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FISCAL IMPACT REPORT

SPONSOR Park DATE TYPED 3/09/05 HB 659/aHBIC/aHJC

SHORT TITLE Uniform Principal & Income Act Changes SB _____

ANALYST Ford

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY05 | FY06 | FY05 | FY06 | | |
| | | | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates
SB 565

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)
Regulation and Licensing Department

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment makes a number of changes. First, the amendment strikes the presumption that an act or omission by a trustee is presumed to be reasonable and undertaken in good faith.

Second, the amendment strikes language that makes the court order specified in Subsection B the exclusive remedy for a person interest in a trust who opposes an act or omission of a trustee.

Third, the amendment extends the 6-month time-limit for a claim brought by a beneficiary to apply to claims brought under all available remedies.

Finally, the amendment removes the section that specifies that the trustee has no duty to inform a beneficiary about the remedy provisions provided under law and has no duty to review the trust to determine what action should be taken under the provisions of the bill.

Synopsis of HBIC Amendment

The House Business and Industry Committee Amendment deletes the provision restricting the distribution amount for a trust for which an estate tax or a gift tax marital deduction was claimed, or may be claimed, and requires that the distribution amount for a trust that was exempt, in whole or in part, from generation-skipping transfer tax follow Sections 46-3A-105 through 46-3A-113 NMSA 1978. The amendment also clarifies an effective date.

Synopsis of Original Bill

House Bill 659 amends and enacts new sections of the Uniform Principal and Income Act to provide a mechanism for a trustee to convert an income trust to a “total return trust.”

Significant Issues

The AGO provides a helpful explanation of House Bill 659:

“Traditionally written trusts generally provide that all of the trust's income goes to a beneficiary and the principal is held for distribution at a later time, often to other people, often the children of the income beneficiary. This can reduce payment to income beneficiaries in times of falling interest rates and dividend yields, especially when rise in equity prices means that the principal has grown while the trust's income was a smaller percentage of the trust's assets. This bill would address the needs of these income beneficiaries by allowing for existing trusts to be converted into ‘Total Return Trusts’.

“When administering a total return trust under this bill, the trustee must invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal. The trustee must make income distributions in accordance with the trust instrument. But the bill sets the distribution percentage for any trust converted to a total return trust at four percent, unless otherwise agreed to by the trustee and the beneficiaries or ordered by a court. However, the bill provides that distribution percentages may not be less than 3% or greater than 5%.

“In other words the beneficiary of a \$500,000 total return trust with a 4% payout will receive \$20,000 per year, regardless of what the trust's actual income is. If the income is only \$10,000, the balance of the distribution will come from principal. Conversely, if the income is \$30,000, the excess above \$20,000 will be added to principal. Making an election to convert does not do away with any right the trustee may have had to use principal for special purposes, such as medical care or education of a beneficiary.

“The bill gives the trustee discretion to convert an income trust to a ‘total return trust’ if certain conditions are met. It also allows the trustee to petition a court for conversion if a beneficiary objects to the conversion. The bill also provides a method for beneficiaries to petition a court to require the trustee to convert an income trust to a total return trust.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill duplicates Senate Bill 565

EF/lg