F I S C A L   I M P A C T   R E P O R T

	ORIGINAL DATE	2/8/07		
SPONSOR Robinson	**LAST UPDATED**		**HB**	
SHORT TITLE Remove Statutory Rule Against Perpetuities			**SB**	522
		ANALYST	Ortiz	

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	**FY08**		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

LFC Files

Responses Received From
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 522 would enact a new section providing that "The common law rule against perpetuities as it applies to New Mexico is abrogated." The bill would also repeal the statutory "rule against perpetuities" set forth in New Mexico's Uniform Probate Code in NMSA Sections 45-2-901- to 45-2-906.

SIGNIFICANT ISSUES

The effect of this bill would be to abolish any rule of perpetuities in New Mexico, thereby allowing testators to earmark property for ownership, use or enjoyment by persons in the infinite future for generations to come.

According to the AGO, the "rule against perpetuities" is a rule in property law that prohibits a grant of property from "vesting" (entitling the beneficiary to present or future ownership, use or enjoyment of property) beyond a certain period of time. It is intended to prevent people from tying up assets for too long a period of time and is concerned with the "utility" of property. The purpose of the rule is to limit a testator's power to earmark property gifts for remote descendants. Attempts to do so beyond the so-called "common law" period or beyond superceding statutory periods are void. Examples of such attempts usually involve contingencies requiring a

beneficiary to reach a certain age or to survive other beneficiaries. (e.g. leaving property in trust with the income going to a succession of beneficiaries, then the corpus to other beneficiaries if they live to a certain age and if they do not, to charity, etc.)

The common law rule against perpetuities, as defined by the Deluxe Eighth Edition of Black's Law Dictionary, prohibits a grant of an estate unless the interest must vest, if it all, no later than 21 years (plus a period of gestation to cover a posthumous birth) after the death of some person alive when the interest was created." This bill "abrogates", or abolishes, that rule which presumably would apply if the superceding statutes are repealed.

New Mexico has superceded the common law rule against perpetuities by adopting the Uniform Statutory Rule Against Perpetuities drafted by the National Conference of Commissioners on Uniform State Laws. The statutory rule contains two components: 1) a nonvested property interest is valid when it is created if it is *certain* to vest, or is *certain* to fail to vest, within 21 years after the death of an individual then actually alive; and 2) if an interest is *not certain* to either vest or terminate within the 21 year period, it must vest within ninety years of its creation or it terminates. The bill also repeals those statutes.

OTHER SUBSTANTIVE ISSUES

According to AOC, the common law Rule against Perpetuities basically governs how long property can be tied up in a trust. As Professor Neil Harl, economics professor at Iowa State, explains, "The Rule has come to stand for the proposition that interests in trust must vest, if at all, not later than 21 years after the last to die of a class of lives in being at the creation of the interest in trust. As a practical matter, that has tended to impose a maximum term of 100 to 125 years for property to be held in trust."

EO/nt