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FISCAL IMPACT REPORT

SPONSOR: Parks DATE TYPED: 03/09/01 HB 111/aHJC
 SHORT TITLE: Uniform Trust Code SB _____
 ANALYST: Rael

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
		See Narrative		

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment articulates the Attorney General’s interest in cy pres hearings (when the trust cannot be used for its intended purpose, but rather for the next best purpose).

The amendment also ensures the Attorney General’s authority under the Charitable Solicitations Act. The Charitable Solicitations Act authorizes the Attorney General to monitor, supervise and enforce the charitable purposes of charitable organizations and regulate professional fundraisers operating in this state.

Synopsis of Original Bill

This bill enacts the Uniform Trust Code. The Uniform Trust Code codifies law on trusts and would substantially change the law that applies to trusts from being primarily a body of common law in New Mexico to a statutory law.

The new Uniform Trust Code was recently adopted as a uniform law at the August 2000 meeting of the National Conference of Commissioners on Uniform State Laws. The AOC is unaware of any state that has adopted this new act.

According to information released about the law from the Uniform Law Commissioners, the law is intended to provide guidance where the trust document itself has not provided information. The

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Code is a default act. In those cases where the settlors of the trust (the people who created the trust) have failed to provide guidance, the Code is intended to provide a comprehensive set of rules.

According to the Uniform Law Commissioners, the Code is mandatory only in a few limited circumstances. These include the requirements for creating a trust and the rights of certain creditors (including a child support claimant) of a beneficiary to reach the beneficiary's interest in payment of a claim. Importantly, the Code applies to all existing trusts.

Article 1 contains definitions, a section on what constitutes knowledge for notice purposes, a list of default and mandatory rules, place of administration, ways in which issues can be settled out of court and rules of construction.

Article 2 contains provisions regarding judicial proceedings including the role of the court, jurisdiction over a trustee and beneficiary, subject matter jurisdiction, and venue.

Article 3 contains provisions on representation by one person for another such as holders of general testamentary powers of appointment, fiduciaries and parents, persons who have substantially identical interests or an appointed representative.

Article 4 contains provisions on the creation, validity, modification and termination of a trust. This Article contains the required provisions relating to the creation of a trust. Also included in this Article are provisions on charitable trust, trusts for the care of animals and non-charitable trusts without ascertainable beneficiaries.

Article 5 looks to creditor's claims in spendthrift and discretionary trusts. This Article contains the exceptions to a spendthrift provision for a beneficiary's child, spouse or former spouse who has a judgment or court order against the beneficiary for support of maintenance.

Article 6 is an article devoted entirely to revocable trusts. It contains provisions relating to revocation or amendment of a revocable trust, power of withdrawal by a settlor and provides for a shortened period to contest the validity of a trust that is similar to the shortened statute of limitations for a will proceeding.

Article 7 looks at the office of trustee and contains provisions on accepting or declining trusteeship, trustee's bond, cotrustees, resignation and removal.

Article 8 addresses the duties and powers of a trustee including the duty of loyalty, impartiality, prudent administration, costs of administration, delegation, record keeping, duties to inform and report, discretionary tax saving powers and extensive general powers.

Article 9 is presently reserved for later text.

Article 10 is a section on liability of trustees and rights of persons dealing with the trustee. It contains remedies for breach of trust, damages for breach of trust, attorney's fees and cost, limitation of action against a trustee with a five year statute of limitation, exculpation of trustee, effect of a beneficiary's consent, release or ratification, limitation on personal liability of a trustee, protection of a person dealing with a trustee and certification of trust.

Article 11 contains miscellaneous provisions. It includes a provision to promote uniformity of application and construction and a provision to have it apply to all existing trust relationships. The

Act repeals sections 45-7-101 through 45-7-401 and 46-2-1 through 46-2-19 NMSA 1978. The Act contains a severability clause. The effective date is July 1, 2001.

Significant Issues

The Uniform Trust Code seeks to standardize trust laws around the country in the same way as other uniform laws, such as the Uniform Commercial Code or the Uniform Probate Code, in order to facilitate predictability and standardization. Occasionally, a trust created in one state under a particular state's laws will not be enforceable in the same manner in another state due to differing laws. If all or most states adopt the Uniform Trust Code, this problem will be minimized.

The Administrative Office of the Courts reports as follows:

The uniform version of the Code has been in existence for less than 6 months and does not appear to have been adopted in any other state. There is no existing case law interpreting the numerous provisions of this Code. The impact of the Code could possibly help streamline trust procedure, but there is insufficient information on the Code to be able to speculate on whether this will be the case or not.

The Code is intended to be and is a detailed and comprehensive body of law dealing with trusts. It potentially allows causes of action that either did not previously exist in New Mexico or were more difficult to bring under common law. Further, trusts are a legal mechanism in which beneficiaries often are limited in their access to trust assets and there can be conflict over these limitations. There is a possibility that this new Act could increase, perhaps substantially, the litigation regarding trusts, particularly in the early years of implementation of the Uniform Trust Code nation-wide.

Additionally, because the Act applies to all existing trusts, it will likely be prudent for attorneys to review each existing trust to determine the impact of the Act on that particular trust. This may lead to increased cases for the judiciary if problems are discovered that require judicial intervention. At a minimum, it will cause those trusts that conduct a review to incur attorney's fees for the review.

FISCAL IMPLICATIONS

The Administrative Office of the Courts reports as follows:

The fiscal implications on the judiciary will directly follow the amount of litigation that is generated or alternatively, avoided, by the Act. The Uniform Trust Code is very new and its impact on litigation is unknown. There is a possibility of increased litigation because of the liability provisions in the Code.

It is possible that the Code will cause many trustees to seek advice on the Code and its impact on each specific trust. This may result in litigation, or at a minimum, will likely result in increased attorney's fees for each trust that reviews its provisions in light of the new Code.

If the Code provides clarity and guidance where the law was previously unclear, this could reduce litigation and provide a positive fiscal impact on the courts.

POSSIBLE QUESTIONS

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1. Unlike many states, New Mexico is a community property state. Many uniform laws are not drafted with community property states in mind. Does the Uniform Trust Code adequately address New Mexico's community property system (particularly with regard to revocable trusts)?
2. A few states, Alaska and Ohio are examples, have experimented with trust laws that seek to attract business to the state. Trust laws that allow for "dynasty trusts" or "creditor-proof" trusts may attract trust companies, banks and wealthy individuals seeking to protect their wealth. By joining the movement to standardize trust laws, does New Mexico forego the opportunity to attract more business to the state?

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