Department of Legislative Services
Maryland General Assembly

FISCAL NOTE
Revised

House Bill 495 (Delegates Dembrow and Gordon)
Judiciary

Estates and Trusts - Rule Against Perpetuities

This amended bill exempts certain trusts from the common law rule against perpetuities. Specifically, the bill provides that the rule against perpetuities does not apply to a trust in which the governing instrument states that the rule against perpetuities does not apply to the trust and under which the trustee, or other person to whom the power is properly granted or delegated, has the power under the governing instrument, applicable statute, or common law to sell, lease, or mortgage property for any period of time beyond the period that is required for an interest created under the governing instrument to vest, so as to be good under the rule against perpetuities.

The bill applies to all trusts created by will or inter vivos agreement executed or amended on or after the October 1, 1998 effective date, and to all trusts created by exercise of a power of appointment granted under instruments executed or amended on or after October 1, 1998.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues. No effect on expenditures.

Local Effect: Potential minimal increase in revenues. No effect on expenditures.

Small Business Effect: None.

Fiscal Analysis

Background: The rule against perpetuities states that "no interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest." The rule prevents property interests from vesting (taking effect) too remotely. Ferrero Construction Co. v. Dennis Rourke Corp., 311 Md. 560, 536 A.2d 1137 (1988).

State Revenues: This bill would permit the creation of perpetual dynasty trusts in Maryland. A perpetual dynasty trust is a trust that descends to a person's future generations, and can be used as an estate planning tool to minimize estate taxes. Because there is a $1 million exemption from the 55% federal generation skipping tax, placing that amount in a perpetual dynasty trust can generate significant assets for future generations without being depleted by taxes. However, due to the rule against perpetuities, all trusts in Maryland generally must terminate between 80 to 110 years after creation. Several other states have modified the rule against perpetuities in order to permit the creation of perpetual dynasty trusts. Therefore, a Maryland resident can currently create a perpetual dynasty trust, but only if the trust is located in a state that has modified the rule against perpetuities in this regard (i.e., if the trust is administered by a banking institution located in one of those states). As a result of this bill, Maryland banks could administer perpetual dynasty trusts. State corporate income tax revenues could increase to the extent that Maryland banks receive additional income in the form of trust administration fees as a result of this bill. Corporate income tax revenues are distributed to the general fund and the Transportation Trust Fund (TTF).

Local Revenues: Local revenues could increase by an indeterminate amount because a portion of corporate income tax revenues are distributed to local governments through the TTF.

Information Source(s): Comptroller of the Treasury (Bureau of Revenue Estimates), Maryland Bankers' Association, Department of Legislative Services

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