STORAGE NAME: h0599s1.rpp
DATE: February 14, 2000

HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
ANALYSIS

BILL #: CS/HB 599

RELATING TO: Perpetuities/Trusts

SPONSOR(S): Committee on Real Property and Probate and Representative Goodlette

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) REAL PROPERTY & PROBATE YEAS 7 NAYS 0
(2)
(3)
(4)
(5)

I. SUMMARY:

The Rule Against Perpetuities requires that a property interest must vest in a person or persons entitled to the property no later than lives in being plus 21 years, or 90 years. This bill modifies the Rule Against Perpetuities, as it relates to trusts, by substituting 1000 years for 90 years. Accordingly, this bill will permit a trust to remain in existence for up to 1000 years before the trust must terminate and its assets distributed among the beneficiaries. This bill also provides that the Rule Against Perpetuities is the sole expression of any rule against perpetuities or remoteness in vesting, and that no common-law rule against perpetuities or remoteness in vesting shall exist.

This bill further provides specific statutory guidelines for judicial modification or termination of a trust, nonjudicial modification of a trust, and for reimbursement of costs and attorney's fees in any action for modification or termination of a trust.

This bill does not appear to have a fiscal impact on local government. There is a positive and negative fiscal impact on the state as it relates to estate tax and intangible personal property tax. See "Fiscal Analysis & Economic Impact Statement."

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes [] No [] N/A [x]

2. Lower Taxes Yes [] No [] N/A [x]

3. Individual Freedom Yes [x] No [] N/A []

4. Personal Responsibility Yes [] No [] N/A [x]

5. Family Empowerment Yes [] No [] N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Rule Against Perpetuities

The Rule Against Perpetuities is found at s. 689.225, F.S.[1] The rule provides that a nonvested property interest is invalid unless, when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or the interest either vests or terminates within 90 years after its creation.[2] Either of these alternatives may be used in a trust instrument, but the trust instrument cannot be crafted to provide that the trust will last for the longer of the two alternatives.[3]

Over the past several years, a number of states (including Delaware, Illinois, and Ohio) have repealed their Rule Against Perpetuities. The principal reason for repeal is based upon federal estate and generation-skipping tax law. Under current federal tax law, it is possible to create a trust that will never be subject to federal estate or generation-skipping tax, as long as the trust lasts. There are limits on how much can be placed into such a trust, and taxes may be owed upon creation of the trust, but once created the trust assets will never again be subject to estate or generation-skipping tax -- that is, as long as the trust exists. When the trust is required to terminate because of the rule against perpetuities, the assets in the trust once again become subject to estate and generation-skipping taxes.[4]

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[1] Florida's Rule Against Perpetuities is derived from the Uniform Statutory Rule Against Perpetuities, with 1990 Amendments. Twenty-five states have adopted this uniform rule.

[2] The 90-year time period is the approximate usual result of the "21 years after the death of an individual then alive" formula. See, Uniform Statutory Rule Against Perpetuities, with 1990 Amendments, by the National Conference of Commissioners on Uniform State Laws, at 8-11; and Waggoner, Perpetuities: A Progress Report on the Draft Uniform Statutory Rule Against Perpetuities, 20 U. Miami Inst. on Est. Plan Ch. 7 (1986).

[3] Note that a trust created for charitable purposes is not limited by the Rule Against Perpetuities, but may have a perpetual life.

[4] Summary of Committee Proposal to Modify the Rule Against Perpetuities and for Statutory Authority to Reform Trusts, prepared by Bruce Stone, Esquire, for the Rule Against Perpetuities Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar, undated but received December 1999.

Several states, at the urging of their bar associations and banking groups, have repealed their Rule Against Perpetuities to allow trusts within their states to last forever (or at least until the trust assets have been exhausted), with the objective of allowing wealth to be preserved without having to pay federal estate and generation-skipping taxes. These trusts have come to be known as "dynasty trusts." According to representatives of the Real Property, Probate, and Trust Law Section of the Florida Bar, states such as Florida that have not repealed or modified their Rule Against Perpetuities have experienced a flight of capital to those states that have repealed their Rule Against Perpetuities. Under current law, a Florida resident cannot create a dynasty trust in Florida. That same Florida resident, however, can create a dynasty trust simply by moving his or her capital to a trust created in another state such as Delaware or Illinois. Bill proponents believe that, "if Florida law does not change, capital wealth will continue to leave Florida and will result in erosion of state tax revenues and loss of jobs in the private sector (principally in the fields of asset management and related professional services)."[5]

<u>Delaware Tax Trap</u>

The "Delaware tax trap" is found in sections 2041(a)(3) and 2514(d) of the Internal Revenue Code. The Delaware tax trap was enacted by Congress many years ago to circumvent an attempt by the Delaware legislature to allow its citizens to avoid federal estate taxes through manipulation of the rule against perpetuities. Delaware had enacted legislation that allowed each generation of beneficiaries in a Delaware trust to extend the rule against perpetuities, so that with each passing generation, the life of the trust could be extended for one more generation level. This effectively allowed Delaware trusts to have perpetual existence, as long as the beneficiaries at each generation level took the necessary action to extend the rule. As long as the assets remained inside the trust, no estate taxes would be due.[6]

In response, Congress created the Delaware tax trap, which states that if the life of a trust can be extended beyond a fixed period that is measured from the date the trust was created, the trust will be subject to estate tax[7] or gift tax[8] when the beneficiaries exercise a power that allows the life of the trust to be extended.[9]

> For example, assume that a trust is created on January 1, 2000, and that the rule against perpetuities applicable to the trust will require the trust property to vest in the beneficiaries on January 1, 2090. Assume that state law allows a beneficiary to exercise a power that can extend the term of the trust by triggering a new rule against perpetuities period. On March 1, 2010, a living beneficiary exercises a power that permits the term of the trust to be extended beyond January 1, 2090. Under this scenario, the beneficiary is subject to gift tax on the trust assets on March 1, 2010. If the beneficiary had not exercised the power to permit the term of the trust to be extended, the beneficiary would not have been subject to gift tax on the trust assets. Furthermore, if none of the beneficiaries exercised powers to permit the trust term to

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[5] <u>Id</u>.

[6] <u>Id</u>.

[7] 26 U.S.C. § 2041(a)(3).

[8] 26 U.S.C. § 2514(d).

[9] Summary of Committee Proposal to Modify the Rule Against Perpetuities and for Statutory Authority to Reform Trusts, prepared by Bruce Stone, Esquire, for the Rule Against Perpetuities Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar, undated but received December 1999.

> be extended, no gift or estate taxes would be owed on the trust assets until after those assets vest on January 1, 2090.[10]

States which have repealed the rule against perpetuities may have stumbled into the Delaware tax trap. In those states, a trust literally can last forever (assuming that the trust assets are not exhausted). The wording of the Delaware tax trap states that if a beneficiary exercises a power that allows vesting of the trust property to be postponed "for a period ascertainable without regard to the date of the creation of the [beneficiary's] power," the exercise of the beneficiary's power triggers a gift tax or estate tax. If a trust has no limit on its existence, and if a beneficiary exercises a power in a way that allows the trust property to continue to remain in trust forever, it is arguable that the beneficiary has postponed the vesting of the trust property "for a period ascertainable without regard to the date of the creation of the [beneficiary's] power."[11]

> For example, assume that a trust is created on January 1, 2000, and that there is no rule against perpetuities. On March 1, 2010, a beneficiary with two children exercises a power given to her in the trust instrument, and she divides the trust assets into two separate trusts for the two lines of her family. She does not require the two separate trusts to terminate, and thus they can continue in existence forever. She also gives each of her two children a power over that child's separate trust identical to the power that she had over the entire trust before she divided it into two. Her children in turn can exercise their powers either to terminate their trusts, or to allow them to continue in trust forever.[12]

Arguably, in the preceding example, the beneficiary has exercised her power to create new powers (in her children) that will allow them to postpone vesting of the trust property for a period that is ascertainable without regard to the date that her power was created - there is no "period" ascertainable by reference to the date her power was created, because there is no rule against perpetuities and thus there simply is no "period." If this argument is correct, when the beneficiary exercises her power on March 1, 2010, the Delaware tax trap subjects the beneficiary to gift tax on the trust assets (if she is alive when she exercises the power) or estate tax (if she died on March 1 and exercises the power upon her death).[13]

If this literal reading and interpretation of the Internal Revenue Code is correct, those states that have repealed their rule against perpetuities hoping to assist their citizens to avoid federal estate and gift taxes forever have instead created the potential for immediate estate or gift tax each time that a beneficiary exercises any form of power given to the beneficiary. There is no legal authority addressing this issue.[14]

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[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

Modification and Termination of Trusts

> The primary justification for existence of the rule against perpetuities is to prevent the creation of trusts that in the distant future may become unwieldy, unwise, or inappropriate due to changes in circumstances. Events and circumstances, laws and trust management practices, language and concepts -- all of these change over time in ways for which not even the wisest of trust settlors and their advisers can envision and plan.[15]

Accordingly, bill proponents believe that if the perpetuities period is to be extended, it must be coupled with mechanisms to allow trust arrangements to adapt over time to changing conditions and circumstances, in ways that will continue to accommodate a settlor's wishes yet at the same time remaining in the best interests of that settlor's intended beneficiaries.[16]

There is one statutory ground specifically allowing the termination of a trust. A trust may be terminated by the trustee of the trust if the market value of the trust is less than $50,000 and that, relative to the costs of administering the trust, continuance pursuant to the terms of the trust will defeat or substantially impair the accomplishment of the trust purposes.[17] There are also several common law grounds for termination of a trust. The most common form of trust termination is termination by the terms of the trust agreement. A court of equity may terminate a trust earlier than its stated term where the trust become passive, where its purpose has been accomplished, or where the performance of the trust has become impossible,[18] but only if all interested persons petition for termination of the trust.[19] Usually, a trust cannot be terminated by the consent of a beneficiary unless its purpose has been obtained and ordinarily, unless all beneficiaries, being of full age and otherwise legally competent, consent.[20] A court may permit termination of a trust where the settlor and beneficiaries agree, so long as the rights of no other persons are affected.[21] A trust may terminate if the legal and equitable estates in the same property merge.[22]

In general, a trust cannot be modified without the consent of all parties in interest, unless there is a specific provision in the trust agreement for modification.[23]

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[15] Id.

[16] Id.

[17] Section 737.402(3), F.S. A trust document may specifically state that this provision does not apply to the trust.

[18] 56 Fla.Jur.2d, Trusts §79.

[19] 56 Fla.Jur.2d, Trusts §80.

[20] 56 Fla.Jur.2d, Trusts §81.

[21] Id.

[22] 56 Fla.Jur.2d, Trusts §83.

[23] 56 Fla.Jur.2d, Trusts §84.

Common-Law Rule Against Perpetuities, Remoteness in Vesting, or Restraint upon the Power of Alienation or Accumulations

Section 2.01, F.S., provides: "The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the 4th day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this state." The rule against perpetuities, the rule against remoteness in vesting, the rule against restraint upon the power of alienation, and the rule against accumulations,[24] are all common law concepts derived from English common law.

The common law rule against perpetuities was first defined in Florida as: "No interest subject to a condition precedent is good, unless the condition must be fulfilled, if at all, within twenty-one years after some life in being at the creation of the interest."[25] "The rule against perpetuities concerns itself only with the vesting or commencing of the estate and not with its termination. It was designed to prevent the perpetual entailment of estates and give them over to free and unhampered conveyance."[26] The common law rule against perpetuities was not specifically repealed when the Rule Against Perpetuities was enacted in the Florida Statutes.

The common law rule against remoteness in vesting is another term for the rule against perpetuities.[27]

The common law rule on restraint upon the power of alienation relates to restrictions upon resale imposed upon the grantee or purchaser of property.

> At one time, estates in fee simple were inalienable, but the *statute quia emptores*, 18 Edw. 1, c. 1 (1289), enabled tenants in fee simple to alienate their lands at pleasure. After this, provisions in deeds or other conveyances for the purpose of restraining alienation, were held invalid. Under the common law, the beneficiary of a trust conveying real estate in fee, in which no one else was interested, could, on becoming of age, ignore and terminate any restraint on his right to alienate it. Such has been termed the rule against restraints or as deduced from statutes attempting to regulate conveyancing, the rule against the suspension of the power of alienation.[28]

Section 689.14, F.S., which prohibits entailed estates,[29] is related to the common law rule prohibiting restraint upon alienation, but the common law rule is broader.

The common law rule on accumulations prohibits the unreasonable accumulation of assets in a trust. A trust provision that requires accumulation of income is valid and will not be

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[24] A better description would be the rule against *unreasonable* accumulations.

[25] Van Roy v. Hoover, 117 So. 887 (Fla. 1928).

[26] Story v. First National Bank & Trust Co. in Orlando, 156 So. 101, 104 (Fla. 1934).

[27] Adams v. Vidal, 60 So.2d 545, 549 (Fla. 1952).

[28] Story v. First National Bank & Trust Co. in Orlando, 156 So. 101, 104 (Fla. 1934).

[29] To entail property is to "settle or limit the succession to real property." Black's Law Dictionary.

disturbed by a court so long as the accumulation is not unreasonable.[30] There is no statutory law prohibiting the unreasonable accumulation of assets in a trust.

Definition of Trust

Section 731.201(33), F.S., provides:

> "Trust" means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts; conservatorships; personal representatives; custodial arrangements pursuant to the Florida Gifts to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.05; trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

Attorney's Fees

"The rule in chancery cases is that a court of equity may, as justice requires, order that costs follow the result of the suit, apportion the costs between the parties, or require all costs be paid by the prevailing party."[31] "This rule has been construed as providing [a] court with broad discretion to award and apportion costs as it deems appropriate."[32]

C. EFFECT OF PROPOSED CHANGES:

This bill modifies the Rule Against Perpetuities in s. 689.225, F.S., as it relates to trusts, by substituting "1000 years" for "90 years" throughout the statute. Accordingly, a trust may remain in existence for up to 1000 years before the trust must terminate and its assets distributed among the beneficiaries. This bill also provides that the Rule Against Perpetuities is the sole expression of any rule against perpetuities or remoteness in vesting, and that no common-law rule against perpetuities or remoteness in vesting shall exist.

This bill further provides specific statutory guidelines for judicial modification or termination of a trust, nonjudicial modification of a trust, and for reimbursement of costs and attorney's fees in any action for modification or termination of a trust.

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[30] Brown v. Saake, 190 So.2d 56, 59 (Fla. 2nd DCA 1966)

[31] Dayton v. Conger, 448 So.2d 609, 612 (Fla. 3rd DCA 1984); see also, Akins v. Bethea, 33 So.2d 638, 640 (1948).

[32] Furlong v. Raimi, 24 Fla.L.Weekly D1444 (Fla. 3rd DCA 1999).

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 689.225, F.S.

Provides that, as to any trust created after December 31, 2000, a nonvested property interest or power of appointment contained in a trust will not be required to vest for 1000 years, in lieu of the 90 years otherwise required for vesting under the Rule Against Perpetuities, unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

This section further provides that the Rule Against Perpetuities is the sole expression of any rule against perpetuities or remoteness in vesting. No common-law rule against perpetuities or remoteness in vesting shall exist with respect to any interest or power regardless of whether such interest or power is governed by this section.

Section 2: Creates ss. 737.4031, 737.4032, and 737.4033, F.S.

Section 737.4031, F.S.: Judicial modification of trusts.--

Provides two different circumstances upon which a trust may be judicially modified. First, if the purposes of a trust have been fulfilled or have become illegal or impossible to fulfill or, if because of circumstances not known to or anticipated by the settlor, compliance with the terms of the trust would defeat or substantially impair the accomplishment of a material purpose of the trust or, if a material purpose of the trust no longer exists, upon the application of a trustee or any beneficiary a court at any time may modify the terms of a trust which is not then revocable to amend or change the terms of the trust, including terms governing distribution of the trust income or principal, or terms governing administration of the trust; terminate the trust in whole or in part; direct or permit the trustee to do acts that are not authorized or that are prohibited by the terms of the trust; or prohibit the trustee from performing acts that are permitted or required by the terms of the trust.

The other circumstance upon which a trust may be modified is if compliance with the terms of the trust is not in the best interest of the persons having a beneficial interest in the trust. Under this circumstance, and upon the application of the trustee or any beneficiary, a trust which is not then revocable may be modified at any time by a court and without regard to whether circumstances not known to or anticipated by the settlor, compliance with the terms of the trust would defeat or substantially impair the accomplishment of a material purpose of the trust or, if a material purpose of the trust no longer exists. A court must exercise its discretion to order a modification of the trust under this subsection in a manner that conforms to the extent possible with the intention of the settlor, taking into account the current circumstances and best interests of the beneficiaries. These provisions are not applicable to a trust created prior to January 1, 2001; nor are they applicable to a trust created after December 31, 2000, if, under the terms of the trust, all beneficial interests in the trust must vest or terminate within the period prescribed by the Rule Against Perpetuities in s. 689.225(2), F.S., notwithstanding s. 689.225(2)(f), F.S.,[33] and the terms of the trust expressly prohibit judicial modification. Modification of a trust is not prohibited by a term of the trust instrument that prohibits amendment or revocation of the trust if the term of the trust does not expressly prohibit judicial modification.

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[33] In other words, within the existing rule against perpetuities period (lives in being plus 21 years, or 90 years).

In exercising its discretion to order a modification of a trust, a court must consider the terms and purposes of the trust, the facts and circumstances surrounding the creation of the trust, and extrinsic evidence relevant to the proposed modification.

To the extent the interests of any person with a beneficial interest in the trust who is unborn or unascertained, whose identity is not then known for any reason, or who is a minor or under a legal disability are not represented by another beneficiary, such person shall be represented by the person's legal guardian, if any, or, if none, by a guardian ad litem appointed by the court upon the court's own motion or upon application by the trustee or any beneficiary.

The court shall consider spendthrift provisions as a factor in making a decision whether to modify a trust under this section, but the court is not precluded from exercising authority to modify the trust because the trust contains spendthrift provisions.

This section defines “beneficiary” and “trust” as follows:

> "Beneficiary" means all current income or principal beneficiaries, whether the beneficiaries' beneficial interests are discretionary or mandatory, and all reasonably ascertainable beneficiaries if all current income interests immediately terminated, determined as if any power of appointment over the trust assets were not exercised.
>
> "Trust" means trust as defined in s. 731.201, F.S.

A trust is made revocable if it is revocable by the settlor alone or in conjunction with any other person. A trust is not revocable if revocable by the settlor only with the consent of all persons having a beneficial interest in the property. A trust which is revocable must be treated as created when the right of revocation terminates.

The provisions of s. 737.4031, F.S., are in addition to, and not in derogation of, rights under the common law to modify, amend, or revoke trusts.

737.4032 Nonjudicial modification of trusts.--

Provides that a trust which is not revocable may be modified at any time after the settlor's death, upon the unanimous agreement of the trustee and all beneficiaries of the trust, to amend or change the terms of the trust, including terms governing distribution of the trust income or principal or terms governing administration of the trust; terminate the trust in whole or in part; direct or permit the trustee to do acts that are not authorized or that are prohibited by the terms of the trust; or prohibit the trustee from performing acts that are permitted or required by the terms of the trust.

These provisions do not apply to any trust for which a charitable deduction is allowed or allowable under the Internal Revenue Code until the termination of all charitable interests in the trust.

An agreement to modify a trust will be binding upon a person with a beneficial interest in the trust who is unborn or unascertained, whose identity is not then known for any reason, or who is a minor or under a legal disability, to the extent that his or her interest is represented by another beneficiary having the same or greater quality of beneficial interest in the trust, but only to the extent there is no conflict of interest between such person and such beneficiary or among the persons represented. To the extent the interests of any

person having a beneficial interest in a trust who is unborn or unascertained, whose identity is not then known for any reason, or who is a minor or under a legal disability are not represented by a beneficiary, such person shall be represented by the person's legal guardian if there is one or, if the person does not have a legal guardian, such person shall be represented by a guardian ad litem appointed by a court upon application by the trustee or any beneficiary. Unless the court requires otherwise, the guardian ad litem's decision whether to consent to modify the trust shall be binding upon any person represented by the guardian ad litem without seeking court approval.

These provisions do not apply to a trust created prior to January 1, 2001. These provisions also do not apply to a trust created after December 31, 2000, if, under the terms of the trust, all beneficial interests in the trust must vest or terminate within the period prescribed by the Rule Against Perpetuities in s. 689.225(2), F.S., notwithstanding s. 689.225(2)(f), F.S., unless the terms of the trust expressly permit modification.

Modification of a trust as authorized in this section is not prohibited by a spendthrift clause, or by a provision in the trust instrument that prohibits amendment or revocation of the trust but that does not expressly refer to modification under this section.

This section defines “beneficiary” and “trust” as previously defined.

A trust is made revocable if it is revocable by the settlor alone or in conjunction with any other person. A trust is not revocable for purposes of this section if revocable by the settlor only with the consent of all persons having a beneficial interest in the property. A trust which is revocable must be treated as created when the right of revocation terminates.

The provisions of s. 737.4032, F.S., are in addition to, and not in derogation of, rights under the common law to modify, amend, or revoke trusts.

737.4033 Costs and Attorney's Fees.

Provides that, in all proceedings under s. 737.4031, F.S., or s. 737.4032, F.S., a court must award taxable costs as in chancery actions, including attorney's fees and guardian ad litem fees, and such costs may be paid from the trust or as otherwise directed by the court.

Section 3: Provides an effective date of December 31, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   To the extent that this bill encourages persons to leave trust assets in the state, the bill proponents argue that it may prevent an erosion of the intangible personal property tax base. To the extent that this bill encourages non-residents to create dynasty trusts in Florida that they cannot create in their home state, this bill may increase the intangible personal property tax base.

2. Expenditures:

This bill may cause an unknown but probably insignificant increase in Judicial Branch costs should the number of cases for judicial modification or termination of trusts increase over current levels.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

none

2. Expenditures:

none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Representatives of the Florida Bankers Association and of the Real Property, Probate, and Trust Law Section of the Florida Bar state that this bill will have a positive economic impact on the private sector.[34]

D. FISCAL COMMENTS:

This bill may have a indeterminate impact on Estate Tax revenues in the distant future. Under current law, when a trust terminates because of the Rule Against Perpetuities, the trust assets vest in persons who then will die at some time and at that point their estate would be subject to the Estate Tax. For a trust created today, that vesting of property would take place approximately 90 years from now, and the new estate tax liability would be created some period of time later, assuming that any of the initial property placed in the trust remains. This bill would extend the 90 years to 1000 years, effectively eliminating future Estate Tax liability as to those assets. The Department of Revenue states that there will be no current effect on estate tax revenues.[35]

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

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[34] Summary of Committee Proposal to Modify the Rule Against Perpetuities and for Statutory Authority to Reform Trusts, prepared by Bruce Stone, Esquire, for the Rule Against Perpetuities Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar, undated but received December 1999.

[35] Telephone conference with Debra Thomas of the Department of Revenue, on January 27, 2000.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

none

B. RULE-MAKING AUTHORITY:

none

C. OTHER COMMENTS:

The Florida Rule Against Perpetuities is derived from the Uniform Statutory Rule Against Perpetuities, with 1990 Amendments, by the National Conference of Commissioners on Uniform State Laws. The prefatory note to the uniform acts states that "**jurisdictions adopting this Act are strongly urged not to adopt a period of time different from the 90-year period.**"[36]

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 7, 2000, the Committee on Real Property and Probate adopted six amendments offered by the sponsor. The bill as amended was reported favorably as a committee substitute. The 6 amendments provide, as follows:

Amendment 1. Adds the word "judicial" to a provision in a newly created section regarding judicial modification of trusts, which clarifies that certain provisions do not apply to a trust that expressly prohibits "judicial" modification.

Amendment 2. Removes the requirement that the drafter of a trust instrument specifically refer to the statutory provisions regarding modification of a trust in order to prohibit judicial modification of certain trusts.

Amendment 3. Removes the requirement that the drafter of a trust instrument specifically refer to the statutory provisions regarding modification of a trust in order to prohibit nonjudicial modification of certain trusts.

[36] Uniform Statutory Rule Against Perpetuities, with 1990 Amendments, by the National Conference of Commissioners on Uniform State Laws, at 9.

Amendment 4. Removes the provisions repealing the common law rule against accumulations and the common law rule on restraints against alienation.[37]

Amendments 5 and 6. Clarify that only a trustee of the trust being modified may seek judicial modification of that trust.[38]

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:	Staff Director:
Nathan L. Bond, J.D.	J. Marleen Ahearn, Ph.D., J.D.

[37] This amendment addresses the concern that repeal of the common law rule on accumulations might allow trusts to become unreasonably large, that repeal of the common law rule on restraints on alienation might have unintended consequences in real property law, and that repeal of these common law rules was not necessary to accomplish the purposes of this bill.

[38] These amendments address the concern that simply using the word "trustee" might have the unintended consequence of allowing a bankruptcy court trustee in a bankruptcy court case involving a trust beneficiary to try to modify or revoke a trust under the provisions of this bill.