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BILL ANALYSIS

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Senate Bills 22 and 23 (as introduced 1-19-11)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

Date Completed: 1-25-11

CONTENT

Senate Bill 23 would amend the Personal Property Trust Perpetuities Act to make the Act inapplicable to a trust that was created or added to by the exercise of a nongeneral power of appointment under a trust that was irrevocable on September 25, 1985.

Senate Bill 22 would amend the Uniform Statutory Rule Against Perpetuities to revise an exception to provisions of that law for property subject to the Personal Property Trust Perpetuities Act.

The bills are described below.

Senate Bill 23

The Personal Property Trust Perpetuities Act essentially makes a nonvested interest in personal property held in trust, or a power of appointment over personal property held in trust, exempt from the statutory rule against perpetuities. The Act applies only to a nonvested interest in, or power of appointment over, personal property held in a trust that is either revocable on, or created after, the Act's effective date (May 28, 2008).

The bill also specifies that the Act would apply only to the extent that the trust was not a special appointee trust. For this purpose, a trust would be a special appointee trust to the extent it was created or added to by the exercise of a nongeneral power of appointment under a trust that was irrevocable on September 25, 1985.

(A property interest is "nonvested" if the transferee is not presently entitled to the interest, and might never become entitled to it. A power of appointment is the authority to create new ownership interests in assets or select the recipient of an interest in property. A power of appointment is "nongeneral" if the document creating it restricts the person or people who may be appointed to receive the interest.

Under Federal regulations, a trust is exempt from the generation-skipping transfer tax if it was irrevocable and in existence on September 25, 1985.

Please see **BACKGROUND**, below, for more information about the Act and the rule against perpetuities.)

Senate Bill 22

Section 2 of the Uniform Statutory Rule Against Perpetuities essentially requires a nonvested property interest or power of appointment to vest within a prescribed number of years in order to be valid. Section 2 does not apply, however, 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 Personal Property Trust Perpetuities Act.

Under the bill, instead, Section 2 would not apply to an interest or power of appointment to which that Act applies.

MCL 554.75 (S.B. 22)
554.94 (S.B. 23)

BACKGROUND

The common law rule against perpetuities was designed to restrict the power of a landowner to tie up property in long-term or perpetual family trusts. (Under the common law rule, a nonvested property interest is invalid unless it must vest, if at all, within 21 years, plus the period of gestation, after some life or lives in being at the time the interest is created.) Because the common law rule could invalidate some property transfers that otherwise would be considered reasonable, Michigan enacted the Uniform Statutory Rule Against Perpetuities in 1988. Under this law, an interest that would be valid under the common law rule remains valid, but an interest that would violate the common law rule is invalid only if it does not actually vest or terminate within 90 years after its creation. Originally, the statutory rule applied to nonvested interests in both real and personal property, as well as powers of appointment.

Several years ago, it was suggested that the statutory rule should be eliminated with respect to personal property held in trust, in order to allow people to establish "dynasty trusts" in Michigan. A dynasty, or perpetual, trust essentially allows its creator, the settlor, to pass wealth from generation to generation without the burden of transfer taxes, including estate and gift taxes and the Federal generation-skipping transfer (GST) tax. Because the rule against perpetuities limits the duration of trusts, dynasty trusts are created only in states that have eliminated the rule or modified it to permit trusts that continue for hundreds of years. Therefore, Public Act 148 of 2008 enacted Michigan's Personal Property Trust Perpetuities Act, and Public Act 149 of 2008 amended Uniform Statutory Rule Against Perpetuities to make an exception for property subject to the new Act.

The Federal GST tax was enacted in 1986 and applies to transfers to grandchildren and others deemed to be two or more generations below that of the person making the transfer. The tax does not apply to a trust that was irrevocable and in existence on September 25, 1985, to the extent the trust's assets were not added to after that date.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.