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FISCAL IMPACT REPORT

SPONSOR Park DATE TYPED 02/19/05 HB 658

SHORT TITLE Foreign Feduciary Reciprocal Corporate Powers SB _____

ANALYST McSherry

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
NFI	NFI	NFI	\$13.9	Recurring	General Fund

The bill relates to, and partially conflicts with Article 9 Section 58-9-1 through 58-9-13 NMSA 1978 Trust Companies.

SOURCES OF INFORMATION

LFC Files
Regulations and Licensing Department (RLD)
Department of Finance Administration (DFA)
Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

House Bill 658 proposes to allow a foreign fiduciary to act in New Mexico as a trustee, executor, administrator, guardian, or in any other fiduciary capacity, without the necessity of complying with any law of this state relating to the qualifications of foreign banking corporations or regarding to the qualifications of foreign fiduciaries to do business in the state provided the foreign fiduciary is licensed in another state, has a certificate of reciprocity issued from the financial institutions division of the Regulations and Licensing Department (RLD).

The bill provides that a foreign fiduciary would have to file with the financial institutions division for an application for a certificate of reciprocity, appoint the division director as its attorney to receive all legal process in New Mexico, and include a million dollar fiduciary bond for the benefit of the director in order to obtain a certificate of reciprocity.

No physical presence would be allowed to be maintained by the fiduciary in New Mexico unless a certificate of reciprocity is received, and a similar institution is permitted to open a similar office in the state of the foreign fiduciary.

Significant Issues

The Regulations and Licensing Department asserts that federally chartered institutions are already exempt from complying with state law in regards to acting as a fiduciary provided that the institution is licensed by the federal government to act as a fiduciary.

According to the Department of Finance and Administration, the Financial Institutions Division under Regulation and Licensing Department would not have any regulatory authority over the proposed foreign fiduciaries and, as such, no examinations would be conducted and the safety of the citizens of the State of New Mexico could be at risk. The Department also asserts that reciprocity is not allowed in many states.

PERFORMANCE IMPLICATIONS

RLD reports that if no additional FTE's were authorized the additional workload associated with the proposed bill could affect the department's ability to meet performance measures, specifically application turn around time. The Financial Institutions Division's current performance measure require application turn around in thirty days and the division processes over 4300 applications per year.

FISCAL IMPLICATIONS

It is anticipated by RLD that a .5 FTE (office clerk) would be necessary to review and process the applications, and issue certificates of reciprocity with estimated costs approximately \$13,900.00. Estimate was determined with a clerk salary of \$10,400.00 (\$10.00 per hour) for 1040 hours and clerk benefits \$3,432.00 (33% of salary).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

DFA cites Section 58-9-13 NMSA, The Trust Company Act, which would create technical issues conflicting with the proposed bill. According to RLD, the Act does not allow for reciprocity with other states.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The Economic Development Department predicts that should HB658 not be passed, New Mexico financial institutions and banks may not receive equal, favorable treatment and ability to act in a fiduciary capacity in other states.

RLD reports that there will be parity between instate and out of state businesses wishing to do trust business in New Mexico.

EM/yr