

Legislative Analysis



REVISE RULE AGAINST PERPETUITIES

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House Bill 6539 (Substitute H-3)
Sponsor: Rep. Tonya Schuitmaker

House Bill 6540 (Substitute H-2)
Sponsor: Rep. Paul Condino
Committee: Judiciary

Complete to 12-3-08

A SUMMARY OF HOUSE BILLS 6539 & 6540 AS REPORTED FROM COMMITTEE

BACKGROUND INFORMATION:

Earlier this year, Public Act 148 (House Bill 5909) created the Personal Property Trust Perpetuities Act, and Public Act 149 (House Bill 4602) amended the Uniform Statutory Rule Against Perpetuities to exempt personal property from the rule against perpetuities under certain conditions. 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 allowed for the creation of perpetual trusts involving personal property; placing real property in perpetual trusts is still prohibited.

The rule against perpetuities is a complicated area of law. Apparently, the exercise of a non-general power of appointment over a trust that was "grandfathered" under certain federal effective-date regulations (meant to prevent those trusts from being subject to the federal generation-skipping tax) under provisions of Public Act 148 can trigger the generation-skipping tax under certain circumstances. Legislation has been offered to address the issue by amending some provisions of Public Act 148 and 149 so that the Personal Property Trust Perpetuities Act would not apply to certain trusts.

CONTENT:

House Bill 6539 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). The bill would add that the 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 was created or added to by the exercise of a nongeneral power of appointment under a trust that was irrevocable on September 25, 1985.

House Bill 6540 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 Personal Property Trust Perpetuities Act. The bill would delete the highlighted 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 listed circumstances.

FISCAL IMPACT:

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

POSITIONS:

No positions on the bills were offered.

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