FINAL BILL REPORT
SSB 6267

C 345 L 02
Synopsis as Enacted

Brief Description: Revising the principal and income act.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Johnson and Kline).

Senate Committee on Judiciary
House Committee on Judiciary

Background: Trusts involve a trustee who has an utmost duty to administer a trust and manage trust property for the benefit of another person. In administering a trust, trustees have several responsibilities including the duty to make trust property productive and the duty of loyalty and impartiality. The duty of impartiality also includes the duty to allocate trust receipts equally between beneficiaries. The Uniform Principal and Income Act involves a trustee's obligation to divide trust receipts in a fair and reasonable manner among various trust beneficiaries.

Under current law, investment advisors have a duty to generate actual income for income beneficiaries. It has been reported that trustees may be compelled to invest in fixed income assets, rather than equities, in order to produce sufficient income for current beneficiaries. However, during recent market conditions, investment portfolios which have included a greater percentage of equity investments compared to fixed income assets have typically produced greater rates of return even though they may have paid smaller dividends. Concern exists that trustees' obligation to produce income may not be in the best interests of all trust beneficiaries since investments which produce income may not result in the maximum overall growth of the trust fund.

The Washington State Bar Association recommends modernizing the Washington Revised Uniform Principal and Income Act of 1971 to incorporate commonly used methods of transferring property, establish new rules, and change outdated legal principles.

Summary: In general terms, the Washington Principal and Income Act 2002 reflects overall modernization and changes to the 1971 act in four sections.

<u>Fiduciary Duties</u>. In allocating trust receipts, disbursements, and other matters within the scope of the 2002 act, a fiduciary should not favor one or more beneficiaries.

<u>Fiduciary's Power to Adjust</u>. If a personal representative invests and manages assets prudently and is unable to fulfill obligations for all beneficiaries and administer the trust, a personal representative may select investments which may not necessarily result in the production of the highest amount of income.

Judicial Control of Discretionary Powers. If a fiduciary's decision regarding a discretionary power is called into question, a court cannot find that a fiduciary abused his or her discretion merely because a judge would have exercised discretion differently. In remedying a fiduciary's abuse of discretion, a court may require the fiduciary to distribute or withhold an amount from the trust to restore a beneficiary to an appropriate position. A court can also require a fiduciary to use personal funds if a beneficiary establishes that the fiduciary did not exercise discretion in good faith and with honest judgment. In a claim or action relating to the fiduciary's discretionary powers, a fiduciary must be reimbursed for liabilities and advanced all costs, including unlimited attorneys' fees and costs of defense unless the beneficiary establishes that the fiduciary did not exercise his or her discretion in good faith and with honest judgment. Unless a fiduciary abuses his or her discretion, a fiduciary has discretionary power over unitrusts.

Power to Convert to Unitrust. A trustee, parties with an interest in the trust, or court may authorize the conversion of a trust to a unitrust. Once the trust is converted to a unitrust, the income amount to the beneficiary is equal to 4 percent of the net fair market value of the trust's assets averaged over the lesser of the three preceding years or the period during which the trust has been in existence.

Votes on Final Passage:

Senate	47	0
House	93	0

Effective: June 13, 2002