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FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/09

SPONSOR Cervantes LAST UPDATED _____ HB 690

SHORT TITLE Foreign-Country Money Judgments Recognition SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown See Below	Unknown See Below		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Bernalillo County Metropolitan Court (BCMC)
 Regulation & Licensing (RLD)

SUMMARY

Synopsis of Bill

House Bill 690 repeals the Uniform Foreign Money-Judgments Recognition Act, originally enacted in 1991, and enacts the Uniform Foreign-Country Money Judgments Recognition Act.

The purpose of the Act, both the current and proposed version, is to:

1. declare that monetary judgments issued in courts outside of the United States will be recognized in New Mexico
2. define the limitations on judgments that will be recognized

HB 690 further defines "foreign country," distinguishing a "foreign country" government from a government subject to a "full faith and credit" determination under the U.S. Constitution. HB 690 also significantly limits the types of foreign-country judgments that will be recognized in New Mexico, excluding tax judgments, fine or penalty judgments, and divorce / domestic relations judgments. These judgments are specifically recognized in the current Act. In addition, the party seeking recognition of the foreign judgment bears the burden of proving that the Act applies.

HB 690 includes the grounds for non-recognition of the current Act, and adds two more:

(C)(7) – the circumstances surrounding the foreign-country judgment “raise substantial doubt about the integrity of the rendering court,”

(C)(8) - the foreign-country proceeding was incompatible with due process of law.

In proposed Section 6, HB 690 sets forth the procedure to be used when a party is seeking recognition of a foreign-country judgment. In proposed Section 7, HB 690 states that if a court recognizes a foreign-country judgment, then the judgment is conclusive between the parties and enforceable. Section 9 sets forth a statute of limitations.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. 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

The model for this law comes from The National Conference of Commissioners on Uniform State Laws (NCCUSL).

The AGO provided the following:

The bill adopts a Uniform Law that adds to and clarifies existing law.

The bill and the Uniform Law as promulgated, in setting out in Section 5(A) instances in which the personal jurisdiction of the foreign court will not be questioned, identifies in Subsection (A)(6) *“the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.”* “Airplane” generally means or refers to fixed-wing aircraft, and does not include rotary-wing aircraft such as helicopters, blimps, dirigibles, balloons or sailplanes. It will be more in line with the intent of the Section, and will avoid future confusion, to use the word “aircraft” in place of “airplane”.

The bill permits a New Mexico court to exercise its discretion in deciding to enforce a foreign-country judgment based on a cause of action that is repugnant to New Mexico public policy. This discretion might lead to differing results in different districts.

Furthermore, the bill provides for a 14-year limitation on enforcing judgments rendered by the Courts of New Mexico. The bill provides that an action to recognize a foreign-country judgment must be commenced within the earlier of the time the judgment in effective in the foreign country, or 15 years after the foreign-country judgment became effective in the foreign country.

There is a philosophical question as to how long judgment creditors should have to enforce their judgments. Arguably, bringing an action in New Mexico at the end of the 15-year period and obtaining a New Mexico judgment recognizing the aged foreign-

country judgment could extend collections another 14 years, providing a benefit to foreign judgment creditors not shared with domestic judgment creditors, and denying New Mexico foreign-country judgment debtors equal protection of the law. On the other hand, if the judgment debtor is attempting to conceal himself in New Mexico, allowing the longer limitation is consistent with the provisions of §37-1-9, NMSA 1978, which provides that the time the judgment debtor was concealed is not included in the computation of any limitation period.

ADMINISTRATIVE IMPLICATIONS

The affected courts should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities

OTHER SUBSTANTIVE ISSUES

The National Conference of Commissioners on Uniform State Laws (NCCUSL), now 117 years old, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of the law. NCCUSL's work supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state.

The NCCUSL has worked for the uniformity of state laws since 1892. It is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners actually appointed.

The state uniform law commissioners come together as the National Conference for one purpose—to study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. It must be emphasized that the Conference can only propose—no uniform law is effective until a state legislature adopts it.

The Conference is a working organization. The uniform law commissioners participate in drafting specific acts; they discuss, consider, and amend drafts of other commissioners; they decide whether to recommend an act as a uniform or a model act; and they work toward enactment of Conference acts in their home jurisdictions.

Since its organization, the Conference has drafted more than 200 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform acts include the Uniform Probate Code, the Uniform Child Custody Jurisdiction Act, the Uniform Partnership Act, the Uniform Anatomical Gift Act, the Uniform Limited Partnership Act, and the Uniform Interstate Family Support Act.