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FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/07

SPONSOR Park LAST UPDATED _____ HB 182/aHJC

SHORT TITLE Amend Uniform Trust Code SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal				General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (OAG)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 182 changes “principal beneficiary” to “charitable beneficiary or beneficiaries that receive or are eligible to receive in the aggregate the trust’s largest distribution”. The rest of the changes are clean-up or clarification.

Synopsis of Original Bill

House Bill 182 amends and recompiles New Mexico’s Uniform Trust Code to substantially conform to the Model Uniform Trust Code adopted by the National Conference of Commissioners on Uniform State Laws as revised in March, 2005.

Generally, the new provisions modify the Uniform Trust Code as follows:

1. Modifies definitions including “beneficiary”, “ascertainable standard”, etc.
2. Allows the trust document to designate applicable law;
3. Defines a charitable organization’s rights as a qualified beneficiary;
4. Enacts a venue provision designating the county in which the trust is administered;
5. Modifies sections governing “spendthrift” provisions of a trust to allow certain relatives of beneficiaries to reach the assets for their maintenance or support, and to allow certain creditors and the state or United States to reach the assets. (Spendthrift provisions

generally prohibit creditors from reaching the assets of a trust before they are distributed, and prevent beneficiaries from obligating or transferring those assets before distribution).

6. Provides statutes of limitations for contesting the validity of a trust and for bringing actions against a trustee;
7. Provides remedies for breach of trust (a duty owed to a beneficiary by the trustee);

8. Limits the trustee's liability as a general or limited partner if the trustee holds that interest in their fiduciary capacity;
9. Defines when the new provisions become applicable to trusts and judicial proceedings.

Other modifications conform to the Model Code.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The AGO noted that HB 182 deviates from the Model Code in certain areas. For example, the bill adds language addressing circumstances under which the settler (creator) of a trust may waive the requirement that a trustee inform and report to the beneficiaries regarding administration of a trust. (46A-8-813F). Also, the bill allows a trust to increase the limitation period for bringing judicial action regarding a trust, even if the increased period conflicts with the limitations set forth in the Uniform Trust Code.

DW/nt