
HOUSE BILL 2329

State of Washington

57th Legislature

2002 Regular Session

By Representatives Lantz, Cooper, Esser, Dunshee, Haigh, McDermott, Linville, Sehlin, Murray, Anderson, Jarrett, Pflug, Cairnes, Barlean, D. Schmidt, Morell and Rockefeller

Read first time 01/14/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to federal estate tax benefits for conservation
2 easements; and amending RCW 11.98.070 and 11.96A.030.

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

4 **Sec. 1.** RCW 11.98.070 and 1997 c 252 s 75 are each amended to read
5 as follows:

6 A trustee, or the trustees jointly, of a trust, in addition to the
7 authority otherwise given by law, have discretionary power to acquire,
8 invest, reinvest, exchange, sell, convey, control, divide, partition,
9 and manage the trust property in accordance with the standards provided
10 by law, and in so doing may:

11 (1) Receive property from any source as additions to the trust or
12 any fund of the trust to be held and administered under the provisions
13 of the trust;

14 (2) Sell on credit;

15 (3) Grant, purchase or exercise options;

16 (4) Sell or exercise subscriptions to stock or other corporate
17 securities and to exercise conversion rights;

18 (5) Deposit stock or other corporate securities with any protective
19 or other similar committee;

- 1 (6) Assent to corporate sales, leases, and encumbrances;
- 2 (7) Vote trust securities in person or by proxy with power of
3 substitution; and enter into voting trusts;
- 4 (8) Register and hold any stocks, securities, or other property in
5 the name of a nominee or nominees without mention of the trust
6 relationship, provided the trustee or trustees are liable for any loss
7 occasioned by the acts of any nominee, except that this subsection
8 shall not apply to situations covered by RCW 11.98.070(31);
- 9 (9) Grant leases of trust property, with or without options to
10 purchase or renew, to begin within a reasonable period and for terms
11 within or extending beyond the duration of the trust, for any purpose
12 including exploration for and removal of oil, gas and other minerals;
13 enter into community oil leases, pooling and unitization agreements;
- 14 (10) Subdivide, develop, dedicate to public use, make or obtain the
15 vacation of public plats, adjust boundaries, partition real property,
16 and on exchange or partition to adjust differences in valuation by
17 giving or receiving money or money's worth;
- 18 (11) Compromise or submit claims to arbitration;
- 19 (12) Borrow money, secured or unsecured, from any source, including
20 a corporate trustee's banking department, or from the individual
21 trustee's own funds;
- 22 (13) Make loans, either secured or unsecured, at such interest as
23 the trustee may determine to any person, including any beneficiary of
24 a trust, except that no trustee who is a beneficiary of a trust may
25 participate in decisions regarding loans to such beneficiary from the
26 trust, unless the loan is as described in RCW 83.110.020(2), and then
27 only to the extent of the loan, and also except that if a beneficiary
28 or the grantor of a trust has the power to change a trustee of the
29 trust, the power to loan shall be limited to loans at a reasonable rate
30 of interest and for adequate security;
- 31 (14) Determine the hazards to be insured against and maintain
32 insurance for them;
- 33 (15) Select any part of the trust estate in satisfaction of any
34 partition or distribution, in kind, in money or both; make nonpro rata
35 distributions of property in kind; allocate particular assets or
36 portions of them or undivided interests in them to any one or more of
37 the beneficiaries without regard to the income tax basis of specific
38 property allocated to any beneficiary and without any obligation to
39 make an equitable adjustment;

1 (16) Pay any income or principal distributable to or for the use of
2 any beneficiary, whether that beneficiary is under legal disability, to
3 the beneficiary or for the beneficiary's use to the beneficiary's
4 parent, guardian, custodian under the uniform gifts to minors act of
5 any state, person with whom he resides, or third person;

6 (17) Change the character of or abandon a trust asset or any
7 interest in it;

8 (18) Mortgage, pledge the assets or the credit of the trust estate,
9 or otherwise encumber trust property, including future income, whether
10 an initial encumbrance or a renewal or extension of it, for a term
11 within or extending beyond the term of the trust, in connection with
12 the exercise of any power vested in the trustee;

13 (19) Make ordinary or extraordinary repairs or alterations in
14 buildings or other trust property, demolish any improvements, raze
15 existing structures, and make any improvements to trust property;

16 (20) Create restrictions, easements, including easements to public
17 use without consideration, and other servitudes;

18 (21) Manage any business interest, including any farm or ranch
19 interest, regardless of form, received by the trustee from the trustor
20 of the trust, as a result of the death of a person, or by gratuitous
21 transfer from any other transferor, and with respect to the business
22 interest, have the following powers:

23 (a) To hold, retain, and continue to operate that business interest
24 solely at the risk of the trust, without need to diversify and without
25 liability on the part of the trustee for any resulting losses;

26 (b) To enlarge or diminish the scope or nature or the activities of
27 any business;

28 (c) To authorize the participation and contribution by the business
29 to any employee benefit plan, whether or not qualified as being tax
30 deductible, as may be desirable from time to time;

31 (d) To use the general assets of the trust for the purpose of the
32 business and to invest additional capital in or make loans to such
33 business;

34 (e) To endorse or guarantee on behalf of the trust any loan made to
35 the business and to secure the loan by the trust's interest in the
36 business or any other property of the trust;

37 (f) To leave to the discretion of the trustee the manner and degree
38 of the trustee's active participation in the management of the
39 business, and the trustee is authorized to delegate all or any part of

1 the trustee's power to supervise, manage, or operate to such persons as
2 the trustee may select, including any partner, associate, director,
3 officer, or employee of the business; and also including electing or
4 employing directors, officers, or employees of the trustee to take part
5 in the management of the business as directors or officers or
6 otherwise, and to pay that person reasonable compensation for services
7 without regard to the fees payable to the trustee;

8 (g) To engage, compensate, and discharge or to vote for the
9 engaging, compensating, and discharging of managers, employees, agents,
10 lawyers, accountants, consultants, or other representatives, including
11 anyone who may be a beneficiary of the trust or any trustee;

12 (h) To cause or agree that surplus be accumulated or that dividends
13 be paid;

14 (i) To accept as correct financial or other statements rendered by
15 any accountant for any sole proprietorship or by any partnership or
16 corporation as to matters pertaining to the business except upon actual
17 notice to the contrary;

18 (j) To treat the business as an entity separate from the trust, and
19 in any accounting by the trustee it is sufficient if the trustee
20 reports the earning and condition of the business in a manner
21 conforming to standard business accounting practice;

22 (k) To exercise with respect to the retention, continuance, or
23 disposition of any such business all the rights and powers that the
24 trustor of the trust would have if alive at the time of the exercise,
25 including all powers as are conferred on the trustee by law or as are
26 necessary to enable the trustee to administer the trust in accordance
27 with the instrument governing the trust, subject to any limitations
28 provided for in the instrument; and

29 (l) To satisfy contractual and tort liabilities arising out of an
30 unincorporated business, including any partnership, first out of the
31 business and second out of the estate or trust, but in no event may
32 there be a liability of the trustee, except as provided in RCW
33 11.98.110 (2) and (4), and if the trustee is liable, the trustee is
34 entitled to indemnification from the business and the trust,
35 respectively;

36 (22) Participate in the establishment of, and thereafter in the
37 operation of, any business or other enterprise according to subsection
38 (21) of this section except that the trustee shall not be relieved of
39 the duty to diversify;

1 (23) Cause or participate in, directly or indirectly, the
2 formation, reorganization, merger, consolidation, dissolution, or other
3 change in the form of any corporate or other business undertaking where
4 trust property may be affected and retain any property received
5 pursuant to the change;

6 (24) Limit participation in the management of any partnership and
7 act as a limited or general partner;

8 (25) Charge profits and losses of any business operation, including
9 farm or ranch operation, to the trust estate as a whole and not to the
10 trustee; make available to or invest in any business or farm operation
11 additional moneys from the trust estate or other sources;

12 (26) Pay reasonable compensation to the trustee or co-trustees
13 considering all circumstances including the time, effort, skill, and
14 responsibility involved in the performance of services by the trustee;

15 (27) Employ persons, including lawyers, accountants, investment
16 advisors, or agents, even if they are associated with the trustee, to
17 advise or assist the trustee in the performance of the trustee's duties
18 or to perform any act, regardless of whether the act is discretionary,
19 and to act without independent investigation upon their
20 recommendations, except that:

21 (a) A trustee may not delegate all of the trustee's duties and
22 responsibilities;

23 (b) This power to employ and to delegate duties does not relieve
24 the trustee of liability for such person's discretionary acts, that, if
25 done by the trustee, would result in liability to the trustee;

26 (c) This power to employ and to delegate duties does not relieve
27 the trustee of the duty to select and retain a person with reasonable
28 care;

29 (d) The trustee, or a successor trustee, may sue the person to
30 collect any damages suffered by the trust estate even though the
31 trustee might not be personally liable for those damages, subject to
32 the statutes of limitation that would have applied had the claim been
33 one against the trustee who was serving when the act or failure to act
34 occurred;

35 (28) Appoint an ancillary trustee or agent to facilitate management
36 of assets located in another state or foreign country;

37 (29) Retain and store such items of tangible personal property as
38 the trustee selects and pay reasonable storage charges thereon from the
39 trust estate;

1 (30) Issue proxies to any adult beneficiary of a trust for the
2 purpose of voting stock of a corporation acting as the trustee of the
3 trust;

4 (31) Place all or any part of the securities at any time held by
5 the trustee in the care and custody of any bank, trust company, or
6 member firm of the New York Stock Exchange with no obligation while the
7 securities are so deposited to inspect or verify the same and with no
8 responsibility for any loss or misapplication by the bank, trust
9 company, or firm, so long as the bank, trust company, or firm was
10 selected and retained with reasonable care, and have all stocks and
11 registered securities placed in the name of the bank, trust company, or
12 firm, or in the name of its nominee, and to appoint such bank, trust
13 company, or firm agent as attorney to collect, receive, receipt for,
14 and disburse any income, and generally may perform, but is under no
15 requirement to perform, the duties and services incident to a so-called
16 "custodian" account;

17 (32) Determine at any time that the corpus of any trust is
18 insufficient to implement the intent of the trust, and upon this
19 determination by the trustee, terminate the trust by distribution of
20 the trust to the current income beneficiary or beneficiaries of the
21 trust or their legal representatives, except that this determination
22 may only be made by the trustee if the trustee is neither the grantor
23 nor the beneficiary of the trust, and if the trust has no charitable
24 beneficiary; ((and))

25 (33) Continue to be a party to any existing voting trust agreement
26 or enter into any new voting trust agreement or renew an existing
27 voting trust agreement with respect to any assets contained in trust;
28 and

29 (34)(a) Donate a qualified conservation easement, as defined by
30 section 2031(c) of the Internal Revenue Code, on any real property, or
31 consent to the donation of a qualified conservation easement on any
32 real property by a personal representative of an estate of which the
33 trustee is a devisee, to obtain the benefit of the estate tax exclusion
34 allowed under section 2031(c) of the Internal Revenue Code or the
35 deduction allowed under section 2055(f) of the Internal Revenue Code as
36 long as:

37 (i)(A) The governing instrument authorizes the donation of a
38 qualified conservation easement on the real property; or

1 (B) Each beneficiary that may be affected by the qualified
2 conservation easement consents to the donation under the provisions of
3 chapter 11.96A RCW; and

4 (ii) The donation of a qualified conservation easement will not
5 result in the insolvency of the decedent's estate.

6 (b) The authority granted under this subsection includes the
7 authority to amend a previously donated qualified conservation
8 easement, as defined under section 2031(c)(8)(B) of the Internal
9 Revenue Code, and to amend a previously donated unqualified
10 conservation easement for the purpose of making the easement a
11 qualified conservation easement under section 2031(c)(8)(B).

12 **Sec. 2.** RCW 11.96A.030 and 1999 c 42 s 104 are each amended to
13 read as follows:

14 The definitions in this section apply throughout this chapter
15 unless the context clearly requires otherwise.

16 (1) "Matter" includes any issue, question, or dispute involving:

17 (a) The determination of any class of creditors, devisees,
18 legatees, heirs, next of kin, or other persons interested in an estate,
19 trust, nonprobate asset, or with respect to any other asset or property
20 interest passing at death;

21 (b) The direction of a personal representative or trustee to do or
22 to abstain from doing any act in a fiduciary capacity;

23 (c) The determination of any question arising in the administration
24 of an estate or trust, or with respect to any nonprobate asset, or with
25 respect to any other asset or property interest passing at death, that
26 may include, without limitation, questions relating to: (i) The
27 construction of wills, trusts, community property agreements, and other
28 writings; (ii) a change of personal representative or trustee; (iii) a
29 change of the situs of a trust; (iv) an accounting from a personal
30 representative or trustee; or (v) the determination of fees for a
31 personal representative or trustee;

32 (d) The grant to a personal representative or trustee of any
33 necessary or desirable power not otherwise granted in the governing
34 instrument or given by law;

35 (e) The amendment, reformation, or conformation of a will or a
36 trust instrument to comply with statutes and regulations of the United
37 States internal revenue service in order to achieve qualification for
38 deductions, elections, and other tax requirements, including the

1 qualification of any gift thereunder for the benefit of a surviving
2 spouse who is not a citizen of the United States for the estate tax
3 marital deduction permitted by federal law, including the addition of
4 mandatory governing instrument requirements for a qualified domestic
5 trust under section 2056A of the internal revenue code, the
6 qualification of any gift thereunder as a qualified conservation
7 easement as permitted by federal law, or the qualification of any gift
8 for the charitable estate tax deduction permitted by federal law,
9 including the addition of mandatory governing instrument requirements
10 for a charitable remainder trust; and

11 (f) With respect to any nonprobate asset, or with respect to any
12 other asset or property interest passing at death, including joint
13 tenancy property, property subject to a community property agreement,
14 or assets subject to a pay on death or transfer on death designation:

15 (i) The ascertaining of any class of creditors or others for
16 purposes of chapter 11.18 or 11.42 RCW;

17 (ii) The ordering of a qualified person, the notice agent, or
18 resident agent, as those terms are defined in chapter 11.42 RCW, or any
19 combination of them, to do or abstain from doing any particular act
20 with respect to a nonprobate asset;

21 (iii) The ordering of a custodian of any of the decedent's records
22 relating to a nonprobate asset to do or abstain from doing any
23 particular act with respect to those records;

24 (iv) The determination of any question arising in the
25 administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

26 (v) The determination of any questions relating to the abatement,
27 rights of creditors, or other matter relating to the administration,
28 settlement, or final disposition of a nonprobate asset under this
29 title;

30 (vi) The resolution of any matter referencing this chapter,
31 including a determination of any questions relating to the ownership or
32 distribution of an individual retirement account on the death of the
33 spouse of the account holder as contemplated by RCW 6.15.020(6);

34 (vii) The resolution of any other matter that could affect the
35 nonprobate asset.

36 (2) "Notice agent" has the meanings given in RCW 11.42.010.

37 (3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

38 (4) "Party" or "parties" means each of the following persons who
39 has an interest in the subject of the particular proceeding and whose

1 name and address are known to, or are reasonably ascertainable by, the
2 petitioner:

3 (a) The trustor if living;

4 (b) The trustee;

5 (c) The personal representative;

6 (d) An heir;

7 (e) A beneficiary, including devisees, legatees, and trust
8 beneficiaries;

9 (f) The surviving spouse of a decedent with respect to his or her
10 interest in the decedent's property;

11 (g) A guardian ad litem;

12 (h) A creditor;

13 (i) Any other person who has an interest in the subject of the
14 particular proceeding;

15 (j) The attorney general if required under RCW 11.110.120;

16 (k) Any duly appointed and acting legal representative of a party
17 such as a guardian, special representative, or attorney in fact;

18 (l) Where applicable, the virtual representative of any person
19 described in this subsection the giving of notice to whom would meet
20 notice requirements as provided in RCW 11.96A.120;

21 (m) Any notice agent, resident agent, or a qualified person, as
22 those terms are defined in chapter 11.42 RCW; and

23 (n) The owner or the personal representative of the estate of the
24 deceased owner of the nonprobate asset that is the subject of the
25 particular proceeding, if the subject of the particular proceeding
26 relates to the beneficiary's liability to a decedent's estate or
27 creditors under RCW 11.18.200.

28 (5) "Persons interested in the estate or trust" means the trustor,
29 if living, all persons beneficially interested in the estate or trust,
30 persons holding powers over the trust or estate assets, the attorney
31 general in the case of any charitable trust where the attorney general
32 would be a necessary party to judicial proceedings concerning the
33 trust, and any personal representative or trustee of the estate or
34 trust.

35 (6) "Principal place of administration of the trust" means the
36 trustee's usual place of business where the day-to-day records
37 pertaining to the trust are kept, or the trustee's residence if the
38 trustee has no such place of business.

1 (7) The "situs" of a trust means the place where the principal
2 place of administration of the trust is located, unless otherwise
3 provided in the instrument creating the trust.

4 (8) "Trustee" means any acting and qualified trustee of the trust.

5 (9) "Representative" and other similar terms refer to a person who
6 virtually represents another under RCW 11.96A.120.

--- END ---