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## FISCAL IMPACT REPORT

SPONSOR Park DATE TYPED 03/04/05 HB 1020  
 SHORT TITLE Amend Uniform Trust Code SB \_\_\_\_\_  
 ANALYST McSherry

### APPROPRIATION

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

(Parenthesis ( ) Indicate Expenditure Decreases)

House Bill 1020 relates to House Bill 830.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 Administrative Office of the Courts (AOC)  
 Regulations and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

House Bill 1020 proposes to amend the Uniform Trust Code by creating a "venue" provision. The language provides for the venue for a judicial proceeding involving a trust to be proper in the district court in which the trust would be administered. For trusts created by will, venue would be proper in the District Court in which the estate would be administered. In proceedings to appoint a trustee, venue would be proper in the District Court in a county in which a beneficiary resides, trust property is located, or in the case of a trust created by will, where the estate would be administered.

The bill would also amend language which describes when, and under what circumstances, a trustee must provide information and notification to beneficiaries. This proposed bill would substitute "ascertainable beneficiary" for "qualified beneficiary" in that section, and would apply notification requirements for trustees accepting appointment on or after July 1, 2003, to irrevocable trusts created after July 1, 2003, and to revocable trusts becoming irrevocable after July 1, 2003.

Significant Issues

This bill would require trustees to provide information regarding administration of a trust, notice of the appointment of a trustee, notice of the creation of an irrevocable trust and notice of the transformation of a revocable trust into an irrevocable trust to beneficiaries who are “ascertainable,” and not only those who are “qualified.”

Current law requires that a trustee provide certain information important to the interests of “qualified” beneficiaries and notification to “qualified” beneficiaries within 60 days of being appointed or within 60 days of becoming aware that a revocable trust has become irrevocable or within 60 days of acquiring knowledge that an irrevocable trust has been created.

The term “qualified beneficiary” is defined in current statute as a beneficiary who, on the date “qualification is determined,” is a recipient of trust income or principal. The term “beneficiary” is defined as one who has a vested or contingent present or future beneficial interest in a trust.

There is no definition, existing or proposed, for an “ascertainable” beneficiary. AGO predicts that this bill would cause an individual to be a “beneficiary” of a trust with a contingent interest in future distributions, but to not necessarily be a “qualified beneficiary” currently entitled to those distributions. AGO asserts that it is likely that the amendment is intended to require a trustee to provide notice to all “ascertainable” beneficiaries, those beneficiaries who may not be recipients at the time notice is required.

The bill proposes that the effective date of notice requirement changes would relate to trusts created prior to July 1, 2003, and appear to have the effect of relieving trustees of the obligation to provide notice of any of the events described to the beneficiaries if the event occurred prior to that date. Presumably this will relieve certain trustees of liability for failure to provide notice required prior to that date.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 1020 relates to HB 830, which also proposes changes to the Uniform Trust Code

**TECHNICAL ISSUES**

The term “ascertainable beneficiaries” is not clear as proposed in this bill and should be defined.

AOC recommends changing the term “qualified beneficiaries” to “ascertainable beneficiaries” throughout Section 46-8-813 if appropriate.

AOC asserts that HB 1020 retains a technically awkward transition from the language of Section 46A-1-105.B to its subsection (8), causing the word “except” to be repeated.

**OTHER SUBSTANTIVE ISSUES**

According to AOC HB 830, which also proposes to amend the Uniform Trust Code, includes changes recommended by the National Conference of Commissioners on Uniform State Laws CCUSL in 2003 and 2004.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The proposed Venue provisions would not exist and notification requirements in current law would remain in effect.

**EM/rs**