

<b>LFC Requester:</b>	<b>Marty Daly</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

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**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
**Original**     **Amendment**      
**Correction**     **Substitute**   

**Date** January 22, 2015  
**Bill No:** HB 124-305

**Sponsor:** Rep. Zachary J. Cook  
**Short Title:** Appointment of Assets between Trusts

**Agency Code:** Attorney General's Office  
**Person Writing:** Sally Malavé  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

Synopsis: House Bill 124 amends the Uniform Trust Code, NMSA 1978, Sections 46A-8-1 to -817 (2003 and as amended) by adding new sections that would allow the trustee of a trust, if afforded by the trust instrument the discretion to make a distribution of income or principal to or for the benefit of one or more beneficiaries of the trust, to appoint a part or all of the income or principal to a second trust, “subject to the discretion in favor of a trustee of a second trust under a trust instrument separate from the trust instrument of the first trust.” Before exercising its discretion to appoint and distribute assets to a second trust, the trustee of the first trust must determine whether the appointment is necessary and desirable after taking into account the purposes of the first trust. The exercise of power to distribute the income or principal of a trust pursuant to HB 124 would be considered the exercise of a power of appointment other than a power to appoint to the trustee, the trustee’s creditors, the trustee’s estate or the creditors of the trustee’s estate. The exercise of power to distribute the income or principal of a trust would occur only by written instrument and with prior notification to all beneficiaries of the first trust.

HB 124 provides that the second trust would only have as beneficiaries one or more beneficiaries of the first trust to or for whom a distribution may be made. In addition, no restricted trustee would be allowed to take any action not authorized by the first trust or remove restrictions imposed by the first trust on discretionary distributions from the trust.

**FISCAL IMPLICATIONS** N/A

**SIGNIFICANT ISSUES** It is not clear what is meant by making an appointment “subject to the discretion in favor of a trustee of a second trust.”

**PERFORMANCE IMPLICATIONS** N/A

**ADMINISTRATIVE IMPLICATIONS** N/A

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP** N/A

**TECHNICAL ISSUES** Because HB 124 would allow a trustee to appoint income or principal to a second trust whose beneficiaries are also beneficiaries of the first trust to or for whom a

distribution “may be made in the future,” the intent of Section 4 of House Bill 124 seems to be to ensure that any appointment of income or principal not violate the rule against perpetuities, see NMSA 1978, § 45-2-901 (1992, as amended through 2012), but the proposed language is less than clear. As an alternative, Section 4 of House Bill 124 may read:

The power pursuant to Section 46A-8-818 shall not be exercised in any manner not consistent with the rule against perpetuities, as may be applicable to the first trust.

**OTHER SUBSTANTIVE ISSUES** None.

**ALTERNATIVES** None.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL** Status quo. Section 46A-8-802 currently does not preclude a trustee, if fair to the beneficiaries, from entering into a transaction between a trust and another trust, decedent’s estate or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest.

**AMENDMENTS** None.