ATTACHMENT B

Council of the District of Columbia
Committee on the Judiciary
Notice of Public Hearing

1350 Pennsylvania Avenue, NW Washington, DC 20004

COUNCILMEMBER KATHY PATTERSON, CHAIRPERSON
COMMITTEE ON THE JUDICIARY

ANNOUNCES A PUBLIC HEARING ON

BILL 15-234, "UNIFORM TRUST ACT OF 2003"

JUNE 26, 2003
10:00 a.m.

John A. Wilson Building
1350 Pennsylvania Avenue, NW
Council Chambers, Room 500
Washington, DC 20004

On Thursday, June 26, 2003, Councilmember Kathy Patterson, Chairperson of the Committee on the Judiciary, will hold a public hearing on Bill 15-234, the "Uniform Trust Act of 2003." The hearing will be held in the Council Chambers and will begin at 10:00 a.m.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official record. Anyone wishing to testify at the hearing should contact Tami Lewis, Legislative Staff Assistant to the Committee on the Judiciary, at 724-7808. The public is encouraged to send copies of any written statements to Ms. Phyllis Jones, Secretary to the Council, Suite 5, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004. The record will officially close on July 17, 2003.

ATTACHMENT C

UNIFORM TRUST CODE

SUMMARY

When a person transfers property to another person "in trust" for beneficiaries or for a legally-acknowledged beneficial purpose, a "trust" is formed. The recipient of the property is called a "trustee." The person who transfers property to the trustee "in trust" is usually called the settlor. Most trusts have identifiable beneficiaries. There are, however, charitable and honorary trusts, which do not have actual beneficiaries. They have a beneficial purpose that substitutes for named or identifiable beneficiaries. Trusts are recognized in the law for many purposes. Trusts are commonly used as part of an individual's estate plan, to avoid probate and to obtain favorable tax consequences.

A trustee is a fiduciary, sometimes described as the utmost fiduciary. A fiduciary has enforceable obligations to the settlor, beneficiaries or beneficial purpose. There are many kinds of fiduciary relationships in the law. The vulnerability of the beneficiaries or the beneficial interest is the reason that the law imposes special obligations on the trustee as a fiduciary.

The prior law governing the trust relationship is fundamentally American common law, best represented in the Restatement of the Law of Trusts, 2nd and the subsequent, still being drafted, Restatement of the Law of Trusts, 3rd. The restatements come from the American Law Institute. There are also statutes in most states that govern aspects of the trust relationship. A handful of states have attempted a codification of the law of trusts. California is a leading example.

In the year 2000, however, the Uniform Law Commissioners have promulgated the first truly national codification of the law of trusts with the Uniform Trust Code. It draws from the common law sources, including the Restatements. The existing statutory law is also a source. The objective is a codification of existing law, but there are elements of law reform, also. The reforms tune trust law to modern needs. The Uniform Code provides fundamental rules that apply to all voluntary trusts.

However, the Uniform Trust Code does not try to incorporate detailed rules for every conceivable kind of trust, nor does it incorporate all of the kinds of trusts there are. It does not contain statutory rules that are already governing trusts in many jurisdictions, and that are working just fine. It does not displace, for example, the Uniform Prudent Investor Act or the Uniform Custodial Trust Act. What the Uniform Trust Code contains is a set of basic default rules that fairly, consistently and clearly govern voluntary trusts. It is a default statute for the most part, because the terms of a trust instrument will govern even if inconsistent with the statutory rules.

The Uniform Trust Code is divided into 11 articles. The first and eleventh articles do not address substantive topics, but deal with general provisions like definitions and rules of statutory interpretation. Article 9 has no content, but may be used to include the Uniform Prudent Investor Act within the Uniform Trust Code if a state wishes to include it there. The eight substantive articles are Article 2, Judicial Proceedings; Article 3, Representation; Article 4, Creation, Validity, Modification, and Termination of a Trust; Article 5, Creditor's Claims; Spendthrift and Discretionary Trusts; Article 6, Revocable Trusts; Article 7, Office of Trustee; Article 8, Duties and Powers of a Trustee; and, Article 10, Liability of Trustees and Rights of Persons Dealing with Trustee. It is not possible to provide a complete summary of the entire Uniform Trust Code, but what follows highlights central characteristics of this important code.

Article 2, Judicial Proceedings, deals with jurisdiction over a trust in any state. It asserts the important rule that a trust is not supervised by a court unless there is a proceeding by an interested person that invokes the jurisdiction of the appropriate court. The place of administration of the trust is the place with jurisdiction over the trustee and beneficiaries of that trust.

Article 3, Representation, deals with the rather complex issues of who may represent whom in transactions or proceedings relating to a trust. In part, this article sets out a series of specialized agency rules, answering the question of who may be the agent of whom. Some of it is fundamental, such as the clear rule that the trustee represents the beneficiaries of a trust. Some of it is common-sense, such as the rule that a guardian represents a ward or a conservator (if appointed) represents the estate of a ward. The most significant innovation is the provision for "virtual" representation. A minor, incapacitated person, unborn individual, or a person whose identity is not known, may be represented by and legally bound "by another having a substantially identical interest with respect to the particular question or dispute" to the extent there is no conflict of interest in that representation.

Article 4, Creation, Validity, Modification and Termination of a Trust, has a self-evident set of rules. A trust is created when property is transferred to a trustee with the intent to create a trust relationship. There must be a definite beneficiary or the trust must be a charitable trust, a trust for animals (specially provided for as a kind of honorary trust), or a trust for a noncharitable purpose (also a kind of honorary trust). These kinds of honorary trusts, which have a limited life, legitimize honorary trusts that are not generally allowed under the common law. They are, therefore, an innovation in the Uniform Trust Code.

It is not necessary to have a trust instrument to create a trust. Oral trusts are allowed, but the standard of proof for an oral trust is the higher "clear and convincing evidence" standard. By not requiring a writing, the Uniform Trust Code avoids issues of electronic record and signature adequacy.

There are clear (default) rules that apply upon consent of the parties to the trust or that govern a court in modifying or terminating a trust. A court may apply the doctrine of cy pres to charitable trusts, when the charitable purpose is no longer obtainable. A comparable charitable purpose may be selected.

Article 5, Creditor's Claim, Spendthrift and Discretionary Trusts deals with creditor claims against the interests of a beneficiary or a settlor. "A spendthrift provision in a trust restricts a beneficiary's creditor from attaching the beneficiary's interest in the trust until there is a distribution to the beneficiary. If there is no spendthrift provision, a creditor of a beneficiary may attach a distribution interest before it is distributed. A spendthrift provision is created simply by general reference to "spendthrift trust" in the trust instrument. A creditor may not compel a trustee to make a distribution to a beneficiary that is discretionary. A beneficiary who owes child support, spousal maintenance, or a creditor for services provided to protect the beneficiary's interest in the trust, cannot rely on spendthrift provisions in a trust to avoid attachment of that interest. Creditors of the settlor of a revocable trust may attach the corpus of the trust, but only a settlor's distribution interest in an irrevocable trust.

Article 6, Revocable Trusts, expressly recognizes the most popular, modern trust form for estate planning. A revocable trust is one in which the settlor retains the power to control, amend, or revoke the trust. Property held in trust reverts back to the settlor if it is revoked. The revocable trust is viewed primarily as a will substitute, used to avoid probate. A trust is revocable unless a trust instrument expressly provides that it is irrevocable. While the settlor of a revocable trust yet lives and has capacity, the trustee owes its duties exclusively to the settlor. The settlor controls the rights of beneficiaries. If the settlor becomes incapacitated or dies, the beneficiaries control their rights under the trust and the duties of the trustee shift to the beneficiaries. The trust is no longer a revocable trust.

Article 7, Office of Trustee, deals with acceptance of the trust by the trustee, bond for the trustee, decision-making by co-trustees, and like matters. Perhaps the most important of the rules govern removal and compensation of the trustee. The settlor, a co-trustee, a beneficiary or the court on its own initiative may request that a trustee be removed. The grounds are breach of trust, lack of cooperation among co-trustees substantially impairing the administration of the trust, defects of the trustee that require removal in the best interests of the beneficiaries, or substantial change of circumstances. The trustee may be removed upon the request of all qualified beneficiaries if removal is in the best interests of the beneficiaries, is not inconsistent with trust purposes and a successor trustee is available. A trustee is entitled to reasonable compensation. A court may review and change a trustee's compensation.

Article 8, Duties and Powers of the Trustee, articulates the basic fiduciary obligations of a trustee, except for those articulated in the Uniform Prudent Investor Act. The basic duty is the duty of loyalty, which requires the trustee to manage the trust solely for the beneficiaries and to avoid conflicts of interest between trustee's interests and beneficiaries' interests. If a trustee provides services to an investment company or investment trust in which the trust invests money pursuant to the Uniform Prudent Investor Act, conflict of interest is not presumed.

Other fiduciary obligations include the duty of impartiality, the obligation of prudent administration, the obligation to incur only reasonable costs, and the obligation to apply the trustee's special skills when there is reliance on those skills when the trustee is named. A trustee may delegate certain duties and powers, but is held to a prudent standard of appointment in so doing. An agent is held to the fiduciary standard of the trustee in accepting an appointment. Delegation has not generally been permitted under the common law, but is an important feature of the Uniform Prudent Investor Act. The Uniform Code provision is based on the one in the Uniform Prudent Investor Act. The delegation rules in both acts are an innovation in trust law.

A trustee generally has all the powers necessary to carry on the business of the trust. The Uniform Code contains an updated list of specific powers derived from the widely accepted Uniform Trustee's Powers Act.

Article 10, Liability of Trustees and Rights of Persons Dealing with the Trustee provides for remedies when there is breach of an obligation by the trustee, who and under what circumstances there is a right of action by anybody, and a trustee's immunity from personal liability when doing business with others on behalf of the trust. A breach of duty to a beneficiary invokes a court's equity powers to compel performance, suspend or remove the trustee upon grounds noted earlier in this summary. Available damages restore a beneficiary's position as if breach had not occurred. The trustee's profit (if any) is also a measure of damage. A trust instrument may not waive or vary the obligation of good faith or exculpate the trustee for reckless indifference. An exculpatory term in a trust is not enforceable if the inclusion of the term abuses the settlor's confidential relationship with the trustee.

A trustee does not incur personal liability to third parties for contracts on behalf of the trust so long as the fiduciary status of the trustee is disclosed. A trustee is not liable for a tort action against the trust unless the trustee also has personal liability.

A third party dealing with a trust, also, is not liable for any breach of the trustee's obligations to the beneficiaries resulting from the transaction, unless the third party has knowledge of the actual breach by the trustee.

The article on liability concludes the substantive parts of the Uniform Trust Code. The Uniform Trust Code provides a first effort at true codification of trust law. There is a serious need for certainty and clearly articulated rules as the use of trusts burgeons in the United

States. The Uniform Trust Code is timely in the year 2000. It meets the needs of the citizens of the United States for decades to come.

ATTACHMENT D

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer

Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO:	**The Honorable Linda W. Cropp** **Chairman, Council of the District of Columbia**
FROM:	**Natwar M. Gandhi** **Chief Financial Officer**
DATE:	**March 17, 2003**
SUBJECT:	**Fiscal Impact Statement: "Uniform Trust Act of 2003"**
REFERENCE:	**Draft Legislation – Bill Number Not Available**

Conclusion

Funds are sufficient in the FY 2003 through FY 2006 budget and financial plan to implement the proposed legislation because there is no significant, direct financial impact associated with the provisions of the proposal.

Background

The proposed legislation is a uniform code for trusts developed by the National Conference of Commissioners on Uniform State Law in 2001. It is a comprehensive codification of the laws of trust. It includes provisions concerning judicial proceedings; representation; creation, validity, modification, and termination of trusts; creditor's claims; spendthrift and discretionary trusts; revocable trusts; the duties and powers of trustee, and the liability of trustees and rights of persons dealing with trustees. These provisions do not displace specialized uniform laws concerning trusts in the District.

This is a reintroduction of bill 14-211 from the last Council session, which had a hearing in November 2001, but was not reported out before the end of the Council session.

Financial Plan Impact

Funds are sufficient in the FY 2003 through FY 2006 budget and financial plan to implement the proposed legislation. Kansas has enacted this uniform legislation and the

Wyoming legislature has reported it out of both houses. The bill also has been reported out of the Banking Committee in Nebraska and is expected to be enacted this year. All three states found that the legislation would have no fiscal impact.

The Office of Corporation Counsel advises that having a clear statute governing trusts would encourage the creation of trusts in the District. To the extent that more trusts are created and administered in the District, there would be some increase in franchise tax revenue. The District imposes a 10 percent franchise tax on income that financial institutions receive from trust administration.