

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5333

Chapter 307, Laws of 1995

(partial veto)

54th Legislature
1995 Regular Session

INVESTMENT OF TRUST FUNDS

EFFECTIVE DATE: 7/23/95

Passed by the Senate April 19, 1995
YEAS 47 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House April 13, 1995
YEAS 95 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved May 9, 1995, with the
exception of section 8, which is
vetoed.

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
SUBSTITUTE SENATE BILL 5333 as passed
by the Senate and the House of
Representatives on the dates hereon
set forth.

MARTY BROWN

Secretary

FILED

May 9, 1995 - 4:19 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5333

AS AMENDED BY THE HOUSE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

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

Read first time 02/02/95.

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; adding new sections
3 to chapter 11.100 RCW; creating a new section; providing an effective
4 date; and declaring an emergency.

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

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

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

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

17 (1) A fiduciary is authorized to acquire and retain every kind of
18 property. In acquiring, investing, reinvesting, exchanging, selling

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

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

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

18 (b) Marketability of investments;

19 (c) General economic conditions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 NEW SECTION. **Sec. 7.** This act applies prospectively only and not
24 retroactively.

25 ****NEW SECTION. Sec. 8. This act is necessary for the immediate***
26 ***preservation of the public peace, health, or safety, or support of the***
27 ***state government and its existing public institutions, and shall take***
28 ***effect July 1, 1995.***

29 ***Sec. 8 was vetoed. See message at end of chapter.**

Passed the Senate April 19, 1995.

Passed the House April 13, 1995.

Approved by the Governor May 9, 1995, with the exception of certain
items which were vetoed.

Filed in Office of Secretary of State May 9, 1995.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 8,
3 Substitute Senate Bill No. 5333 entitled:

4 "AN ACT Relating to investment of trust lands;"

5 This legislation includes an emergency clause in section 8.
6 Although the clarification of the fiduciary's responsibility to trust
7 assets is important, it is not a matter necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions. Preventing this
10 bill from being subject to a referendum under Article II, section 1 (b)
11 of the state Constitution unnecessarily denies the people of this state
12 their power, at their own option, to approve or reject this bill at the
13 polls.

14 For this reason, I have vetoed section 8 of Substitute Senate Bill
15 No. 5333.

16 With the exception of section 8, Substitute Senate Bill No. 5333 is
17 approved."