1988

Session Law 88-040

Florida Senate & House of Representatives

Follow this and additional works at: https://ir.law.fsu.edu/staff-analysis

Part of the Legislation Commons

Recommended Citation
https://ir.law.fsu.edu/staff-analysis/760

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.
1. Joint Legislative Management Committee. Division of Legislative Information. Final Legislative Bill Information, 1988 Regular Session. SB 214 (p. 620 [passed bill] and HB 172 (p. 244) [substituted bill].


5. Committee Substitute for House Bill (CS/HB) 172 by the House Committee on Judiciary [4/7/88].


FLORIDA LEGISLATURE

FINAL

LEGISLATIVE BILL INFORMATION

1987 Special Sessions B, C, D
1988 Regular Session
1988 Special Sessions E, F

prepared by:

Joint Legislative Management Committee
Legislative Information Division
Capitol Building, Room 826 — 488-4371
H 171 GENERAL BILL/ENG by Clements and others (Similar S 281) 
Cockroach Bay Aquatic Preserve, provides for future lease extensions of portions of Cockroach Bay Aquatic Preserve owned by Tampa Port Authority; revise boundaries. Amends 268.391. Effective Date 07/06/88.
 01/11/88 HOUSE Prefiled
 01/26/88 HOUSE Referred to Natural Resources, Appropriations
 04/06/88 HOUSE Introduced, referred to Natural Resources, Appropriations -HJ 22; on subcommittee agenda—Natural Resources, 04/06/88, 1:15 pm – 24-HOB
 04/06/88 HOUSE Subcommittee Recommendation pending ratification by full Committee: Favorable with 1 amendment, on Committee agenda, pending subcommittee action—Natural Resources, 04/06/88, 2:30 pm, Morris Hall, Preliminary Committee Action by Natural Resources: Favorable with 1 amendment.
 04/08/88 HOUSE Comm.: Report: Favorable with 1 amendment(s) by Natural Resources—HJ 107, Now in Appropriations—HJ 107
 04/19/88 HOUSE Withdrawn from Appropriations—HJ 187; Placed on Calendar
 05/17/88 HOUSE Placed on Special Order Calendar; Read second time, Amendment adopted—HJ 537
 05/18/88 HOUSE Read third time—HJ 553; Passed as amended; YEAS 115 NAYS 0—HJ 159
 05/19/88 SENATE In Messages
 05/23/88 SENATE Received, referred to Natural Resources and Conservation; Appropriations—SJ 364
 06/27/88 SENATE Extension of time granted Committee Natural Resources and Conservation
 05/30/88 SENATE Withdrawn from Natural Resources and Conservation; Appropriations, Substituted for SB 281, Passed, YEAS 36 NAYS 0—SJ 536
 05/30/88 Ordered enrolled
 06/21/88 Signed by Officers and presented to Governor
 07/05/88 Approved by Governor; Chapter No. 88-258

H 172 GENERAL BILL/CS by Judiciary; Canaday (Identical S 214) 
Statutory Rule Against Perpetuities: replaces existing statutory rule against perpetuities with "Florida Uniform Statutory Rule Against Perpetuities," prescribes method of determining validity of nonvested property interests & powers of appointment; provides for when such interests or powers are created, provides for reformation of disposition under certain circumstances; provides for application & for rule of construction, etc.: Repeals 689.22. Effective Date: 10/01/88.
 01/11/88 HOUSE Prefiled
 01/26/88 HOUSE Referred to Judiciary; Appropriations
 04/01/88 HOUSE Subreferred to Subcommittee on Court Systems, Probate and Consumer Law
 04/05/88 HOUSE Introduced, referred to Judiciary; Appropriations—HJ 22; Subreferred to Subcommittee on Court Systems, Probate and Consumer Law; On Committee agenda—Judiciary, 04/06/88, 9:00 am – 31-HOB
 04/06/88 HOUSE Subcommittee Recommendation pending ratification by full Committee: Favorable with 2 amendments; On Committee agenda, pending subcommittee action—Judiciary, 04/07/88, 10:00 am, 2140
 04/07/88 HOUSE Preliminary Committee Action by Judiciary: Favorable as a committee Substitute
 04/11/88 HOUSE Comm.: Report: CS by Judiciary—HJ 134; CS read first time—HJ 135; Now in Appropriations—HJ 134
 04/19/88 HOUSE Withdrawn from Appropriations—HJ 187; Placed on Calendar
 05/03/88 HOUSE Placed on Special Order Calendar
 05/09/88 HOUSE Idem/Sim. Senate Bill substituted; Laid on Table under Rule, Idem/Sim./Compare Bill passed, refer to SB 214 (Ch. 88-40) –HJ 372

H 173 GENERAL BILL by Governmental Operations; Hodges (Similar S 287) 
Student Records & Reports: (OPEN GOVERNMENT SUNSET REVIEW) provides exemption from public records requirements for pupil & student records & reports & hearings concerning those records & reports; saves such exemptions from repeal; provides for future review & repeal. Amendments necessary. Similar to SB 116 (Ch. 88-9) –HJ 553
 01/12/88 HOUSE Prelfiled
 01/26/88 HOUSE Referred to Education
 04/06/88 HOUSE Introduced, placed on Calendar—HJ 22
 05/10/88 HOUSE Placed on Special Order Calendar—HJ 463
 06/03/88 HOUSE Placed on Special Order Calendar—HJ 773
 06/07/88 HOUSE Died on Calendar, Idem/Sim./Compare Bill passed, refer to SB 287 (Ch. 88-292)

H 174 GENERAL BILL by Governmental Operations; Hodges (Compare S 267) 
Public Records/State Government (OPEN GOVERNMENT SUNSET REVIEW) saves from repeal exemption from public records requirements for perpetual estates vested in student records & juvenile justice records for admission & administration of dropout prevention program; provides for future review & repeal. Amends 232.23 Effective Date: 10/01/88.
 01/12/88 HOUSE Prefiled
 01/26/88 HOUSE Placed on Calendar
 04/05/88 HOUSE Introduced, placed on Calendar—HJ 22
 05/10/88 HOUSE Placed on Special Order Calendar—HJ 463; Passed; YEAS 35 NAYS 0–SJ 518
 05/30/88 Ordered enrolled
 06/21/88 Signed by Officers and presented to Governor
 07/05/88 Approved by Governor; Chapter No. 88-259

H 175 GENERAL BILL by Governmental Operations; Hodges (Similar S 115) 
Community College Student Records: (OPEN GOVERNMENT SUNSET REVIEW) provides exemption from public records requirements for student records & reports; saves such exemption from repeal; provides for future review & repeal. Amendments necessary. Similar to SB 116 (Ch. 88-10) –HJ 158
 01/12/88 HOUSE Prefiled
 01/26/88 HOUSE Placed on Calendar
 04/05/88 HOUSE Introduced, placed on Calendar—HJ 22
 04/12/88 HOUSE Placed on Special Order Calendar; Read second time—HJ 110
 04/13/88 HOUSE Read third time; Passed, YEAS 116 NAYS 0—HJ 157
 04/19/88 SENATE In Messages
 04/21/88 SENATE Received, referred to Education—SJ 162
 04/29/88 SENATE Extension of time granted Committee Education
 05/10/88 SENATE Withdraw from Education—SJ 261; Placed on Calendar
 05/30/88 SENATE Placed on Special Order Calendar—SJ 453; Passed; YEAS 35 NAYS 0–SJ 518

(continued on next page)
A bill to be entitled
An act relating to property; replacing the
existing statutory rule against perpetuities
with the "Florida Uniform Statutory Rule
Against Perpetuities"; prescribing a method of
determining the validity of nonvested property
interests and powers of appointment; providing
for when such interests or powers are created;
providing for reformation of a disposition
under certain circumstances; providing
exclusions from the rule; providing for
application; providing for a rule of
construction; providing for uniformity of
application and construction; repealing s.
689.22, F.S., relating to the rule against
perpetuities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Statutory rule against perpetuities.--
(1) SHORT TITLE.--This section may be cited as the
"Florida Uniform Statutory Rule Against Perpetuities."
(2) STATEMENT OF THE RULE.--
(a) A nonvested property interest in real or personal
property is invalid unless:
1. 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
2. The interest either vests or terminates within 90
years after its creation.

CODING: Words stricken are deletions; words underlined are additions.
(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

1. When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

2. The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

1. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

2. The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subparagraph (a), subparagraph (b), or subparagraph (c), the possibility that a child will be born to an individual after the individual’s death is disregarded.

(3) WHEN NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT CREATED.—

(a) Except as provided in paragraphs (b), (d), and (e) of this subsection and in paragraph (a) of subsection (6), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this section, if there is a person who alone can exercise a power created by a governing
instrument to become the unqualified beneficial owner of a
nonvested property interest or a property interest subject to
a power of appointment described in paragraph (b) or paragraph
(c) of subsection (2), the nonvested property interest or
power of appointment is created when the power to become the
unqualified beneficial owner terminates.

(c) For purposes of this section, a joint power with
respect to community property or to marital property under the
Uniform Marital Property Act held by individuals married to
each other is a power exercisable by one person alone.

(d) For purposes of this section, 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.

(e) For purposes of this section, if a nongeneral or
testamentary power of appointment is exercised to create
another nongeneral or testamentary power of appointment, every
nonvested property interest or power of appointment created
through the exercise of such other nongeneral or testamentary
power is considered to have been created at the time of the
creation of the first nongeneral or testamentary power of
appointment.

(4) REFORMATION.--Upon the petition of an interested
person, a court shall reform a disposition in the manner that
most closely approximates the transferor's manifested plan of
distribution and is within the 90 years allowed by
subparagraph (2)(a)2., subparagraph (2)(b)2., or subparagraph
(2)(c)2. if:

CODING: Words stricken are deletions; words underlined are additions.
(a) A nonvested property interest or a power of appointment becomes invalid under subsection (2);

(b) A class gift is not but might become invalid under subsection (2) and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(c) A nonvested property interest that is not validated by subparagraph (2)(a)1. can vest but not within 90 years after its creation.

(5) EXCLUSIONS FROM STATUTORY RULE AGAINST PERPETUITIES.—Subsection (2) does not apply to:

(a) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

1. A premarital or postmarital agreement;

2. A separation or divorce settlement;

3. A spouse’s election;

4. A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

5. A contract to make or not to revoke a will or trust;

6. A contract to exercise or not to exercise a power of appointment;

7. A transfer in satisfaction of a duty of support; or

8. A reciprocal transfer;

(b) A fiduciary’s power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(c) A power to appoint a fiduciary;

CODING: Words stricken are deletions; words underlined are additions.
(d) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(e) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(f) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(g) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state.

(6) APPLICATION.--

(a) Except as extended by paragraph (c), this section applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this section. For purposes of this subsection, a nonvested

CODING: Words stricken are deletions; words underlined are additions.
property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) This section also applies to a power of appointment that was created before the effective date of this section, but only to the extent that it remains unexercised on the effective date of this section.

(c) If a nonvested property interest or a power of appointment was created before the effective date of this section and is determined in a judicial proceeding, commenced on or after the effective date of this section, to violate this state's rule against perpetuities as that rule existed before the effective date of this section, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

(7) RULE OF CONSTRUCTION.--With respect to any matter relating to the validity of an interest within the rule against perpetuities, unless a contrary intent appears, it shall be presumed that the transferor of the interest intended that the interest be valid.

(8) UNIFORMITY OF APPLICATION AND CONSTRUCTION.--This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Section 2. Section 689.22, Florida Statutes, is hereby repealed.

Section 3. This act shall take effect October 1, 1988.
SENATE SUMMARY

Enacts the Uniform Statutory Rule Against Perpetuities, which has been approved for adoption by the various states by the National Conference of Commissioners on Uniform State Laws, with modifications approved by the Section on Real Property, Probate, and Trust Law of The Florida Bar, in replacement of the current statute prescribing the rule against perpetuities. The uniform act applies to nonvested property interests and powers of appointment. See bill for details.

CODING: Words stricken are deletions; words underlined are additions.
I. SUMMARY:

A. Present Situation:

With certain enumerated exceptions Florida adheres to the common law rule against perpetuities which is set forth in s. 689.22, F.S. The rule provides that:

"No interest in real or personal property is valid unless it must vest, if at all, not later than 21 years after one or more lives in being at the creation of the interest and any period of gestation involved..." s.689.22(1), F.S.

The rule does not apply to county hospital trusts, s. 155.02, F.S., certain employee trust benefit plans, ss. 441.01 and 441.02, F.S., cemeteries, s. 689.13, F.S., or condominium declarations s. 718.104(5), F.S.

The essential purpose of the rule is to prevent unreasonable restraints upon the alienation of property by invalidating any future interests therein that vest too remotely whether such interests are created by will, deed or power of appointment. Powell, Florida's Statutory Rule Against Perpetuities, 11 Fla. State L.R. 767 (Winter, 1984). However, this can and does lead to unfavorable results because since its origin in 1682, courts have usually applied the rule very strictly when determining the validity of certain dispositions of property. See Duke of Norfolk's Case, 3 ch. Cas. 1, 22 Eng. Rep. 931 (Ch. 1682) and Chafin, Reforming The Rule Against The Perpetuities, 24, Ga. State Bar Journal 62, November, 1987.

A power of appointment is a power created in a person enabling that person (the donee) to designate, within the limits prescribed by the creator of the power (the donor), the persons who shall take certain property and the manner in which they shall take it.

B. Effect of Proposed Changes:

Senate Bill 214 repeals s. 689.22, F.S., relating to the rule against perpetuities and replaces it with the "Florida Uniform Statutory Rule Against Perpetuities (uniform act)."

Certain features of the common law rule are retained. A nonvested interest in property or power of appointment would still be invalid unless it is certain to vest or terminate no later than 21 years after the death of an individual alive at the creation of the interest.

However, unlike the common law rule, the uniform act provides for a statutory 90 year "wait and see" period. Thus, a future interest, invalid under the common law rule, would not become
invalid under the uniform act unless in actuality it doesn't vest or is not terminated during the 90 year waiting period.

For example, a power of appointment that is valid under the common law rule against perpetuities is valid under the uniform act.

On the other hand a general power of appointment, invalid under the common law rule, would be valid under the uniform act if the condition precedent to the donee's exercise of the power is either satisfied or becomes impossible to satisfy within 90 years after its creation.

Similarly, a nongeneral power of appointment, invalid under the common law rule, would be valid under the uniform act if the donee's power is irrevocably exercised or otherwise terminates within 90 years after its creation.

The provisions of the bill would not apply to a property interest, or power of appointment already excluded from the rule against perpetuities by another Florida Statute.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None

B. Government:

None

III. COMMENTS:

The Uniform Statutory Rule Against Perpetuities has been endorsed by the National Conference of Commissioners on Uniform State Laws, the American Bar Association's House of Delegates, the Council of the American Bar Association's Real Property, Probate and Trust Law Section, the Executive Council of the Florida Bar's Real Property, Probate and Trust Law Section, the Board of Regents of the American College of Probate Counsel, and the Board of Governors of the American College of Real Estate Lawyers.

IV. AMENDMENTS:

None.
A bill to be entitled
An act relating to conveyances of land and
declarations of trust; amending s. 689.22,
F.S., creating the "Florida Uniform Statutory
Rule Against Perpetuities"; revising the
statutory rule against perpetuities; providing
when a nonvested property interest or power of
appointment is created; providing for
reformation; providing exclusions; providing
for application; providing for a rule of
construction; providing for uniformity of
application and construction; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 689.22, Florida Statutes, is
amended to read:

(1) SHORT TITLE.--This section may be cited as the
"Florida Uniform Statutory Rule Against Perpetuities."

(2) STATUTORY RULE AGAINST PERPETUITIES.--
(a) A nonvested property interest on real or personal
property is invalid unless:

1. 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

2. The interest either vests or terminates within 90
years after its creation.

CODING: Words stricken are deletions; words underlined are additions.
(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

1. When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive or

2. The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

1. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive or

2. The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under paragraph (a), (b), (c), or (e), the possibility that a child will be born to an individual after the individual's death is disregarded.

(3) When nonvested property interest or power of appointment created —

(a) Except as provided in paragraphs (b), (d), and (e), and in paragraph (a) of subsection (6), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

CODING: Words stricken are deletions; words underlined are additions.
(b) For purposes of this section, if there is a person who alone can exercise a power created by a governing instrument to become the unconditional beneficial owner of:

1. A nonvested property interest, or
2. A property interest subject to a power of appointment described in paragraph (b) or paragraph (c) of subsection (2);

the nonvested property interest or power of appointment is created when the power to become the unconditional beneficial owner terminates.

(c) For purposes of this section, a joint power with respect to community property or to marital property under the Uniform Marital Property Act held by individuals married to each other as a power exercisable by one person alone.

(d) For purposes of this section, 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.

(e) For purposes of this section, if a nongeneral or testamentary power of appointment is exercised to create another nongeneral or testamentary power of appointment, every nonvested property interest or power of appointment created through the exercise of such other nongeneral or testamentary power is considered to have been created at the time of the creation of the first nongeneral or testamentary power of appointment.

(4) REFORMATION.—Upon the petition of an interested person, a court shall reform a disposition in the manner that
most closely approximates the transferor's manifested plan of
distribution and is within the 90 years allowed by paragraph
(2)(a)(12) or (2)(b)(12) or paragraph (2)(c)(12), if:
(a) A nonvested property interest or a power of
appointment becomes invalid under subsection (2);
(b) A class gift is not but might become invalid under
subsection (2) and the time has arrived when the share of any
class member is to take effect in possession or enjoyment; or
(c) A nonvested property interest that is not
validated by paragraph (2)(a) can vest but not within 90
years after its creation.

(5) Exclusions From Statutory Rule Against
Perpetuities.--Subsection (2) does not apply to:
(a) A nonvested property interest or a power of
appointment arising out of a nonnondative transfer, except a
nonvested property interest or a power of appointment arising
out of:
1. A premarital or postmarital agreement;
2. A separation or divorce settlement;
3. A spouse's election;
4. A similar arrangement arising out of a prospective,
existing, or previous marital relationship between the
parties;
5. A contract to make or not to revoke a will or
trust;
6. A contract to exercise or not to exercise a power
of appointment;
7. A transfer in satisfaction of a duty of support; or
8. A reciprocal transfer;
(b) A fiduciary's power relating to the administration
or management of assets, including the power of a fiduciary to

CODING: Words stricken are deletions; words underlined are additions.
sell, lease, or mortgage property, and the power of a
fiduciary to determine principal and income;
   (c) A power to appoint a fiduciary;
   (d) A discretionary power of a trustee to distribute
principal before termination of a trust to a beneficiary
having an indefeasibly vested interest in the income and
principal;
   (e) A nonvested property interest held by a charity,
government, or governmental agency or subdivision, if the
nonvested property interest is preceded by an interest held by
another charity, government, or governmental agency or
subdivision
   (f) A nonvested property interest in or a power of
appointment with respect to a trust or other property
arrangement forming part of a pension, profit-sharing, stock
bonus, health, disability, death benefit, income deferral, or
other current or deferred benefit plan for one or more
employees, independent contractors, or their beneficiaries or
spouses, to which contributions are made for the purpose of
distributing to or for the benefit of the participants or
their beneficiaries or spouses the property, income, or
principal in the trust or other property arrangement, except a
nonvested property interest or a power of appointment that is
generated by an election of a participant or a beneficiary or
spouse or
   (g) A property interest, power of appointment, or
arrangement that was not subject to the common-law rule
against perpetuities or is excluded by another statute of this
state.

(6) APPLICATION.--

CODING: Words stricken are deletions; words underlined are additions.
(a) Except as extended by paragraph (c), this section applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this section. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) This section also applies to a power of appointment that was created before the effective date of this section, but only to the extent that it remains unexercised on the effective date of this section.

(c) If a nonvested property interest or a power of appointment was created before the effective date of this section and is determined in a judicial proceeding commenced on or after the effective date of this section, to violate this state's rule against perpetuities as that rule existed before the effective date of this section, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

(7) RULE OF CONSTRUCTION.--With respect to any matter relating to the validity of an interest within the rule against perpetuities, unless a contrary intent appears, it shall be presumed that the transferor of the interest intended that the interest be valid.

(8) UNIFORMITY OF APPLICATION AND CONSTRUCTION.--This act shall be applied and construed to effectuate its general objectives.
purpose to make uniform the law with respect to the subject of
this act among states enacting it.

Section 2. This act shall take effect October 1, 1988.

HOUSE SUMMARY
Adopts the Uniform Statutory Rule Against Perpetuities
law for the State of Florida.

This publication was produced at an average cost of 1.12 cents
per single page in compliance with the Rules and for
the information of members of the Legislature and the public.

CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled
An act relating to property, replacing the
existing statutory rule against perpetuities
with the "Florida Uniform Statutory Rule
Against Perpetuities," prescribing a method of
determining the validity of nonvested property
interests and powers of appointment; providing
for when such interests or powers are created;
providing for reformation of a disposition
under certain circumstances; providing
exclusions from the rule; providing for
application; providing for a rule of
construction; providing for uniformity of
application and construction; repealing s.
689.22, F.S., relating to the rule against
perpetuities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Statutory rule against perpetuities.--
(1) SHORT TITLE.--This section may be cited as the
"Florida Uniform Statutory Rule Against Perpetuities."
(2) STATEMENT OF THE RULE.--
(a) A nonvested property interest in real or personal
property is invalid unless:
1. 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
2. The interest either vests or terminates within 90
years after its creation.

CODING: Words stricken are deletions; words underlined are additions.
(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

1. When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

2. The condition precedent either is satisfied or becomes impossible to satisfy within 20 years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

1. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

2. The power is irrevocably exercised or otherwise terminates within 20 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subparagraph (a), or subparagraph (c), the possibility that a child will be born to an individual after the individual's death is disregarded.

(3) When nonvested property interest or power of appointment created—

(a) Except as provided in paragraphs (b), (d), and (e) of this subsection and in paragraph (a) of subsection (5), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this section, if there is a person who alone can exercise a power created by a governing
Instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in paragraph (b) or paragraph (c) of subsection (2), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of this section, a joint power with respect to community property or to marital property under the Uniform Marital Property Act held by individuals married to each other is a power exercisable by one person alone.

(4) For purposes of this section, 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.

(5) For purposes of this section, if a nongeneral or testamentary power of appointment is exercised to create another nongeneral or testamentary power of appointment, every nonvested property interest or power of appointment created through the exercise of such other nongeneral or testamentary power is considered to have been created at the time of the creation of the first nongeneral or testamentary power of appointment.

(6) Reformation.—Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed by subparagraph (2)(a)1., subparagraph (2)(b)1., or subparagraph (2)(c)1. of subsection (2).

CODING: Words stricken are deletions; words underlined are additions.
[a] A nonvested property interest or a power of appointment becomes invalid under subsection (2).

[b] A class gift is not but might become invalid under subsection (2) and the time has arrived when the share of any class member is to take effect in possession or enjoyment or

c) A nonvested property interest that is not validated by subparagraph (2)(a)1. can vest but not within 90 years after its creation.

(5) EXCLUSIONS FROM STATUTORY RULE AGAINST PERPETUITIES.--Subsection (2) does not apply to:

[a] A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

1. A premarital or postmarital agreement;

2. A separation or divorce settlement;

3. A spouse's election;

4. A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

5. A contract to make or not to revoke a will or trust;

6. A contract to exercise or not to exercise a power of appointment;

7. A transfer in satisfaction of a duty of support or

8. A reciprocal transfer;

[b] A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

[c] A power to appoint a fiduciary.

CODING: Words stricken are deletions; words underlined are additions.
(d) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal.

(e) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision.

(f) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouses or

(g) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state.

(6) APPLICATION.--

(a) Except as extended by paragraph (c), this section applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this section. For purposes of this subsection, a nonvested

CODING: Words stricken are deletions; words underlined are additions.
property interest or a power of appointment created by the
exercise of a power of appointment is created when the power
is irrevocably exercised or when a revocable exercise becomes
irrevocable.

(b) This section also applies to a power of
appointment that was created before the effective date of this
section, but only to the extent that it remains unexercised on
the effective date of this section.

(i) If a nonvested property interest or a power of
appointment was created before the effective date of this
section and is determined in a judicial proceeding, commenced
on or after the effective date of this section, to violate
this state's rule against perpetuities as that rule existed
before the effective date of this section, a court, upon the
petition of an interested person, may reform the disposition
in the manner that most closely approximates the transferor's
manifested plan of distribution and is within the limits of
the rule against perpetuities applicable when the nonvested
property interest or power of appointment was created.

(7) RULE OF CONSTRUCTION.--With respect to any matter
relating to the validity of an interest within the rule
against perpetuities, unless a contrary intent appears, it
shall be presumed that the transferor of the interest intended
that the interest be valid.

(8) UNIFORMITY OF APPLICATION AND CONSTRUCTION.--This
section shall be applied and construed to effectuate its
general purpose to make uniform the law with respect to the
subject of this act among states enacting it.

Section 2. Section 689.22, Florida Statutes, is hereby
repealed.

Section 3. This act shall take effect October 1, 1988.

CODING: Words stricken are deletions; words underlined are additions.
SENATE SUMMARY

Enacts the Uniform Statutory Rule Against Perpetuities, which has been approved for adoption by the various states by the National Conference of Commissioners on Uniform State Laws, with modifications approved by the Section on Real Property, Probate, and Trust Law of The Florida Bar, in replacement of the current statute prescribing the rule against perpetuities. The uniform act applies to nonvested property interests and powers of appointment. See bill for details.

This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.
I. SUMMARY:

A. PRESENT SITUATION:

Florida's rule against perpetuities is codified in section 689.22, Florida Statutes. The current rule states that no interest in real or personal property is valid unless it vests within 21 years after one or more lives in being at the creation of the interest. The rule against perpetuities is a common law rule designed to curtail post-mortem control of property interests by placing a time limit on the vesting of future interests. The rule operates to void an interest in property from its creation if there exists a possibility that the interest might not vest within the perpetuities period.

Florida's present rule differs from the common law rule against perpetuities in that it employs a "wait and see" period during which the interest is given a chance to vest. If it is not clear that an interest will definitely vest within some life or lives in being plus 21 years, then, rather than voiding the interest under the common law rule, Florida law provides that the court can wait and see if, in fact, the interest vests within the life or lives in being plus 21 years.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the "Florida Uniform Statutory Rule Against Perpetuities" and amends the current perpetuities law to provide for a flat period of 90 years during which a property interest must vest or terminate, if it violates the common law rule. The bill provides that a nonvested property interest or power of appointment is created according to the general principles of property law. The bill also provides for judicial reformation. Finally, the bill sets out a statutory rule of construction.
C. SECTION-BY-SECTION ANALYSIS:

Section 1 of the bill creates the substantive provisions of the Florida Uniform Statutory Rule Against Perpetuities. The section is divided into eight subsections:

Subsection (1) is the short-title cited as "Florida Uniform Statutory Rule Against Perpetuities."

Subsection (2) replaces the present "wait and see" provision of Florida law by providing that a nonvested interest is not void if, in fact, it vests within 90 years. Under present law, the interest must be certain to vest based on the facts as known at the end of the lives in being at the time of the original transfer, within 21 years after those lives in being.

Subsection (3) provides that the determination of when a nonvested property interest or power of appointment is created shall be made under general principles of property law.

Subsection (4) provides that the nonvested property interest's disposition would be judicially reformed in the manner that most closely approximates the transferor's manifested plan of distribution if an interest neither vests nor terminates within the measuring life (lives) plus 21 years or within the gross 90 year period. Upon petition of an interested person, the court must make this reformation. This provision expands the common law rule of judicial reformation of the transfer of nonvested property interests to charities, which would empower the court to judicially reform a faulty charitable transfer in the manner that most closely approximates the transferor's manifested intent, to cover noncharitable transfers as well.

Subsection (5) of the bill deals with the scope of the rule against perpetuities. Specifically, this section states that the rule will not apply to a nonvested property interest or power of appointment arising out of a nondonative transfer except one arising out of: a premarital or postmarital agreement; a separation or divorce settlement; a spouse's election; a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties; a contract to make or not to revoke a will or trust; a contract to exercise or not to exercise a power of appointment; a transfer in satisfaction of a duty of support; or, a reciprocal transfer. This section explicitly states that subsection (2) does not apply to: a fiduciary's power relating to the administration or management of assets; a power to appoint a fiduciary; a discretionary power of a trustee to distribute principal before termination of a trust; a nonvested property interest held by a charity or governmental agency if the nonvested property interest is preceded by an interest held by another charity or governmental agency; a nonvested property interest or a power of appointment with respect to a trust or other property arrangement forming part of a pension or other current or deferred benefit plan for one or more employees; or a property interest or power of appointment not subject to the common-law rule against perpetuities or is excluded by another statute of this state. The statutory rule against perpetuities does not apply to nondonative or commercial transfers such as options, lease, and similar promissory arrangements as these are governed by other statutes.

Subsection (6) provides that the uniform rule will be primarily applied prospectively rather than retroactively. It will generally apply only to contingent interests and powers of appointment created on or after the effective
date of its enactment, although retroactive application is provided in some circumstances. The section will apply to a power of appointment created before the effective date to the extent that it remains unexercised on the effective date. Also, courts, upon the petition of an interested person, may reform the disposition of a nonvested property interest or a power of appointment created before the effective date which is determined in a judicial proceeding commenced on or after the effective date to have violated the rule against perpetuities as it existed before the effective date. Courts are not mandated to reform invalid instruments as they are in subsection (4), rather they are given discretionary jurisdiction to reform instruments violative of the present rule.

Subsection (7) sets out the following rule of construction: in the absence of evidence of contrary intent, it shall be presumed that the transferor of an interest intended that the interest be valid.

Subsection (8) indicates the intent to make uniform the law of perpetuities among states enacting these changes.

Section 2 repeals the present Florida Statutory Rule Against Perpetuities.

Section 3 provides an effective date of October 1, 1988.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   Unknown

3. Long Run Effects Other Than Normal Growth:
   None

4. Appropriations Consequences:
   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   None
C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   None

2. Direct Private Sector Benefits:
   Unknown

3. Effects on Competition, Private Enterprise, and Employment Markets:
   None

D. FISCAL COMMENTS:
   None

III. LONG RANGE CONSEQUENCES:
   None

IV. COMMENTS:

These changes to the Statutory Rule Against Perpetuities were approved by the National Conference of Commissioners on Uniform State Laws and adopted as the Uniform Statutory Rule Against Perpetuities in 1986 and endorsed by several legal associations. The Florida Bar Real Property, Probate and Trust Law Section has endorsed the Uniform Act. Jesse Dulceminier, a leading scholar in the probate and trust field of law, has expressed his dissatisfaction with the Uniform Act. Still, at least three states (Minnesota, Nevada and South Carolina) have adopted the Uniform Act. The Uniform Act is currently under consideration in several other states.

The rule against perpetuities in Florida is sometimes criticized on the basis that the rule operates capriciously or unpredictably. The validity of an interest turns on conceivable rather than actual events. The rule can void reasonable bequests because the draftsman did not avoid the traps of the rule. Due to the difficulty in avoiding problems with the rule and the desire to avoid charges of professional malpractice, many attorneys regularly insert savings clauses which provide that if any provision violates the rule then the interests contained therein will go to a named beneficiary. Further, the current provision in Florida law which ties the "wait and see" period to lives in being results in varied application as the wait and see period would be short where the lives used terminate at an early time or could be substantially longer than ninety years where there is a young survivor who lives to an old age.

The period of ninety years was chosen over all others through a simple statistical derivation. The drafters of the Uniform Act determined that the average age for the youngest life in being at the creation of a contingent property interest is 6 years old. They further determined that such a person has a remaining life expectancy of 69 years through the 1985 statistical abstract. They added the 69 years to a period of 21 years (from the orthodox rule) to reach a gross period of 90 years. 90 years therefore approximates the waiting period which would be produced by the use of a measuring life (lives) plus a 21 year period tacked on at the end.
The major differences between the Committee Substitute for House Bill 172 and the bill, as filed, is that it specifically repeals the present statutory rule, rather than amending it to conform to the uniform rule. Substantively there is no difference; the changes are a matter of form.

V. AMENDMENTS:

None

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: Greg Hearing
Staff Director: Richard Hixson

FINANCE & TAXATION:
Prepared by:

APPROPRIATIONS:
Prepared by:

3.3
GENERAL ACTS
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
TENTH LEGISLATURE OF FLORIDA
UNDER THE CONSTITUTION
AS REVISED IN 1968
During the Regular Session
April 5, 1988 through June 7, 1988
and Special Sessions
September 21 - October 8, 1987; October 12 - 14, 1987;
December 8 - 10, 1987; February 2 - 4, 1988; and
June 8, 1988

Volume I, Part One
Published by Authority of Law
Under Direction of the
JOINT LEGISLATIVE MANAGEMENT COMMITTEE
TALLAHASSEE
1988
CHAPTER 88-39  LAWS OF FLORIDA  CHAPTER 88-39

Be It Enacted by the Legislature of the State of Florida:

Section 1. The common-law rule of evidence applicable to homicide prosecutions known as the "year-and-a-day rule," which provides a conclusive presumption that an injury is not the cause of death or that whether it is the cause cannot be discerned if the interval between the infliction of the injury and the victim's death exceeds a year and a day, is hereby abrogated and does not apply in this state.

Section 2. This act applies to any prosecution for homicide caused by an injury inflicted on or after the effective date of this act.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor May 18, 1988.

Filed in Office Secretary of State May 18, 1988.

CHAPTER 88-40

Senate Bill No. 214

An act relating to property; replacing the existing statutory rule against perpetuities with the "Florida Uniform Statutory Rule Against Perpetuities"; prescribing a method of determining the validity of nonvested property interests and powers of appointment; providing for when such interests or powers are created; providing for reformation of a disposition under certain circumstances; providing exclusions from the rule; providing for application; providing for a rule of construction; providing for uniformity of application and construction; repealing s. 689.22, F.S., relating to the rule against perpetuities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Statutory rule against perpetuities.--

(1) SHORT TITLE.--This section may be cited as the "Florida Uniform Statutory Rule Against Perpetuities."

(2) STATEMENT OF THE RULE.--

(a) A nonvested property interest in real or personal property is invalid unless:

1. 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

2. The interest either vests or terminates within 90 years after its creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:
1. When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

2. The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

1. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

2. The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subparagraph (a)1., subparagraph (b)1., or subparagraph (c)1., the possibility that a child will be born to an individual after the individual's death is disregarded.

(3) WHEN NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT CREATED.--

(a) Except as provided in paragraphs (b), (d), and (e) of this subsection and in paragraph (a) of subsection (6), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this section, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in paragraph (b) of paragraph (c) of subsection (2), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this section, a joint power with respect to community property or to marital property under the Uniform Marital Property Act held by individuals married to each other is a power exercisable by one person alone.

(d) For purposes of this section, 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.

(e) For purposes of this section, if a nongeneral or testamentary power of appointment is exercised to create another nongeneral or testamentary power of appointment, every nonvested property interest or power of appointment created through the exercise of such other nongeneral or testamentary power is considered to have been created at the time of the creation of the first nongeneral or testamentary power of appointment.

(4) REFORMATION.--Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is
within the 90 years allowed by subparagraph (2)(a)2., subparagraph (2)(b)2., or subparagraph (2)(c)2. If:

(a) A nonvested property interest or a power of appointment becomes invalid under subsection (2);

(b) A class gift is not but might become invalid under subsection (2) and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(c) A nonvested property interest that is not validated by subparagraph (2)(a)1. can vest but not within 90 years after its creation.

(5) EXCLUSIONS FROM STATUTORY RULE AGAINST PERPETUITIES.—Subsection (2) does not apply to:

(a) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

1. A premarital or postmarital agreement;
2. A separation or divorce settlement;
3. A spouse's election;
4. A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;
5. A contract to make or not to revoke a will or trust;
6. A contract to exercise or not to exercise a power of appointment;
7. A transfer in satisfaction of a duty of support; or
8. A reciprocal transfer;

(b) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(c) A power to appoint a fiduciary;

(d) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(e) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(f) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the
purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(g) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state.

(6) APPLICATION.--

(a) Except as extended by paragraph (c), this section applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this section. For purposes of this subsection, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) This section also applies to a power of appointment that was created before the effective date of this section, but only to the extent that it remains unexercised on the effective date of this section.

(c) If a nonvested property interest or a power of appointment was created before the effective date of this section and is determined in a judicial proceeding, commenced on or after the effective date of this section, to violate this state's rule against perpetuities as that rule existed before the effective date of this section, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

(7) RULE OF CONSTRUCTION.--With respect to any matter relating to the validity of an interest within the rule against perpetuities, unless a contrary intent appears, it shall be presumed that the transferor of the interest intended that the interest be valid.

(8) UNIFORMITY OF APPLICATION AND CONSTRUCTION.--This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Section 2. Section 689.22, Florida Statutes, is hereby repealed.

Section 3. This act shall take effect October 1, 1988.

Approved by the Governor May 18, 1988.

Filed in Office Secretary of State May 18, 1988.

CHAPTER 88-41

Senate Bill No. 328

280