

BILL ANALYSIS

Senate Research Center

S.B. 911
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Jurisprudence
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As Filed

DIGEST

In 1996 the federal government enacted legislation that extended protection from certain environmental claims to fiduciaries. This was in response to the growing number of environmentally burdened properties ending up in the hands of fiduciaries, thus exposing the fiduciaries to liability. Prior to federal relief, if the trust could not cover the cost of damages, the corporate trustee and the individual trustee/trustees administering the trust account could be held personally liable. In addition, it is generally held that a trustee may not delegate the responsibility for investments to a third party and mitigate liability for claims brought by a beneficiary specific to performance of those investments managed by a third party. As the knowledge of investments by beneficiaries expands, and the nature of the market changes, trustees are often not able to provide alternative investment strategies in the appropriate circumstances. This bill will bring the state statute in line with the federal law regarding fiduciary liability for an environmentally burdened property and will allow a release of the liability of the trustee when a third party outside investment advisor is hired.

PURPOSE

As proposed, S.B. 911 provides new regulations regarding fiduciary liability for an environmentally burdened property, and allows a release of the liability of the trustee when a third party outside investment advisor is hired.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 114.001, Property Code, by adding Subsection (e), to provide that the trustee has the same protection from liability provided for a fiduciary under 42 U.S.C. Section 9607(n).

SECTION 2. Amends Section 114.005, Property Code, to authorize a beneficiary who has full legal capacity to release a trustee from responsibility for an investment made or recommended by an agent retained by the trustee for that purpose. Authorizes the release to provide that the beneficiary is acting for that beneficiary and as a representative for an unborn or unascertained beneficiary. Sets forth the extent of the release on the unborn or unascertained beneficiary's interest. Provides that the release is effective only as to the releasing beneficiary's pro rata share of the trust estate. Requires the release under this section to be in writing and delivered to the trustee.

SECTION 3. Effective date: September 1, 1997.

SECTION 4. Emergency clause.