

HOUSE BILL REPORT

SSB 5333

As Reported By House Committee On:
Law & Justice

Title: An act relating to investment of trust funds.

Brief Description: Revising regulations for the investment of trust funds.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Smith, Long and Johnson).

Brief History:

Committee Activity:

Law & Justice: 3/28/95, 3/31/95 [DPA].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended. Signed by 16 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Smith; Thibaudeau and Veloria.

Staff: Edie Adams (786-7180).

Background: The National Conference of Commissioners on Uniform State Laws drafted a Uniform Prudent Investor Act which governs the management of trust assets by a trustee. A trust is a fiduciary relationship with respect to property in which one person, the grantor or trustor, transfers property to a trustee or fiduciary who is to manage that trust property for the benefit of a third party, called the beneficiary. The Uniform Prudent Investor Act provides that a trustee shall invest and manage trust assets as a prudent investor would, evaluating the trust portfolio as a whole. The trustee has the duty to diversify trust assets, invest and manage trust assets solely in the interest of the beneficiaries, and act impartially in investing trust assets when there is more than one beneficiary.

Current Washington law on the investment of trust assets is contained in Chapter 11.100 RCW, the Investment of Trust Funds Act. This act contains provisions analogous to most of the Uniform Prudent Investor Act.

The Washington Investment of Trust Funds Act provides that a fiduciary is to apply a "total asset management approach" in managing and investing trust assets, exercising the judgment and care which persons of prudence, discretion, and intelligence exercise in the management of their own affairs. A fiduciary with special skills is under a duty to use those special skills. A fiduciary may not buy or sell investments from or to the fiduciary or an affiliate.

A fiduciary may hold and retain any real or personal property received into or acquired by the trust from any source without need for diversification. A fiduciary may not enter into a "significant nonroutine transaction" in the absence of a compelling circumstance without first giving notice to the trustor and all beneficiaries and obtaining an independent appraisal for certain real estate transactions.

Washington case law establishes that fiduciaries managing trust assets have a duty of loyalty and impartiality to the beneficiaries and a duty to diversify trust assets. A fiduciary may delegate duties to an agent, but remains liable for all discretionary decisions of the agent.

Summary of Amended Bill: Provisions are added to the Investment of Trust Funds Act specifying that a fiduciary who invests and manages trust funds owes a duty to the beneficiaries to comply with the act, and that the requirements of the chapter may be expanded, restricted, eliminated, or otherwise altered by provisions of the trust instrument.

"General economic conditions" is added to the factors to be considered in managing the trust assets under the total asset management approach.

A new section is added providing that the fiduciary has a duty of loyalty to invest trust funds solely in the interest of the beneficiaries, and a duty to act impartially in making investment decisions if the trust has more than one beneficiary.

A new section is added providing that the fiduciary has a duty to diversify trust assets unless the fiduciary reasonably determines the purposes of the trust are better served without diversification because of special circumstances.

References to "trustee" are replaced with "fiduciary."

The provisions of the act apply prospectively only, and not retroactively.

Amended Bill Compared to Substitute Bill: The substitute bill exempted the state investment board, employee benefit plans, and the retirement systems of the cities of Seattle, Tacoma, and Spokane.

The amended bill adds an emergency clause and provides that the act takes effect July 1, 1995, and applies prospectively only.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect on July 1, 1995.

Testimony For: None.

Testimony Against: None.

Testified: Jeff Lane, Washington State Investment Board (with concerns).