



**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

Synopsis: House Bill 183 seeks to amend New Mexico’s statutory Rule Against Perpetuities, to create a new exemption for real property held in trust. New Mexico has adopted the Uniform Statutory Rule Against Perpetuities. The Rule Against Perpetuities 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. *See* N.M. Stat. Ann. 45-2-901. The Uniform Statutory Rule Against Perpetuities contains several enumerated exemptions from the Rule Against Perpetuities.

House Bill 183 would create a new exemption in addition to those already included in the Uniform Rule, excluding property interests held in trust from the Rule Against Perpetuities. Unvested personal property could be held in a trust indefinitely. With respect to real property, the Bill would allow a trust to hold real property, without any interest vesting in that property, for 365 years after the later of the trust acquiring the property or the trust becoming irrevocable, before the trust must distribute the property. At the end of this 365-year period, the Bill provides for several means of distribution of the real 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, to the beneficiaries who are entitled to receive income from the trust; and (3) if neither (1) nor (2), according to New Mexico law governing the distribution of intestate real property.

The Bill provides an exception from this 365-year termination period for trusts holding an interest in corporate entities where the corporate entity terminates and leaves the trust as a holder of real property as a result. In such circumstances, the Bill allows the trust to distribute the interest in real property pursuant to the procedures described above or to convey the interest in real property to another corporate entity in exchange for an interest in that corporate entity.

**FISCAL IMPLICATIONS**

There are no fiscal implications for this Office.

## **SIGNIFICANT ISSUES**

It may be confusing to include the new provisions regarding the 365-year period for the expiration of a trust within Section 45-2-904, which contains exemptions to the Rule Against Perpetuities. A new provision for the termination of a trust after 365 years may be better placed in its own Section, while leaving only the blanket exemption for property held in trusts in 45-2-904.

The proposed subsection (C) may also be confusing with respect to how it interacts with the proposed subsection (B) and the remainder of the Rule Against Perpetuities. First, it is unclear how a trust could terminate or become void “pursuant to ... Section 45-2-901” by acquiring real property, if property interests in trusts are already exempt from the Rule Against Perpetuities. Second, subsection (C) seemingly would only preclude the termination of a trust if that trust retained real property for 365 years after a corporate entity terminated and left the trust with the real property. It is unclear whether subsection (C) is intended to cover such a narrow contingency.

## **PERFORMANCE IMPLICATIONS**

There are no performance implications for this Office.

## **ADMINISTRATIVE IMPLICATIONS**

There are no administrative implications for this Office.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The exclusion of property held in trusts from the Rule Against Perpetuities interacts with Section 4 of House Bill 124, which states: “The power pursuant to Section 46A-8-818 shall not be exercised to suspend the power to alienate trust property to extend the first trust beyond the permissible period of a rule against perpetuities applicable to the first trust.” The exclusion of trust property could nullify Section 4 of House Bill 124, or Section 4 could be read as preventing the extension of the first trust beyond the 365-year term for trusts in House Bill 183, depending on whether the 365-year term is considered part of the Rule Against Perpetuities.

## **TECHNICAL ISSUES**

In proposed subsection (B)(3) the term “interstate” appears, where I believe the statute should read “intestate.” Issues regarding the location of the proposed 365-year expiration for trusts holding real property within Section 45-2-904, the exemptions from the Rule Against Perpetuities are discussed above. Also, the proposed title to Section 45-2-904 is confusing in that not all exemptions in the section concern real property held in trust.

## **OTHER SUBSTANTIVE ISSUES**

None.

## **ALTERNATIVES**

None.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

**AMENDMENTS**

The proposed Subsections (B)-(E) could be placed within a new section of N.M. Stat. Ann. 45-2-901 *et seq.*, rather than as part of 45-2-904.