

POWERS OF APPOINTMENT

House Bill 4863 as introduced
Sponsor: Rep. Jim Haadsma

House Bill 4864 as introduced
Sponsor: Rep. Douglas C. Wozniak

Committee: Judiciary
Complete to 10-17-23

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4863 would amend the Powers of Appointment Act as follows:

1. The act now provides that, to the extent that certain specified conditions are met,¹ the length of the period during which the vesting of a future interest may be *suspended or* postponed by the exercise of a power is determined, *from the time of the creation of the power or, for a general power presently exercisable, the effective date of the instrument of exercise*, under the Personal Property Trust Perpetuities Act² or section 5(2) of the Uniform Statutory Rule Against Perpetuities.³

The bill would remove the language italicized above. For purposes of this provision, which applies whether the applicable period is finite or infinite, the bill would provide that a trust that is created by the exercise of a power of appointment is created when the power has been irrevocably exercised or when a revocable exercise becomes irrevocable.

2. The act also currently provides both of the following:

The period during which the vesting of a future interest may be *suspended or* postponed by the exercise of a power of appointment begins on the effective date of the instrument of exercise in the case of a general power presently exercisable, and in all other situations, at the time of the creation of the power.

In determining *the period* during which the vesting of a future interest may be *suspended or* postponed by the exercise of a power of appointment, if a second power is created by the exercise of a first power and the first power is a presently exercisable general power, the second power is considered to have been created on the effective date of the instrument of exercise.

The bill would replace “the period” with “any finite period” and delete “suspended or” in the places indicated with italics above.

3. The act now allows a trustee with a presently exercisable discretionary power to make distributions of income or principal of an irrevocable trust to or for the benefit of one or

¹ An instrument exercises a power of appointment to subject property to, or create, a trust that is either revocable on or created after May 28, 2008; the appointive property is personal property; and the trust isn't a special appointee trust.

² <http://legislature.mi.gov/doc.aspx?mcl-Act-148-of-2008>

³ <http://legislature.mi.gov/doc.aspx?mcl-554-75> Section 5(2) of the Uniform Statutory Rule Against Perpetuities would be amended by House Bill 4864 as described below.

more beneficiaries of the trust to exercise the power by appointing all or part of the property subject to the power in favor of the trustee of a second trust, unless the terms of the first trust expressly provide otherwise and provided that certain conditions are satisfied. Among other things, the second trust may provide a special or general power of appointment, including a power to appoint trust property to persons who are not beneficiaries of the first trust, to one or more of the beneficiaries of the second trust.

The bill would add that the beneficiaries of the second trust must be permissible appointees of the trustee's presently exercisable discretionary distribution power over the first trust.

MCL 556.115a and 556.124

House Bill 4864 would amend the Uniform Statutory Rule Against Perpetuities.

For purposes of the act, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

The bill would amend section 5(2) to add that, despite the above provision, section 2 of the act⁴ is applicable to an interest or power of appointment created, or to which property is subjected, by the exercise of a second power that is subject to section 2(1) of the Personal Property Trust Perpetuities Act,⁵ but only to the extent of the exercise of the second power, and instead of using a period of 90 years to determine whether section 2(1)(b), (2)(b), or (3)(b) of the act is satisfied, or whether to reform a disposition under section 4 of the act,⁶ a period of 360 years must be used.⁷

MCL 554.73 and 554.75

FISCAL IMPACT:

The bill would not have a fiscal impact on the state or on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

⁴ <http://legislature.mi.gov/doc.aspx?mcl-554-72>

⁵ <http://legislature.mi.gov/doc.aspx?mcl-554-92>

⁶ <http://legislature.mi.gov/doc.aspx?mcl-554-74>

⁷ The bill revises this provision in current law (which is not now specified to be an exception to the provision regarding the creation of a nonvested property interest or power of appointment as described above): "Section 2 is applicable to an interest or power of appointment to which the Personal Property Trust Perpetuities Act... applies if the interest or power was created, or property was made subject to the interest or power, by the exercise of a second power. If section 2 is applicable to an interest or power under this subsection, it applies only to the extent of the exercise of the second power, and instead of using a period of 90 years to determine whether section 2(1)(b), (2)(b), or (3)(b) is satisfied, or whether to reform a disposition under section 4, a period of 360 years shall be used."