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## FISCAL IMPACT REPORT

ORIGINAL DATE 01-20-06

SPONSOR Youngberg LAST UPDATED \_\_\_\_\_ HB 113

SHORT TITLE Uniform Revised Limited Partnership Act SB \_\_\_\_\_

ANALYST Dearing

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	(\$0.1)		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Public Regulatory Commission (PRC)  
 Attorney General (AG)

**Agency responses from the Administrative Office of the Courts, Public Regulatory Commission and the Attorney General are from the 2005 legislative session, and are specific to the earlier version designated the Uniform Limited Partnership Act. Minor changes in language of the Uniform Revised Limited Partnership Act, are stated by NCCUSL to be of stylistic nature, as opposed to any substantiality in change(s) of the legal meaning/interpretation of the Act.**

### SUMMARY

#### Synopsis of Bill

House Bill 113 enacts the model “Uniform Revised Limited Partnership Act,” put forth by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in an effort to promote uniformity of the law among various states concerning the organization of limited partnerships. The enactment would repeal sections of the NMSA code, effective January 1, 2008, encompassing 54-2-1 NMSA 1978 through 54-2-63 NMSA 1978.

In a brief summary provided by the commissioners, they state that the “ULPA provides a more flexible and stable basis for the organization of limited partnerships, helping states stimulate new

partnership business ventures.” In the commissioner’s prefatory note, they provide further insight into the Act.

According to the prior (2005 session) response from Administrative Office of the Courts, The new Limited Partnership Act is a “stand alone” act, “de-linked” from both the original general partnership act (“UPA”) and the Revised Uniform Partnership Act (“RUPA”). To be able to stand alone, the Limited Partnership incorporates many provisions from RUPA and some from the Uniform Limited Liability Company Act (“ULLCA”). As a result, the new Act is far longer and more complex than its immediate predecessor, the Revised Uniform Limited Partnership Act (“RULPA”).

The new Act has been drafted for a world in which limited liability partnerships and limited liability companies can meet many of the needs formerly met by limited partnerships. This Act therefore targets two types of enterprises that seem largely beyond the scope of LLPs and LLCs: (i) sophisticated, manager-entrenched commercial deals whose participants commit for the long term, and (ii) estate planning arrangements (family limited partnerships). This Act accordingly assumes that, more often than not, people utilizing it will want:

- strong centralized management, strongly entrenched, and
- passive investors with little control over or right to exit the entity

The Act’s rules, and particularly its default rules, have been designed to reflect these assumptions.

The Act contains a severability clause, and repeals portions of NMSA 1978 relating to limited partnerships. Section 1206 describes the application of the Revised Uniform Liability Partnership Act to existing relationships.

The Act provides that except as noted regarding specific provisions, the effective date of the Act is January 1, 2007.

According to the prior (2005 session) response from the Attorney General, “The Uniform Limited Partnership Act (ULPA), completely revised by the NCCUSL in 2001, updates limited partnership law to reflect modern business practices by providing greater flexibility and protection. The ULPA originally dates back to 1916, and since that time has set the standard for limited partnership law in this country. It was extensively revised in 1976 and amended in 1985.

When ULPA was last revised, limited partnerships were used extensively within the business community. Today, limited liability partnerships (LLPs) and limited liability companies (LLCs) can meet many of the needs formerly met only by limited partnerships. Limited partnerships are now used primarily in two ways: for family limited partnerships in estate planning arrangements, and for highly-sophisticated, manager-controlled limited partnerships.

A limited partnership is distinguished from a general partnership by the existence of limited partners who invest in the partnership; in return for limited liability, the limited partner usually relinquishes any right of control or management of partnership affairs. However, the general partner of a limited partnership traditionally receives no direct liability protection.

The new act provides:

- **Perpetual Entity.** No termination unless the agreement so provides. Limited partner exit does not dissolve the entity.
- **Entity Status.** A limited partner is clearly an entity.
- **Convenience.** The new ULPA provides a single, self-contained source of statutory authority for issues pertaining to limited partnerships. The act is no longer dependent upon general partnership law for rules that are not contained within ULPA.
- **LLLP Status.** Under the new ULPA, limited partnerships may opt to become limited liability limited partnerships (LLLP), simply by so stating in the limited partnership agreement, and in the publicly filed certificate. The primary reason for a limited partnership to elect LLLP-status is to provide direct protection from liability for debts and obligations of the partnership to the general partner of the limited partnership.
- **Liability Shield.** The 1976 ULPA provided only a restricted liability shield for limited partners. The new ULPA provides a full, status-based shield against limited partner liability for entity obligations. The shield applies whether or not the limited partnership is an LLLP.
- **Express Default Statute.** The act governs relations among the partners and between the partners and the partnership only when the partnership agreement does not do so.

The new Act also addresses other issues, such as allocating power between general partners and limited partners; and setting fiduciary duties owed by general partners to other general and limited partners.”

The following more elaborate summary has also been taken from the NCCUSL web site, [http://nccusl.org/Update/uniformact\\_summaries/uniformacts-s-ulpa.asp](http://nccusl.org/Update/uniformact_summaries/uniformacts-s-ulpa.asp).

“First, the ULPA 2001 includes provisions to meet the needs of sophisticated, manager-entrenched commercial deals whose participants commit for the long term. Second, the ULPA 2001 addresses the modern needs of estate planning arrangements, so-called "family limited partnerships." In addressing these concerns, this Act assumes that people utilizing it will want both strong centralized, entrenched management, and passive investors or limited partners with little capacity to exit the entity. As a result, the Act's rules, and particularly its default rules, have been designed to reflect those assumptions.

A fundamental change from RULPA involves the liability of limited partners and general partners for the partnership debts. Under RULPA, a limited partner could be held liable for the entity's debts if he participated in the control of the business and the third party transacted business with the partnership with the reasonable belief that the limited partner was a general partner. Under the new Act, a limited partner cannot be held liable for the partnership debts even if he participates in the management and control of the limited partnership. Concerning general partners, under RULPA, liability was complete, automatic and formally inescapable. Under this Act, limited liability limited partnership (LLLP) status is expressly available to provide a full liability shield to all general partners.

Another important change concerns a limited partner's right to disassociate from the partnership. Under RULPA a limited partner could theoretically withdraw from the partnership on six months notice unless the partnership agreement specified the withdrawal events for a limited partner.

Due to estate planning concerns, the new ULPA default rule affords no right to disassociate as a limited partner before the termination of the limited partnership. The power to disassociate is expressly recognized, but may be exercised only through the partnership agreement or those events listed in section 601(b) of this Act.

There are other important changes in the new ULPA. For example, under RULPA, the duration of the limited partnership must be specified in the certificate of limited partnership. Under this Act, no duration limit must be specified and the default rule now creates a perpetual entity. However, the duration is subject to change via the partnership agreement.

Also, under RULPA the use of a limited partner's name in the entity's name was prohibited except in unusual circumstances. Under the new ULPA, this restriction is eliminated. A limited partner's name may be incorporated into the business name of an entity created under this Act.

Further, under RULPA the dissolution of the partnership entity required the unanimous, written consent of all the partners. Under this Act, dissolution of the partnership only requires the consent of all the general partners and of the limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective.

## **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced proceedings. 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**

While HB 113 seeks to enact most portions of the model ULPA put forward by the commissioners of the NCCUSL in 2001, the bill omits the following provisions from Article 8, governing dissolution of limited partnerships:

- Section 809: Administrative dissolution
- Section 810: Reinstatement following administrative dissolution
- Section 811: Appeal from denial of reinstatement
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HB 113 adds the following section not present in the NCCUSL model ULPA:

- Section 119: Limited partnership subject to amendment or repeal of the ULPA

For additional notes and comments from the NCCUSL commissioners regarding the Uniform Revised Limited Partnership Act, visit:

<http://www.nccusl.org/nccusl/DesktopDefault.aspx?tabindex=0&tabid=1>

and select “Limited Partnership Act” from the pull-down list. There are minor revisions to this proposed legislation from the aforementioned source via NCCUSL. These are stated to be needed to change language for reasons of style only.

The following provisions of the Act, among others, some of which create or authorize new proceedings, will affect the courts:

- Section 205: if a person required by the ULPA to sign a record or deliver a record to the secretary of state for filing does not do so, any other person that is aggrieved may petition the district court to order the person to sign the record, deliver the record to the secretary of state for filing or the secretary of state to file the record unsigned.
- Section 405.C (4): a court must grant permission to a judgment creditor to levy execution against the assets of a general partnership or another specified condition must occur in order for a judgment creditor of a general partner to so levy execution.
- Section 703: A court may perform the following:
  - Charge the transferable interest of the judgment debtor with payment of an unsatisfied amount of a judgment with interest, on application to a court by any judgment creditor of a partner or transferee
  - Appoint a receiver of the share of the distributions due or to become due to the judgment debtor
  - Order a foreclosure upon interest subject to the charging order at any time
- Section 802: On application by a partner, the district court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.
- Section 809: An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute.

#### **ADMINISTRATIVE IMPLICATIONS**

See "Fiscal Implications" above.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

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

Status Quo

PD/mt