

2 **SHB 1185** - S COMM AMD  
3 By Committee on Law & Justice

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5 Strike everything after the enacting clause and insert the  
6 following:

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

9 (1) Except as limited in subsection (2) of this section, any  
10 corporation, association, or person handling or investing trust funds  
11 as a fiduciary shall be governed in the handling and investment of such  
12 funds as in this chapter specified. A fiduciary who invests and  
13 manages trust assets owes a duty to the beneficiaries of the trust to  
14 comply with requirements of this chapter. The specific requirements of  
15 this chapter may be expanded, restricted, eliminated, or otherwise  
16 altered by provisions of the controlling instrument.

17 (2) The provisions of this chapter shall not apply to the state  
18 investment board under chapter 43.33A RCW, the retirement systems  
19 operated by the cities of Seattle, Tacoma, and Spokane, and employee  
20 benefit plans under chapter 49.64 RCW.

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

23 (1) A fiduciary is authorized to acquire and retain every kind of  
24 property. In acquiring, investing, reinvesting, exchanging, selling  
25 and managing property for the benefit of another, a fiduciary, in  
26 determining the prudence of a particular investment, shall give due  
27 consideration to the role that the proposed investment or investment  
28 course of action plays within the overall portfolio of assets. In  
29 applying such total asset management approach, a fiduciary shall  
30 exercise the judgment and care under the circumstances then prevailing,  
31 which persons of prudence, discretion and intelligence exercise in the  
32 management of their own affairs, not in regard to speculation but in  
33 regard to the permanent disposition of their funds, and if the  
34 fiduciary has special skills or is named trustee on the basis of  
35 representations of special skills or expertise, the fiduciary is under

1 a duty to use those skills.

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

5 (a) The probable income as well as the probable safety of their  
6 capital;

7 (b) Marketability of investments;

8 (c) General economic conditions;

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

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

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

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

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

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

17 (3) Within the limitations of the foregoing standard, and subject  
18 to any express provisions or limitations contained in any particular  
19 trust instrument, a fiduciary is authorized to acquire and retain every  
20 kind of property, real, personal, or mixed, and every kind of  
21 investment specifically including but not by way of limitation,  
22 debentures and other corporate obligations, and stocks, preferred or  
23 common, which persons of prudence, discretion, and intelligence acquire  
24 for their own account.

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

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

34 (2) Within the limitations of subsection (1) of this section,  
35 whenever the trust instrument directs, requires, authorizes, or permits  
36 investment in obligations of the United States government, the  
37 ~~((trustee))~~ fiduciary may invest in and hold such obligations either  
38 directly or in the form of securities of, or other interests in, an

1 open-end or closed-end management type investment company or investment  
2 trust registered under the federal investment company act of 1940, as  
3 now or hereafter amended, if both of the following conditions are met:

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

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

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

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

26 A fiduciary shall invest and manage the trust assets solely in the  
27 interests of the trust beneficiaries. If a trust has two or more  
28 beneficiaries, the fiduciary shall act impartially in investing and  
29 managing the trust assets, taking into account any differing interests  
30 of the beneficiaries.

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

33 Subject to the provisions of RCW 11.100.060 and any express  
34 provisions in the trust instrument to the contrary, a fiduciary shall  
35 diversify the investments of the trust unless the fiduciary reasonably  
36 determines that, because of special circumstances, the purposes of the  
37 trust are better served without diversifying.

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

3       Whenever power or authority to direct or control the acts of a  
4 ((trustee)) fiduciary or the investments of a trust is conferred  
5 directly or indirectly upon any person other than the designated  
6 trustee of the trust, such person shall be deemed to be a fiduciary and  
7 shall be liable to the beneficiaries of ((said)) the trust and to the  
8 designated trustee to the same extent as if he or she were a designated  
9 trustee in relation to the exercise or nonexercise of such power or  
10 authority."

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14       On page 1, line 1 of the title, after "funds;" strike the remainder  
15 of the title and insert "amending RCW 11.100.010, 11.100.020,  
16 11.100.035, and 11.100.130; and adding new sections to chapter 11.100  
17 RCW."

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