

Legislative Analysis



REVISE RULE AGAINST PERPETUITIES

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5009 as introduced
Sponsor: Rep. Tonya Schuitmaker

House Bill 5010 as introduced
Sponsor: Rep. Mark Meadows
Committee: Judiciary

Complete to 10-28-09

A SUMMARY OF HOUSE BILLS 5009 AND 5010 AS REPORTED BY COMMITTEE 10-21-09

BACKGROUND INFORMATION:

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 allowed for the creation of perpetual trusts involving *personal property*. Placing *real property* in perpetual trusts continues to be prohibited.

The rule against perpetuities is a complicated area of law. Apparently, under provisions of Public Act 148, 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.

House Bills 5009 and 5010 are reintroductions of House Bills 6539 and 6540 of 2008 as reported by the House Judiciary Committee, respectively. 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. Before being passed by the House, the bills were amended on the floor to eliminate the rule against perpetuities as to real property. 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.)

CONTENT:

House Bill 5009 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 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 5010 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 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 listed circumstances.

FISCAL IMPACT:

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

POSITIONS:

A representative of the Council of Probate and Estate Planning Section of the Michigan State Bar testified in support of the bill. (10-21-09)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.