

Legislative Analysis



REVISE RULE AGAINST PERPETUITIES

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Senate Bill 22 as introduced
Senate Bill 23 (Substitute S-1)
Sponsor: Sen. Tonya Schuitmaker
House Committee: Judiciary
Senate Committee: Judiciary

Complete to 2-16-11

A SUMMARY OF SENATE BILLS 22 AND 23 AS PASSED BY THE SENATE

Two bills enacted in 2008 exempted personal property from the rule against perpetuities under certain conditions. Public Act 148 of 2008 (enrolled House Bill 5909) created the Personal Property Trust Perpetuities Act and Public Act 149 of 2008 (enrolled House Bill 4602) amended the Uniform Statutory Rule Against Perpetuities.

In brief, the rule against perpetuities prevents people from tying up assets in trusts that can go on forever. A perpetual trust (or dynasty trust, as it is called) is a technique that allows the creator of the trust to pass wealth from generation to generation without incurring transfer taxes such as the federal generation-skipping transfer tax. The changes made by Public Acts 148 and 149 of 2008 allowed for the creation of perpetual trusts involving *personal property*. Placing *real property* in perpetual trusts continues to be prohibited.

Senate Bills 22 and 23 would make further amendments in this area of the law.

Senate Bill 22 would amend the Uniform Statutory Rule Against Perpetuities (MCL 554.75). Currently, the act does not apply to an interest in, or power of appointment over, personal property held in a trust that is either revocable on or created after the effective date of the 2008 Personal Property Trust Perpetuities Act. The bill would delete the underlined portions to read instead, that except as provided in the act, the act would not apply to an interest or power of appointment to which the Personal Property Trust Perpetuities Act applied. The bill would also specify that Section 2 of the act would apply to an interest or power of appointment to which the Personal Property Trust Perpetuities Act applied under certain listed circumstances.

Senate Bill 23 would amend the Personal Property Trust Perpetuities Act (MCL 554.94). Currently, the act applies only to a nonvested interest in, or power of appointment over, property held in a trust that is either revocable on May 28, 2008, or created after that date (the effective date of Public Act 148 of 2008). The bill would add that this provision would apply only to the extent that the trust was *not a special appointee trust*. For purposes of this provision, a trust would be a special appointee trust to the extent it includes assets that were held in a trust that was irrevocable on September 25, 1985, if both of the following apply to the assets:

- The assets have continuously been held in trust since September 25, 1985.
- The assets have not become subject to a general power of appointment since September 25, 1985.

BACKGROUND INFORMATION:

The rule against perpetuities is a complicated area of law. Apparently, under provisions of Public Act 148 of 2008, the exercise of a nongeneral power of appointment over a trust that is "grandfathered" under certain federal effective-date regulations (meant to prevent those trusts from being subject to the federal generation-skipping tax) can still trigger the generation-skipping tax under certain circumstances. These bills are intended to prevent this from occurring.

Senate Bills 22 and 23 are reintroductions of House Bills 5009 and 5010 of the 2009-2010 Legislative Session. Those bills addressed the issue described above by amending some provisions of Public Act 148 and 149 so that the Personal Property Trust Perpetuities Act would not apply to certain trusts. The Senate did not act on the bills.

(For more information on the common law rule against perpetuities, the Uniform Statutory Rule Against Perpetuities, and a discussion of the impact of eliminating the rule against perpetuities, see the House Fiscal Agency analysis on House Bills 6365 and 6366 of the 2005-2006 legislative session dated 11-28-06.)

FISCAL IMPACT:

There would be little or no fiscal impact on state or local government.

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