children than the lowest estimate of married individuals who make transfers to their children. Thus, we assume that 25% of individuals in unmarried couples with children will leave a portion of their estate to their children. We estimate that, on average, these individuals will leave half of their estates to their children.[63] We then calculate a weighted average for bequests to children, 5%, for all individuals in unmarried partnerships.[64]

Next, we account for the fact that many individuals, particularly those with larger estates, will have charitable bequests, the largest form of bequest except for bequests to surviving spouses.[65] Both New Jersey and the IRS exempt such bequests from taxation.[66] While a recent study revealed that 8% of the population have included charitable bequests in their estate plans,[67] the best information about charitable bequests comes from federal estate tax returns, which in recent years have only been required for estates worth over $600,000. The data about such returns indicate that the frequency and size of charitable bequests increase with the value of the estate.[68]

Accordingly, we only calculate a charitable deduction for our top quartile of individuals. We assume these individuals will have charitable bequest patterns similar to decedents filing federal estate tax returns: on average 17% will make charitable bequests and such bequests will be 29% of their net estate.[69] We use these statistics to create a weighted average charitable deduction of 5% for all decedents falling in our top quartile.

After these deductions are taken out, we make two very conservative assumptions. First, we assume that the remainder of the decedent's estate will be left to their unmarried partner. Second, we assume that the decedent has deployed no other estate planning strategies to reduce their surviving partner's inheritance tax liability, or the tax liability of their estate in general. It is quite likely that in order to avoid inheritance taxes, decedents with unmarried partners, especially wealthy ones, leave portions of their estate to other Class A beneficiaries and take other measures to reduce their unmarried partners' tax burden.

Finally, to estimate the median tax burden for surviving unmarried partners in each percentile group, we multiply the Class D taxation rate, 15%, with our estimated median bequests to surviving unmarried partners.

Table 6: Estimated Median Transfer Inheritance Tax for Unmarried Partners by Percentiles based on Household Net Worth ($)

Percentile Group by Net Worth	A Medium Household Net Worth	B Individual Net Worth (A*.5)	C Probate Expenses (B*.95)	D Funeral Expenses (C-5180)	E Bequests to Children [D-(B*.05)]	F Charitable Bequests [E-(B*.05)] (top 25%)	G Tax (F*.15)
Less than 25%	1,100	550	522.5	0	0	0	0
25%-50%	40,800	20,400	19,380	14,200	13,180	13,180	1,977
51%-75%	156,600	78,300	74,385	69,205	65,290	67,290	9,794
76-90%	430,200	215,100	204,345	199,165	188,410	177,655	26,648
91-100%	1,301,900	650,950	618,403	613,223	580,676	548,128	82,219

Aggregate Impact on Transfer Inheritance Tax Revenues

To determine the aggregate impact of the FEA on transfer inheritance tax revenues, we multiply our estimated number of domestic partners dying under the FEA by our estimate of the median tax burden for surviving partners in each percentile group. We do this by dividing the estimated numbers of such decedents into our net worth percentile groups, and then multiplying them by the median tax burden for each group. We then add the aggregate tax burdens for each group together to estimate the FEA's overall impact on transfer inheritance tax revenues.

Accordingly, we estimate that the FEA will result in a loss of transfer inheritance tax revenues of $470,017 to $940,035 from same-sex domestic partners and of $3,820,786 to $7,641,572 from different-sex domestic partners. Thus, using the most conservative assumptions available, we estimate that the FEA will result in a loss of transfer inheritance tax revenues of $4.3 to $8.6 million. This represents a loss of approximately 1% to 1.5% of New Jersey's current net revenues from its transfer inheritance and estate taxes.[70]

Table 7: Aggregate Loss in Transfer Inheritance Tax Revenues from FEA for New Jersey

Unmarried Couples	**22% Register**	**33% Register**	**44% Register**
Same Sex	470,017	712,607	940,035
Different Sex	3,820,786	5,731,179	7,641,572
Total	**4,290,804**	**6,443,786**	**8,581,607**

6. Summary and Conclusions

Using data from New Jersey residents in Census 2000 and drawing on the experience of other states, we have been able to quantify the likely fiscal effects of the Family Equality Act. Out of the rights and benefits provided to domestic partners in the FEA, only three appear to have any fiscal significance:

- The State will likely save from $46 to $92 million in avoided public assistance expenditures.
- Covering the health insurance of domestic partners of state employees and retirees will add approximately $7 million in state expenditures. Making domestic partners eligible for spousal survivor benefits will probably not result in any increase in state expenditures.
- The State will also experience a loss in transfer inheritance tax revenues in the range of $4.3 to 7.8 million range.

It is clear from our analysis that the FEA will have a positive impact on the state budget. Even if our predictions about the State's savings from public benefits are too high, we could cut our smallest estimate for those savings by two-thirds and there would still be enough savings to off-set our highest projections for the additional costs of providing employee health benefits and the potential loss in inheritance tax revenues.

Table 8: Summary of Fiscal Effects

	Net impact
Savings on public assistance (midpoint)	69,300,034
Cost of health care benefits	-7,055,897
Lost transfer inheritance tax revenues (midpoint)	-6,443,786
Total	**$55,800,351**

As Table 8 shows, the net impact of the FEA is over $55 million in fiscal savings each year. We conclude that the Family Equality Act will provide material support to many New Jersey families without placing a strain on the state budget.

Acknowledgements

We thank several people for their help with this report. Angela Arabia-Meyer provided research assistance, and Elizabeth Silver helped with analyzing public assistance benefits and made comments on drafts. We thank the Evelyn and Walter Haas, Jr. Fund and the New Jersey Lesbian and Gay Coalition, with the Human Rights Campaign, for funding.

1. This conclusion is also based on the assumption that few dissolutions will occur. That assumption is consistent with Vermont's experience with dissolutions of civil unions, in which fewer than 1% per year have dissolved. Telephone interview with Richard McCary, Office of Vital Records, Department of Health, May 14, 2003.
2. Vermont reported that implementation of their more extensive civil union legislation involved some additional agency time in the six months following passage, but that no additional staff was required. Vermont Office of the Legislative Council, Report of the Vermont Civil Union Review Commission, 2002, pp. 8-9. The fees required by the FEA would also help to offset any administrative costs.
3. If the provision encourages employers to offer benefits to partners, the fact that the IRS considers the value of employer contributions to partner benefits to be taxable income would mean a positive fiscal effect for the state.
4. The Census Bureau asks households to designate one person as the "householder" and then to report each other person in the household in relationship to the householder. So for example, Joe is listed as householder for his household, Jane is listed as his spouse, Joe Jr. as child of householder, etc. Householders can now also designate another person as their "unmarried partner," a designation widely assumed to mean a more interdependent and committed personal relationship, unlike "roommate" or "boarder", which are two other possible designations.
5. We use our own calculations from the 5% Public Use Micro Sample from the U.S. Census Bureau.
6. California allows different-sex couples to register as domestic partners only if one partner is 62 or older.
7. The Work First New Jersey Program includes the state's General Assistance program.
8. Most of an SSI grant funding comes from the federal government, with the state providing a small supplement.
9. For definition of the TANF assistance unit, see NJAC 10:90-2.7. The Food Stamp program is an apparent exception, since benefits are determined with respect to a household.
10. The Act defines basic living expenses as "the cost of food and shelter and any other cost, including but not limited to, the cost of health care, if some or all of the cost is paid as a benefit because a person is another person's domestic partner." This provision implies that if an applicant's partner's employer offered domestic partner coverage, then the employed partner would be required to enroll the applicant.
11. DOMA is a federal law that limits the definition of "spouse" in all federal laws and regulations to refer "only to a person of the opposite sex who is a husband or a wife." Pub. L. 104-199, sec 1, 100 Stat. 2419 (Sep. 21, 1996) codified at 1 U.S.C. §7 (1997). "Spouse" is the term used to specify individuals whose assets and income may be counted for SSI and Medicaid eligibility purposes. Thus, arguably, DOMA would prohibit the state from interpreting the term spouse in the regulations to include same-sex domestic partners. This issue has arisen in Vermont with respect to that state's treatment of couples in a civil union within the Medicaid program. Federal officials have not yet issued a formal opinion on whether a civil union partner could be treated as a spouse. David Mace, *Critics Say Rule Change Violates Civil Unions*, The Times Argus, Barre, VT April 17, 2003.
12. See, e.g., N.J.S.A. 30:4D-2 (Medicaid benefits shall be "last resort benefits.").
13. For example, federal law mandates that states must "take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under" Medicaid and to seek reimbursement in cases "where such legal liability is found to exist." 42 U.S.C. 1396a.
14. N.J.S.A. 30:40D-3(m)("Third party means any person…who is or may be liable in contract, tort, or otherwise by law or equity to pay all or part of the medical cost of injury, disease, or disability of an applicant for or recipient of medical assistance payable under this act.").
15. See generally, Centers for Medicare and Medicaid Services, State Medicaid Manual, 3900-391010.15., 3900.1 and 3900.2 (2003).
16. Division of Medial Assistance and Health Services, Medicaid Only Manual, N.J.A.C. 10:71, p. 59 (May, 17, 2002) ("whenever the sponsor of an alien is subject to deeming provisions (see N.J.A.C. 10:71-5.8) any countable resources of the sponsor in excess of the appropriate resource limit…shall be considered to be the resources of the alien in addition to whatever resources the alien has.").
17. Wording from the Census questionnaire, published in U.S. Dept. of Commerce, U.S. Census Bureau, "Public Use Microdata Sample, 2000 Census of Population and Housing, Technical Documentation," issued April 2003, p. D
18. U.S. House of Representatives, Committee on Ways and Means, The 2000 Green Book, Oct. 6, 2000. http://www.aspe.hhs.gov/2000gb/sec7.txt, accessed 10/27/03, Table 7-18. Cash and work-based assistance expenditures in NJ, FY1999: $302 million.
19. In a later step we account for the fact that only 11.7% of SSI benefits in New Jersey are provided by the state.
20. Robert Moffitt, "Incentive Effects of the U.S. Welfare System: A Review," *Journal of Economic Literature*, Vol. 30, March 1992, pp. 1-61. See discussion on pp. 27-31.
21. We use the CPI-U from 1999 to 2002 to adjust the figures.
22. U.S. Department of Health and Human Services, "2002 Indicators of Welfare Dependence," Appendix A: Program Data, http://www.aspe.hhs.gov/hsp/indicators02/appa-ssi.htm#SSI, accessed 10/28/03.
23. Estimated savings from people losing eligibility were calculated, for example for public assistance by people in same-sex partnerships, by multiplying current spending times 0.22 x (1 - .9/2.3) x 1.0798 (the inflation factor).
24. Total Medicaid spending in NJ FY2001: CMS/CMSO September 2002.
Centers for Medicare and Medicaid Services, Data Compendium, September 2002. http://cms.hhs.gov/researchers/pubs/datacompendium/2002/02p72.pdf,

accessed 10/27/03.

25. NJ KidCare and NJ Family Care: New Jersey Comprehensive Annual Financial Report, Fiscal Year ended June 30, 2002, p. 8. www.state.nj.us/treasury/omb/publications/, accessed 10/29/03.

26. Respondents are not asked to report which state employs them, however. It is possible that some New Jersey residents could be employed by neighboring states, making this calculation an overestimate of the number of affected state employees. It is also possible, though, that there are New Jersey employees in other states who are missed by this calculation. Our analysis assumes that the two numbers are either quite small or are balanced out.

27. Phone conversation with Christine Williams, New York State Department of Civil Service, Division of Employee Benefits.

28. As of June 30, 2002. See Fiscal Year 2002 Annual Report, State Health Benefits Program, New Jersey Division of Pensions and Benefits, p. 14.

29. Given the experiences of other employers that offer domestic partner benefits, we assume that there will be no increase in overall premiums. See M. V. Lee Badgett, "Calculating Costs with Credibility: Health Care Benefits for Domestic Partners," *Angles*, Institute for Gay and Lesbian Strategic Studies, November 2000.

30. New Jersey Department of Personnel, Workforce Profile 2002, http://www.state.nj.us/personnel/policy2002/26.pdf, Accessed October 21, 2003.

31. See "Fiscal Year 2002 Annual Report," op cit.

32. See M. V. Lee Badgett and R. Bradley Sears, "Equal Rights, Fiscal Responsibilities: The Fiscal Impact of AB205 on California's Budget," Williams Project on Sexual Orientation Law, UCLA, and the Institute for Gay and Lesbian Strategic Studies, 2003, p. 22, note 36.

33. Another much smaller group of employees pays about 25% of the premium for the Traditional plan, which we also take into account.

34. See "Fiscal Year 2002 Annual Report," op cit.

35. Collectively, the three funds ended fiscal year 2002 with a Fund Balance of over $26 million.

36. Information on the five different plans come from member handbooks accessed on the New Jersey Dept of the Treasury, Division of Pension and Benefits website: http://www.state.nj.us/treasury/pensions/epbam/pensions/retsys.htm, accessed 10/22/03. Additional information comes from the Employers' Pensions and Benefits Administration Manual, Winter 2003, "Death Benefits", www.state.nj.us/treasury/pensions/epbam/pensions/claims/death.htm#2012, accessed 10/23/03.

37. Employers' Pensions and Benefits Administration Manual, Winter 2003, "Group Life Insurance," http://www.state.nj.us/treasury/pensions/epbam/pensions/claims/gli.htm, accessed 8/22/03.

38. See NJ Department of the Treasury, Division of Pensions and Benefits, "Pension Options" Fact Sheet #5, http://www.state.nj.us/treasury/pensions/fact05.htm, accessed 10/22/03.

39. A recent change allows the widow/widower of a member of the PFRS and SPRS to keep the accidental death pension after remarriage.

40. New Jersey Department of the Treasury, Division of Pensions and Benefits, Police and Firemen's Retirement System, Fiscal Year 2002 Annual Report, p. 5. Note that not all of the members are state employees.

41. Note that the FEA could actually reduce some pension fund expenditures if "remarrying" is interpreted as including the formation of a domestic partnership. More spouse survivors might stop receiving state survivor pensions.

42. NJ Division of Pensions and Benefits, "47th Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2002," p. 185, www.state.nj.us/treasury/pensions/epbam/exhibits/ann-rpts/, accessed 10/23/03. This calculation assumes that the proportion of PFRS beneficiaries receiving death benefits from state employees is equal to the proportion of retired state employees and beneficiaries in the whole system, 7.5% (p. 141 of same document).

43. Note that this total is small in the context of those retirement systems: in the same year, the total benefits paid out to state employees in these systems was over $162 million.

44. Employers' Pensions and Benefits Administration Manual Winter 2003, "Funding the Pension System," http://www.state.nj.us/treasury/pensions/epbam/pensions/funding1.htm, accessed 8/22/03.

45. N.J.S.A. 54:34-2(a)(1),(2) and (d).

46. Family Equality Act, A3743(37)(N.J. 2002-2003 Sess.).

47. Tavia Simmons and Martin O'Connell, *Married-Couple and Unmarried-Partner Households:* Census 2000 Special Reports, CENSR-5, U.S. Dept. of Commerce, Bureau of the Census, page 4, Table 2 (2003).

48. New Jersey Department of Health and Senior Services, New Jersey Health Statistics 2000, Mortality, Table M1 and Figure M1, available on-line at www.state.nj.us/health/chs/stats00/mortality.htm. Using the overall age-adjusted rate most likely overestimates the number of individuals in registered domestic partnerships who will die annually. This is one of the conservative assumptions that we build into this model. The death-rate for individuals in these couples is likely to be lower because younger individuals tend to be in unmarried cohabitating couples, and will have a lower death rate. For example, the data collected in Census 2000 reveals that individuals in different-sex unmarried couples are, on average, over a decade younger than individuals in married couples. Census 2000, New Jersey Long Form Census Data, 1% Public Use Microdata Sample.

49. N.J.S.A. 3B5-1 et. seq.. We assume that the FEA will not have any impact on the likelihood that people in unmarried partnerships will draft a will. Those who fail to draft wills are most commonly persons who have not made any plans about the disposition of their estates. Further, it is not plausible that persons in unmarried couples are currently not drafting wills leaving their partners property because of the 15%-16% transfer inheritance tax (and thus leaving their partners with nothing), but would draft a will and leave their partners property if that tax was removed.

50. See, e.g., Paul M. Insel and Walton T. Roth., eds., Core Concepts in Health, 7th ed., p. 543 (1996) (studies estimate that seven out of ten Americans die without leaving a will); Harvard Law Review Association, *Developments in the Law -- Medical Technology and the Law*, 103 Harv. L. Rev. 1614 , 1618(1990)(eighty percent of people die intestate); Kris Bulcroft & Phyllis Johnson, *A Cross-National Study of the Laws of Succession and Inheritance: Implications for Family Dynamics*, 2 J.L. & Family Studies 1, 24 (2000)(50% of citizens die intestate).

51. The factors that seem to predict a higher likelihood of intestacy are lower socioeconomic status, lower levels of education, younger age, and smaller estate of the decedent. See Deborah A. Batts, *I Didn't Ask to Be Born: The American Law of Disinheritance and a Proposal for Change to a System of Protected Inheritance*, 41 Hastings L. J. 1197, 1270 (1990); Joel R. Glucksman, *Intestate Succession in New Jersey: Does It Conform to Popular Expectations?*, 12 Col. J. of L. and Soc. Problems. 253, 279 (1976).

52. Census 2000, New Jersey Long Form Census Data, 1% Public Use Microdata Sample. For example, the unmarried same-sex households had median incomes that were over $10,000 lower than married couples, were 25% less likely to own a home (the most valuable asset in the estate of most Americans), and had homes that were valued $25,000 less than the homes owned by married couples. Id.

53. Id.; See also, Fisher and Curnette, *Reforming the Law of Intestate Succession and Elective Shares: New Solutions to Age-Old Problems*, 93 W. Va. L. Rev. 61 (1990) (intestate estates are generally smaller than testate estates) and Gerry W. Beyer, *Statutory Fill-in Will Forms -- The First Decade: Theoretical Constructs and Empirical Findings*, 2 Or. L. Rev. 769 (1993) (those with little education and wealth are less likely to have wills).

54. Ana M. Aizcorbe, Arthur B. Kennickell, and Kevin B. Moore, *Recent Changes in Family Finances: Evidence from the 1998 and 2001 Survey of Consumer Finances*, Federal Reserve Bulletin January 2003, pp. 6-7 and Table 3.

55. While a more inequitable distribution obviously exists in many couples, it is also true that it is just as likely that the wealthier individual in a couple will die as the one with less wealth. Thus, over a large group of people, a better estimate of individual net worth, and the subsequent value of an individual's estate upon death, is reached by dividing the household net worth in two and attributing half to each member of the couple.

56. State of New Jersey Inheritance Tax Return, Schedule "D" Deductions, Claimed Resident Decedent, and Instructions for Schedule D, New Jersey Division of Taxation (2002).

57. American Association of Retired Persons, *A Report on Probate: Consumer Perspectives and Concerns* (1990)(concluding that the average cost of probate is between 2% to 10% of the gross estate.)

58. This is also a conservative estimate because the percentages for average probate costs are based on gross estate as opposed to the net worth/estate, which we use in our analysis.

59. National Funeral Directors Association, NFDA Fact Sheets, at www.nfda.org/nfdafactsheets.php (average cost of an adult funeral in the United States is $5180).

60. Tavia Simmons and Martin O'Connell, *Married-Couple and Unmarried-Partner Households: 2000*, Census 2000 Special Reports, CENSR-5, U.S. Dept. of Commerce, Bureau of the Census, p. 9. Table 4 (2003). The percentage used for same-sex households is a weighted average based on this data. Since same-sex couples are 50% male and 50% female in New Jersey, the weighted average is simply the average of males reporting children under 18 present (25.8%) and females reporting children under 18 present (34.7%). Id. The weighted average of 30% does not change depending on whether data regarding the householders own children, or their own children and/or unrelated children is used. For different sex couples, we use data on the householders own children and/or unrelated children, assuming that primarily the children unrelated to the householder will be related to the householder's unmarried partner. For this data, "own children" refers to the sons/daughters of the householder. Id. Use of these statistics will undercount the percentage of decedents with bequests to children, because this data does not capture couples who only have children who are over 18.

61. This is a weighted average. Different-sex unmarried partners are 89% of all unmarried partners in New Jersey and same-sex partners are 11% of unmarried partners. Id. page 9, Table 4 and page 4, Table 2

62. J. Thomas Oldham, *What Does the U.S. System Regarding Inheritance Rights of Children Reveal About American Families?*, 33 Fam. L.Q. 265 (1999).

63. Obviously, some individuals might leave all of their estates to their children while others may only leave a fraction of their estates. We choose 50%, in part, based on our conservative assumption about the percentage of unmarried individuals who are leaving a portion of their estate to their children.

64. Thus, we assume that 60% of individuals in unmarried couples in New Jersey do not have children and will have no bequests to children. Of the 40% that do have children, we assume that three-fourths will leave nothing to their children and that the other one-fourth will leave a bequest of 50% of their estate to their children. Thus, the weighted average for the size of the bequest to children is [(60*0) +(30)(0)+(10)(.50)]/100.

65. *Estate Tax Returns Filed in 2001: Gross Estate by Type of Property, Deductions, Taxable Estate, Estate Tax, and Tax Credits, by Size of Gross Estate*, SOI Unpublished Data, at http://www.irs.gov/taxstats/article/o..id=96422.00html; Gary D. Bass and John S. Irons, *The Estate Tax and Charitable Giving*, OMB, June, 2003.

66. N.J.S.A. 54:34-4(d).

67. National Committee on Planned Giving, Planning Giving in the United States: A Survey of Donors, (2000).

68. *Estate Tax Returns Filed in 2001: Gross Estate by Type of Property, Deductions, Taxable Estate, Estate Tax, and Tax Credits, by Size of Gross Estate*, SOI Unpublished Data, at http://www.irs.gov/taxstats/article/o..id=96422.00html; Gary D. Bass and John S. Irons, *The Estate Tax and Charitable Giving*, OMB, June, 2003.

69. Id.

70. New Jersey Division of Taxation, 2002 Annual Report, p. 17, Table 1-Major State Tax Collections (Net) Fiscal Years 2000-2002 (2002) (2002 figures subject to adjustment). The Family Equality Act will have no impact on New Jersey's Estate Tax, because that tax is applied to the entire value of the holdings left by a person when he or she dies, regardless of how the estate is disbursed to beneficiaries. N.J.S.A. 54:38-1 et. seq.. The Family Equality Act makes no amendment to New Jersey's Estate Tax.

Williams Project Policy Study
November 2003
All rights reserved by the Williams Project and IGLSS.

SUPPORTING FAMILIES, SAVING FUNDS:
A Fiscal Analysis of New Jersey's Family Equality Act

Contributing Researchers
M. V. Lee Badgett, Ph.D.
R. Bradley Sears, J.D.
with
Suzanne Goldberg, J.D.

Layout
John Graves, Eidolon Communications

Policy Studies of the Williams Project are published periodically. This report may not be reprinted without permission, but should be credited to the Williams Project and IGLSS.

The Charles R. Williams Project
on Sexual Orientation Law and Public Policy
UCLA School of Law
Box 951476
Los Angeles, CA 90095-1476
Ph. (310) 794-5279
F (310) 825-6023
www.law.ucla.edu/williamsproject

IGLSS
P.O. Box 2603
Amherst, MA 01004-2603
Ph. (413) 577-0145
F (413) 545-2921
www.iglss.org