BILL ANALYSIS

C.S.H.B. 2240
By: Paxton
Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

C.S.H.B. 2240, the Uniform Prudent Investor Act, is based on model language promulgated by the Uniform Law Commissioners in 1994. The Act provides more uniformity of law in an interstate investment environment and needed clarity regarding the duties and responsibilities of trustees. To date, at least 38 other states have adopted Uniform Prudent Investor Act legislation.

The Act amends the Texas Property Code to update trust investment law by allowing trustees to utilize "modern portfolio theory" as a guide for investment decisions. The Act states that a trustee's performance should be measured by the performance of the whole portfolio, rather than that of each individual investment. The Act promotes greater protection for the trust's assets along with the prospect of better trust income overall.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2240 adds new Chapter 117 to the Property Code, to be cited as the "Uniform Prudent Investor Act," to establish the prudent investor rule ("the rule") as a default rule. The rule may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust, and the provisions of a trust control over the rule. A trustee is not liable to a beneficiary under the rule to the extent that the trustee acted in reasonable reliance on the specific provisions of the trust. The rule would be applicable to all trusts established after the Act's effective date, and to all decisions made by trustees after the effective date for existing trusts.

The rule establishes that a trustee shall invest and manage trust assets like a prudent investor. A trustee's decisions respecting individual assets shall not be evaluated in isolation but must be examined in context of the trust portfolio as a whole and as part of an overall investment strategy. A trustee's compliance with the rule is determined in light of the facts and circumstances existing at the time of a trustee's decisions and not by hindsight.

The bill states the circumstances that a trustee shall consider in investing and managing trust assets, requires trustees to make reasonable efforts to verify the facts surrounding the trust assets, permits a trustee to invest in any kind of property or investment, and places a duty upon trustees to use any special skills or expertise the trustee possesses. Generally, trustees must review assets and bring the trust portfolio into compliance with the rule after accepting the trust, diversify a trust's investments, invest and manage assets solely in the interest of beneficiaries, and act impartially when considering any differing interests of beneficiaries. The bill permits a trustee to delegate investment and management functions to an agent, and releases the trustee from liability for the actions or decisions of the agent.

C.S.H.B. 2240 repeals Section 113.003, Property Code, which permits a trustee to maintain any part of the original trust corpus without regard to diversification and without liability for any depreciation or loss resulting from retention of the asset. The bill makes conforming changes to various sections of the Property Code and the Texas Probate Code, and it deletes additional sections of the Property Code that are inconsistent with the provisions of the bill.

EFFECTIVE DATE

January 1, 2004

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds the provision permitting a trustee to delegate investment and management functions to an agent and releasing the trustee from liability for the decisions or actions of an agent. The substitute delays the effective date to January 1, 2004, from September 1, 2003.