BILL ANALYSIS

C.S.H.B. 2241
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Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

C.S.H.B. 2241, the Uniform Principal and Income Act, is based on model language promulgated by the Uniform Law Commissioners in 1997 and amended in 2000. The Act provides more uniformity of law in an interstate investment environment and needed clarity regarding the allocation of a trust's assets into principal and income. To date, at least 30 other states have adopted Uniform Principal and Income Act legislation.

The Act amends the Texas Property Code to provide procedures for trustees to separate principal and income. The Act distinguishes between property that is principal to be distributed to remainder beneficiaries (when an income interest ends) and property that is income distributed to income beneficiaries. It clarifies allocations of acquired assets and provides trustees with the power to make adjustments between principal and income to correct inequities. The Act promotes greater protection for the trust's assets along with providing a means for fairer treatment for all beneficiaries.

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. 2241 adds new Chapter 116 to the Property Code, to be cited as the "Uniform Principal and Income Act." The bill establishes a fiduciary's duties in allocating receipts and disbursements to or between principal and income. It requires a fiduciary to administer a trust or estate impartially, based on what is fair and reasonable to all beneficiaries, unless the will or trust clearly intends another result.

The bill permits a trustee to adjust between principal and income as the trustee considers necessary, provides the circumstances under which adjustment may be made, and establishes the considerations a trustee must consider before making an adjustment. The bill provides several prohibitions to prevent a trustee from making an adjustment between principal and income under certain circumstances. The bill provides procedures for adjustments when there is more than one trustee. The bill does not permit a court to order a fiduciary to change a decision, or exercise or not exercise a power conferred to the fiduciary, unless the court determines the fiduciary has abused the discretion granted to the fiduciary. The bill requires a court to determine prospectively whether a proposed action by a fiduciary would constitute abuse of discretion, upon petition by the fiduciary.

The bill defines a fiduciary's duties and establishes rules for determination and distribution of net income following the death of the decedent, in case of an estate, or after an income interest in a trust ends. The bill describes the net income entitlements of each beneficiary when a fiduciary distributes assets and sets out the means of determining a beneficiary's fractional interest. The bill defines when the beneficiaries' right to income begins and ends, and it describes the trustee's duties to apportion receipts and disbursements at those times. The bill establishes provisions for the distribution of income from a noncharitable unitrust.

Generally, C.S.H.B. 2241 requires a trustee to allocate money received from any entity to income. Generally, a trustee shall allocate property other than money, money received in exchange for a trust's interest in an entity, money received in liquidation of an entity, and capital gains dividends from an entity to principal. The bill provides several exceptions to these general requirements. The bill permits a trustee to maintain separate accounting records from the rest of the trust for a variety of activities if the trustee determines that doing so is in the best interest of all beneficiaries. The bill describes the allocation of receipts, whether normally or not normally apportioned, between principal and income and provides exceptions to these requirements. The bill permits a trustee to allocate an entire amount to principal if certain allocations between principal and income would be insubstantial.

The bill provides for the allocation of disbursements during the administration of trust. One half of regular compensation, expenses, and recurring premiums should be disbursed from income, and the remaining one-half from principal. The bill provides that other types of disbursements be made solely from principal. The bill establishes the means of transferring depreciation, reimbursements, and taxes between principal and income. The bill permits a fiduciary to make adjustments between principal and income to offset the shifting of economic interests or tax benefits between beneficiaries under certain conditions.

C.S.H.B. 2241 amends sections of the Property Code and Texas Probate Code to make conforming changes and repeals portions of those same codes that are inconsistent with the bill's provisions.

EFFECTIVE DATE

January 1, 2004

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds provisions requiring a court to determine that a fiduciary has abused the discretion conferred upon the fiduciary before reversing a decision or action made by the fiduciary. The substitute adds the requirement that a court to determine prospectively whether a proposed action by a fiduciary would constitute abuse of discretion, upon petition by the fiduciary. The substitute adds language clarifying the bill's effect upon certain estates as of the effective date of the Act.