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FISCAL IMPACT REPORT

ORIGINAL DATE 01/23/13

SPONSOR Cook LAST UPDATED HB 41

SHORT TITLE Perpetuities for Certain Trust Properties SB

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 41 designates a new section to the statutory rule against perpetuities for interests held by trusts. Those interests generally would not be subject to the standard 90 year expiration period for conveyance to a beneficiary. This new exemption carves out interests in real property, water or water rights held by a trust, which interests under HB 41 shall expire 110 years from either the date on which the interest is added to or purchased by the trust or the date the trust becomes irrevocable, whichever is later. HB 41 codifies how those interests are to be distributed at the end of the 110 year period.

The effective date of this bill is July 1, 2013.

FISCAL IMPLICATIONS

No fiscal impact is anticipated.

SIGNIFICANT ISSUES

The purpose of the rule against perpetuities is to preserve the transferability of property interests.

There is a continued potential for abuse by persons attempting to evade ad valorem, income and estate taxation. Eliminating or delaying requirements for conveyance of trust property out of trust may reduce the scope and number of taxable events, or opportunities to reassess the property at market value when it is conveyed out of trust.

TECHNICAL ISSUES

The AOC advises that in law the term “real property” encompasses water rights, so reference to both real property and water rights in the bill is unnecessary. Additionally, the AOC notes that referring separately to “water” and “water rights” may suggest that they represent different rights. In New Mexico, a water right is a usufructuary right to divert water and apply it to beneficial use; it is not ownership in any particular water source, but instead is a right to use a certain amount of water.

MD/bm