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FISCAL IMPACT REPORT

SPONSOR Cook **ORIGINAL DATE** 02/09/15
LAST UPDATED 03/19/15 **HB** 183/aHfI#1/aSJC

SHORT TITLE Perpetuities for Certain Trust Properties **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 124

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Administrative Office of the Courts (AOC)
State Land Office (SLO)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to House Bill 183 replaces the term "corporate entity" with the more general "business entity" in Subsections C, D and E, which address the exceptions to the application of the general invalidation period stated in Section 45-2-901, NMSA 1978, or the longer periods provided in this bill.

Synopsis of HfI Amendment #1

The House Floor Amendment #1 to House Bill 183 changes the word "interstate" to "intestate" on page 4, line 20, in the provision governing the distribution of real property after the expiration of the 365 year period for real property held in trust provided in this bill, absent any provision in the trust instrument governing distribution and in the absence of any income beneficiary.

Synopsis of Original Bill

House Bill 183 amends the Uniform Rule Against Perpetuities as adopted in New Mexico to create a new exemption for property held in trust. Generally, the Rule invalidates certain unvested property interests if they do not vest within 21 years of the death of a person now living or within 90 years of the creation of the property interest.

This new exemption provides no termination for unvested personal property held in trust, while real property can be held in trust for 365 years after the later of the date upon which the trust acquired the property or the date the trust became irrevocable. At the conclusion of that period, the trust must distribute the property: (1) as if the trust had been terminated, if such termination provides for a means of distribution; (2) if the termination does not provide for a distribution, then to the beneficiaries who are entitled to receive income from the trust; and (3) if neither (1) nor (2), then according to New Mexico law governing the distribution of intestate real property.

This 365-year termination period does not apply to trusts holding an interest in corporate entities where the corporate entity terminates and leaves the trust as a holder of real property. In these circumstances, the trust may distribute the interest in real property as set out in the bill, or it may convey the interest in real property to another corporate entity in exchange for an interest in that corporate entity.

For purposes of HB 183 "real property" does not include either intangible personal property or an interest in a corporation, a limited liability company, a partnership, a statutory trust, a business trust or another corporate entity, regardless of whether the entity is the owner of an interest in real property.

The effective date of this bill is July 1, 2015.

FISCAL IMPLICATIONS

No meaningful fiscal impact to the State 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.

As AOC comments, HB 183 would significantly change the existing rule by extending the life span to 365 years allowing the creation of what may be referred to as "dynasty trusts." While dynasty trusts may be considered effective tools for building and preserving wealth because no estate tax can be imposed while the property interests are held in trust, its impact on the State's ability to collect those and other taxes is adversely impacted.

Dynasty trust assets are also shielded from creditors and divorcing spouses.