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**SUBSTITUTE HOUSE BILL 1185**

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**State of Washington                      54th Legislature                      1995 Regular Session**

**By** House Committee on Law & Justice (originally sponsored by Representatives Hickel and Costa)

Read first time 02/01/95.

1            AN ACT Relating to investment of trust funds; amending RCW  
2 11.100.010, 11.100.020, 11.100.035, and 11.100.130; and adding new  
3 sections to chapter 11.100 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            **Sec. 1.** RCW 11.100.010 and 1985 c 30 s 63 are each amended to read  
6 as follows:

7            Except as otherwise specifically provided in the Revised Code of  
8 Washington with respect to state, county, or municipal retirement  
9 trusts, any corporation, association, or person handling or investing  
10 trust funds as a fiduciary shall be governed in the handling and  
11 investment of such funds as in this chapter specified. A fiduciary who  
12 invests and manages trust assets owes a duty to the beneficiaries of  
13 the trust to comply with requirements of this chapter. The specific  
14 requirements of this chapter may be expanded, restricted, eliminated,  
15 or otherwise altered by provisions of the controlling instrument.

16            **Sec. 2.** RCW 11.100.020 and 1985 c 30 s 65 are each amended to read  
17 as follows:

1 (1) A fiduciary is authorized to acquire and retain every kind of  
2 property. In acquiring, investing, reinvesting, exchanging, selling  
3 and managing property for the benefit of another, a fiduciary, in  
4 determining the prudence of a particular investment, shall give due  
5 consideration to the role that the proposed investment or investment  
6 course of action plays within the overall portfolio of assets. In  
7 applying such total asset management approach, a fiduciary shall  
8 exercise the judgment and care under the circumstances then prevailing,  
9 which persons of prudence, discretion and intelligence exercise in the  
10 management of their own affairs, not in regard to speculation but in  
11 regard to the permanent disposition of their funds, and if the  
12 fiduciary has special skills or is named trustee on the basis of  
13 representations of special skills or expertise, the fiduciary is under  
14 a duty to use those skills.

15 (2) Except as may be provided to the contrary in the instrument,  
16 the following are among the factors that should be considered by a  
17 fiduciary in applying this total asset management approach:

18 (a) The probable income as well as the probable safety of their  
19 capital;

20 (b) Marketability of investments;

21 (c) General economic conditions;

22 (d) Length of the term of the investments;

23 ~~((d))~~ (e) Duration of the trust;

24 ~~((e))~~ (f) Liquidity needs;

25 ~~((f))~~ (g) Requirements of the beneficiary or beneficiaries;

26 ~~((g))~~ (h) Other assets of the beneficiary or beneficiaries,  
27 including earning capacity; and

28 ~~((h))~~ (i) Effect of investments in increasing or diminishing  
29 liability for taxes.

30 (3) Within the limitations of the foregoing standard, and subject  
31 to any express provisions or limitations contained in any particular  
32 trust instrument, a fiduciary is authorized to acquire and retain every  
33 kind of property, real, personal, or mixed, and every kind of  
34 investment specifically including but not by way of limitation,  
35 debentures and other corporate obligations, and stocks, preferred or  
36 common, which persons of prudence, discretion, and intelligence acquire  
37 for their own account.

1       **Sec. 3.** RCW 11.100.035 and 1994 c 221 s 68 are each amended to  
2 read as follows:

3       (1) Within the standards of judgment and care established by law,  
4 and subject to any express provisions or limitations contained in any  
5 particular trust instrument, guardians, trustees, and other  
6 fiduciaries, whether individual or corporate, are authorized to acquire  
7 and retain securities of any open-end or closed-end management type  
8 investment company or investment trust registered under the federal  
9 investment company act of 1940 as now or hereafter amended.

10       (2) Within the limitations of subsection (1) of this section,  
11 whenever the trust instrument directs, requires, authorizes, or permits  
12 investment in obligations of the United States government, the  
13 (~~trustee~~) fiduciary may invest in and hold such obligations either  
14 directly or in the form of securities of, or other interests in, an  
15 open-end or closed-end management type investment company or investment  
16 trust registered under the federal investment company act of 1940, as  
17 now or hereafter amended, if both of the following conditions are met:

18       (a) The portfolio of the investment company or investment trust is  
19 limited to obligations of the United States and to repurchase  
20 agreements fully collateralized by such obligations; and

21       (b) The investment company or investment trust takes delivery of  
22 the collateral for any repurchase agreement either directly or through  
23 an authorized custodian.

24       (3) If the fiduciary is a bank or trust company, then the fact that  
25 the fiduciary, or an affiliate of the fiduciary, provides services to  
26 the investment company or investment trust such as that of an  
27 investment advisor, custodian, transfer agent, registrar, sponsor,  
28 distributor, manager, or otherwise, and is receiving reasonable  
29 compensation for those services does not preclude the bank or trust  
30 company from investing or reinvesting in the securities of the open-end  
31 or closed-end management investment company or investment trust. The  
32 fiduciary shall furnish a copy of the prospectus relating to the  
33 securities to each person to whom a regular periodic accounting would  
34 ordinarily be rendered under the trust instrument or under RCW  
35 11.106.020, upon the request of that person. The restrictions set  
36 forth under RCW 11.100.090 may not be construed as prohibiting the  
37 fiduciary powers granted under this subsection.

1        NEW SECTION.   **Sec. 4.**   A new section is added to chapter 11.100 RCW  
2 to read as follows:

3        A fiduciary shall invest and manage the trust assets solely in the  
4 interests of the trust beneficiaries.   If a trust has two or more  
5 beneficiaries, the fiduciary shall act impartially in investing and  
6 managing the trust assets, taking into account any differing interests  
7 of the beneficiaries.

8        NEW SECTION.   **Sec. 5.**   A new section is added to chapter 11.100 RCW  
9 to read as follows:

10       Subject to the provisions of RCW 11.100.060 and any express  
11 provisions in the trust instrument to the contrary, a fiduciary shall  
12 diversify the investments of the trust unless the fiduciary reasonably  
13 determines that, because of special circumstances, the purposes of the  
14 trust are better served without diversifying.

15        **Sec. 6.**   RCW 11.100.130 and 1985 c 30 s 77 are each amended to read  
16 as follows:

17        Whenever power or authority to direct or control the acts of a  
18 ((trustee)) fiduciary or the investments of a trust is conferred  
19 directly or indirectly upon any person other than the designated  
20 trustee of the trust, such person shall be deemed to be a fiduciary and  
21 shall be liable to the beneficiaries of ((said)) the trust and to the  
22 designated trustee to the same extent as if he or she were a designated  
23 trustee in relation to the exercise or nonexercise of such power or  
24 authority.

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