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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/19
 LAST UPDATED 3/13/19

SPONSOR Wirth HB _____

SHORT TITLE Uniform Probate Code Changes SB 503/aHJC

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	No Fiscal Implications					

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 395

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment to Senate Bill 503 changes the bill’s amendment to the definition of “disposition or appointment of property” in Section 45-2-804(A)(1) NMSA 1978 to restore the reference in the existing law to a beneficiary designated in a “revocable trust or other” governing instrument.

Synopsis of Original Bill

Senate Bill 503 amends the Uniform Probate Code, 45 NMSA 1978, to

- Add a new section governing the exercise of a power of appointment. A power of appointment generally is created when a testator (person making a will) selects a person who is given authority to dispose of certain property under the will. The new section provides that a general residuary clause in a will or a will making general disposition of all of the testator’s property expresses an intention to exercise a power of appointment held by the testator if specified conditions are met.

- Add a new section governing a power of appointment, which details the circumstances

under which a powerholder's substantial compliance with a formal requirement of appointment imposed in a governing instrument is sufficient.

•Make technical amendments to Sections 45-2-802, 45-2-804, and 45-7-507 NMSA 1978, primarily to make those provisions gender neutral.

SB503 amends the Uniform Powers of Appointment Act, Sections 46-11-101 to 46-11-603, to provide additional flexibility for the holder of a power of appointment by specifying that, absent a contrary intent in the instrument creating a power of appointment, the holder may create a nongeneral power in an appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power.

The bill provides that its provisions apply to a governing instrument created before, on or after July 1, 2019; a judicial proceeding commenced on or after July 1, 2019; and a judicial proceeding commenced before July 1, 2019, unless the court finds that application of a particular provision of the bill would substantially interfere with the effective conduct of the judicial proceeding or prejudice a right of a party.

The effective date of SB503 is July 1, 2019.

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

SB503 is intended to bring provisions of New Mexico's Uniform Probate Code and Uniform Powers of Appointment Act up to date. AOC notes that, as amended by the bill, the provisions more closely conform to the model uniform acts drafted and published by the Uniform Law Commission (ULC).

Sections 1 and 2 of the bill reenact Sections 45-2-608 and 45-2-704 of the Uniform Probate Code, which were repealed effective January 1, 2017, as a result of the enactment of the Uniform Power of Appointments Act. *See* 2016 N.M. Laws, ch. 69, §§ 724, 727.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 395, Uniform Probate Code Changes

BG/sb/gb