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## FISCAL IMPACT REPORT

SPONSOR Ingle ORIGINAL DATE 1/31/18  
 LAST UPDATED 2/11/18 HB \_\_\_\_\_

SHORT TITLE Trust Company Act Changes SB 137/aSJC

ANALYST Romero

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
		See Fiscal Implications		

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Regulation and Licensing Department

### SUMMARY

#### Synopsis of SJC amendment

The Senate Judiciary Committee amendment adds specific language to identify trust assets “Managed by a Fiduciary” before the fee schedule for fidelity bond amounts. The amendment also adjusts the fidelity bond amount schedule. A new section is added to the bill with new material:

- a. A person aggrieved by a final order of the director may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.
- b. The commencement of proceedings pursuant to Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director’s order.

#### Synopsis of Original Bill

Senate Bill 137 makes several changes to the Trust Company Act including adding new requirements for certificates, minimum capital, fidelity bonds and insurance. Additionally, the bill provides for investigations and accompanying fees along with authority to reorganize a trust company and repeals some sections of the Trust Company Act.

The bill requires trust companies to conduct business according to all state and federal laws including compliance with all rules pursuant to the Trust Company Act, the Uniform Probate Code, the Uniform Prudent Investor Act and the Uniform Trust Code. It requires trust companies to keep investments separate from its assets. Additionally, the bill requires each member of the board of director for a trust company to swear an oath as part of the application for a certificate and each new board member must do the same.

The bill provides a new schedule for fidelity bond insurance requirements and it also grants the director of the financial institutions division of the Regulation and Licensing Department authority to shut down companies failing to adhere to state laws and rules.

RLD provided the following summary for each section of SB137:

“SB 137 amends the Trust Company Act found at NMSA 1978 Section 58-9-1 et seq. Sections 2, 7, and 8 clarify that New Mexico certified trust companies must operate in compliance with state and federal laws, including all civil and criminal laws that are relevant to trustees and fiduciaries in New Mexico. §58-9-4, §58-9-9, and §58-9-10.

Sections 7 and 8. Provide the Director of the Financial Institutions Division (Director) of the Regulation and Licensing Department with the authority to act quickly and decisively when the examination of a trust company reveals violations of New Mexico law. §58-9-9 and §58-9-10.

Section 5. Strengthens protections for consumers by increasing, based upon the trust’s assets, the amount of the fidelity bond that must be secured by a trust company and by requiring the terms of the bond to provide that the bond company may not cancel the bond, even for non-payment, without first notifying the Director in writing. Section 5 also requires that the mandatory insurance coverage purchased by a trust company must be suitable to cover losses, including losses due to fraud or embezzlement, so that if a client suffers losses due to the bad acts or negligence of the trust company, or that company’s employee, or director there is adequate recourse for the client to recover the lost funds.

Sections 1, 5, and 6. Narrow the exceptions in the Trust Company Act for “nonprofit” trust companies so those exceptions apply to companies engaged in the administration of trust services only related to “special needs pooled trusts” as outlined under federal law for nonprofit companies providing services to individuals with disabilities. §58-9-2.

Section 3. Requires all members of the board of directors of New Mexico certified trust companies to give and file a sworn oath to diligently and honestly administer the affairs of the trust company, in compliance with the law (similar to what is required of members of the boards of New Mexico banks.) §58-9-5.

Section 9. Requires any certified trust company seeking to cease doing business or to reorganize the company to submit filings with the FID detailing all aspects of the proposed shutdown or reorganization, including how accounts will be handled, and who the directors of a reorganized company will be. Additionally, a trust company seeking to cease business operations or to reorganize shall be subject to a full examination by the FID. §58-9-11.”

## FISCAL IMPLICATIONS

No fiscal implications.

## SIGNIFICANT ISSUES

RLD provided the following issue:

“The driving force behind SB 137’s recommended changes to the Trust Company Act are the result of the Financial Institutions Division (FID) of the Regulation and Licensing Department uncovering a multitude of criminal acts of embezzlement, fraud, and extreme financial mismanagement in a New Mexico nonprofit trust company operating as Desert State Life Management. Pursuant to its statutory mandate, the FID went to district court to have the company placed into receivership. The FID has spent months sorting out the records and finances of the company to determine the amounts of the losses suffered by the clients of the company. The FID has concluded that those losses total over \$4.9 million dollars. The former CEO of Desert State Life Management, Paul Donisthorpe, has been charged and convicted of federal felony offenses and is facing prison time for his unlawful actions. In the course of dealing with this case, and in taking steps to ensure that tragic losses such as those the victims of Desert State Life Management endured do not fall upon other vulnerable New Mexico trust company clients, the FID identified a number of provisions of the Trust Company Act needing clarification and strengthening of protections for consumers, as well as tightening of appropriate regulatory authority.”

## ADMINISTRATIVE IMPLICATIONS

RLD also provided the following:

“Under current law, in the event the Director of the FID determines that due to insufficient capital or other unsound conditions of a trust company, the Director must petition the district court to place the trust company into receivership the Director “may apply to the district court . . . *to be appointed receiver*” for the company. This is very different from other financial industries regulated by the FID whereby, in the event a receivership is sought, the Director files a petition to have the court “*appoint a receiver*” under the terms of the New Mexico Receivership Act, §44-8-1 NMSA 1978, *et seq.* In contrast, the current Trust Company Act requires that the Director be personally appointed as the receiver and personally carry out the receivership duties for the affected trust company.

This is the very situation that arose in the Desert State Life Management matter, in which, for several months, the Director of the FID was placed in the untenable position of being both the regulator and the receiver for the company. Because there were virtually no trust assets left at the time the company went into receivership, the Director was forced to perform the day-to-day operations of the trust company and make all trustee decisions for the client accounts. Although assignment of a receivership was the appropriate step in the matter of Desert State Life Management, it is not ideal to appoint as the receiver of a troubled company, the regulator of that company. As such, SB 137 will rectify this oddity by providing that any receiverships necessary under the Trust Company Act will be conducted under a receiver appointed by a court pursuant to the Receivership Act.”