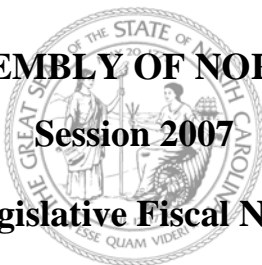


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 1384 (First Edition)

SHORT TITLE: Repeal Rule Against Perpetuities.

SPONSOR(S): Representatives Glazier and Tillis

FISCAL IMPACT					
	Yes ()	No (X)	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
REVENUES	** See Assumptions and Methodology**				
EXPENDITURES					
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					
EFFECTIVE DATE:	January 1, 2008				

BILL SUMMARY:

SUMMARY: House Bill 1384 repeals the statutory rule against perpetuities and codifies the law regarding the alienation of trusts created in North Carolina.

CURRENT LAW: In 1995 the General Assembly adopted Article 2 of Chapter 41, the Uniform Statutory Rule Against Perpetuities (USRAP), and Article 3 of Chapter 41, "Time Limits on Options in Gross and Certain Other Interests in Land" (Limit Options in Gross).

USRAP includes a two-prong test for the validity of future interests. First, if the interest is valid under the common-law rule, it remains valid under USRAP. The common-law rule requires the interest to vest within 21 years of some life in being at the creation of the interest. Second, if the future interest violates the common-law rule, the interest is valid if it actually vests within 90 years. The USRAP includes provisions governing the time of creation of an interest and allows for the reformation of a failed interest by the court. Certain interests are excluded from the statutory rule including certain commercial transactions and martial and divorce agreements.

Limit Options in Gross replaces the common-law rule against perpetuities with statutory time limits for options in gross and other interests in real property. An "option in gross" is defined as an

option in which the holder does not own any leasehold or other interest in the land. A "preemptive right in the nature of a right of first refusal in gross with respect to an interest in land" means a preemptive right in which the holder does not own any leasehold or other interest in the land. An option in gross or a preemptive right becomes invalid if it is not actually exercised within 30 years of its creation. A lease, excluding oil, gas, or mineral lease, also becomes invalid if its term does not commence within 30 years after its execution. Other provisions invalidate the following: (1) a nonvested easement in gross which does not actually vest within 30 years; (2) a possibility of reverter, right of reentry, or executory interest if the right to vest depends on an event affecting the use of land and the interest does not actually vest within 60 years of its creation. The following possibilities of reverter, rights of reentry, or executory interest are excluded from the act: (1) those held by a charity, a government or government agency or subdivision excluded from the USRAP; or (2) an arrangement relating solely to an interest in oil, gas, or minerals.

BILL ANALYSIS: House Bill 1384 repeals USRAP and creates new statutory provisions for the validity of trusts. USRAP requires an interest to *vest* within a proscribed time limit. This bill repeals the vesting requirement and codifies the common law prohibition against restraints on alienation.

Sec. 1. Repeals Article 2 of Chapter 41, USRAP.

Sec. 2. Creates Article 2A of Chapter 41, which provides a new statutory framework for perpetuities and the suspension of the power of alienation.

- Provides a trust is void if it suspends the power of alienation of trust property for a period longer than the permissible period.
- The permissible period is 21 years after the end of one of more lives in being.
- The permissible period for the settlor of a revocable trust is computed from the termination of the power to revoke or amend.
- The permissible period for a trust created by a power of appointment is computed from the time the power is exercised. This rule is also used for testamentary powers of appointments.
- The permissible period for a trust created by other powers is computed from the time the power is created. Facts at the time the power is exercised must be considered in determining whether the trust is valid.
- The power of alienation is suspended only when there are no persons in being, alone or in combination with others, who can convey an absolute fee in possession of the land, or full ownership of personal property.
- The power of alienation is not suspended by a trust or by equitable interests under a trust if the trustee has the power to sell, or if there is an unlimited power to terminate the trust in one or more persons in being.
- These provisions do not apply to a transfer in trust:
 - 1) for charitable purposes.
 - 2) to a literary or charitable organization.
 - 3) to a veterans' memorial organization.

4) to a cemetery corporation, society, or association.

5) as part of a pension or similar plan established by an employer for the benefit of its employees.

- The provisions of this statute do not apply to future interests other than future interests in trust.
- Provides the common law rule against perpetuities is not in force in this state.

EFFECTIVE DATE: This act becomes effective January 1, 2008, and applies to all trusts and other property interests created before, on, or after that date.

ASSUMPTIONS AND METHODOLOGY: There will be no fiscal impact on state revenues from the repeal of the rules of perpetuity. This finding is consistent with some 21 other states, which have enacted similar repeals.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

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DATE: May 9, 2007



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