
SENATE BILL 5333

State of Washington

54th Legislature

1995 Regular Session

By Senators Smith, Long and Johnson

Read first time 01/19/95. Referred to Committee on Law & Justice.

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 Any corporation, association, or person handling or investing trust
8 funds as a fiduciary shall be governed in the handling and investment
9 of such funds as in this chapter specified. A fiduciary who invests
10 and manages trust assets owes a duty to the beneficiaries of the trust
11 to comply with requirements of this chapter. The specific requirements
12 of this chapter may be expanded, restricted, eliminated, or otherwise
13 altered by provisions of the controlling instrument.

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

16 (1) A fiduciary is authorized to acquire and retain every kind of
17 property. In acquiring, investing, reinvesting, exchanging, selling
18 and managing property for the benefit of another, a fiduciary, in

1 determining the prudence of a particular investment, shall give due
2 consideration to the role that the proposed investment or investment
3 course of action plays within the overall portfolio of assets. In
4 applying such total asset management approach, a fiduciary shall
5 exercise the judgment and care under the circumstances then prevailing,
6 which persons of prudence, discretion and intelligence exercise in the
7 management of their own affairs, not in regard to speculation but in
8 regard to the permanent disposition of their funds, and if the
9 fiduciary has special skills or is named trustee on the basis of
10 representations of special skills or expertise, the fiduciary is under
11 a duty to use those skills.

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

15 (a) The probable income as well as the probable safety of their
16 capital;

17 (b) Marketability of investments;

18 (c) General economic conditions;

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

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

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

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

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

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

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

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

37 (1) Within the standards of judgment and care established by law,
38 and subject to any express provisions or limitations contained in any

1 particular trust instrument, guardians, trustees, and other
2 fiduciaries, whether individual or corporate, are authorized to acquire
3 and retain securities of any open-end or closed-end management type
4 investment company or investment trust registered under the federal
5 investment company act of 1940 as now or hereafter amended.

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

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

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

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

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

36 A fiduciary shall invest and manage the trust assets solely in the
37 interests of the trust beneficiaries. If a trust has two or more
38 beneficiaries, the fiduciary shall act impartially in investing and

1 managing the trust assets, taking into account any differing interests
2 of the beneficiaries.

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

5 Subject to the provisions of RCW 11.100.060 and any express
6 provisions in the trust instrument to the contrary, a fiduciary shall
7 diversify the investments of the trust unless the fiduciary reasonably
8 determines that, because of special circumstances, the purposes of the
9 trust are better served without diversifying.

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

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

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