

2 **SSB 5333** - H 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 Any corporation, association, or person handling or investing trust  
10 funds as a fiduciary shall be governed in the handling and investment  
11 of such funds as in this chapter specified. A fiduciary who invests  
12 and manages trust assets owes a duty to the beneficiaries of the trust  
13 to comply with requirements of this chapter. The specific requirements  
14 of this chapter may be expanded, restricted, eliminated, or otherwise  
15 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:

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

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

35 (a) The probable income as well as the probable safety of their

1 capital;  
2 (b) Marketability of investments;  
3 (c) General economic conditions;  
4 (d) Length of the term of the investments;  
5 ~~((d))~~ (e) Duration of the trust;  
6 ~~((e))~~ (f) Liquidity needs;  
7 ~~((f))~~ (g) Requirements of the beneficiary or beneficiaries;  
8 ~~((g))~~ (h) Other assets of the beneficiary or beneficiaries,  
9 including earning capacity; and  
10 ~~((h))~~ (i) Effect of investments in increasing or diminishing  
11 liability for taxes.

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

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

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

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

37 (a) The portfolio of the investment company or investment trust is  
38 limited to obligations of the United States and to repurchase

1 agreements fully collateralized by such obligations; and

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

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

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

21 A fiduciary shall invest and manage the trust assets solely in the  
22 interests of the trust beneficiaries. If a trust has two or more  
23 beneficiaries, the fiduciary shall act impartially in investing and  
24 managing the trust assets, taking into account any differing interests  
25 of the beneficiaries.

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

28 Subject to the provisions of RCW 11.100.060 and any express  
29 provisions in the trust instrument to the contrary, a fiduciary shall  
30 diversify the investments of the trust unless the fiduciary reasonably  
31 determines that, because of special circumstances, the purposes of the  
32 trust are better served without diversifying.

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

35 Whenever power or authority to direct or control the acts of a  
36 (~~trustee~~) fiduciary or the investments of a trust is conferred

1 directly or indirectly upon any person other than the designated  
2 trustee of the trust, such person shall be deemed to be a fiduciary and  
3 shall be liable to the beneficiaries of ((said)) the trust and to the  
4 designated trustee to the same extent as if he or she were a designated  
5 trustee in relation to the exercise or nonexercise of such power or  
6 authority.

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

9 NEW SECTION. **Sec. 8.** This act is necessary for the immediate  
10 preservation of the public peace, health, or safety, or support of the  
11 state government and its existing public institutions, and shall take  
12 effect July 1, 1995."

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16 On page 1, line 1 of the title, after "funds;" strike the remainder  
17 of the title and insert "amending RCW 11.100.010, 11.100.020,  
18 11.100.035, and 11.100.130; adding new sections to chapter 11.100 RCW;  
19 creating a new section; providing an effective date; and declaring an  
20 emergency."

21 EFFECT: Deletes the exemption for the state investment board,  
22 employee benefit plans, and the Seattle, Tacoma & Spokane retirement  
23 systems. Adds an emergency clause and provides that the act takes  
24 effect on July 1, 1995 and applies prospectively only and not  
25 retroactively.

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