

**2003 DRAFTING REQUEST**

**Bill**

Received: **02/16/2004**

Received By: **pgrant**

Wanted: **As time permits**

Identical to LRB:

For: **Glenn Grothman (608) 264-8486**

By/Representing: **Maggie**

This file may be shown to any legislator: **NO**

Drafter: **pgrant**

May Contact:

Addl. Drafters: **mlief**

Subject: **Probate - trusts and trustees**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Grothman@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Uniform prudent investor act

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pgrant 02/17/2004	wjackson 02/17/2004		_____			
/1			jfrantze 02/17/2004	_____	mbarman 02/17/2004	sbasford 02/18/2004	
				_____		sbasford 02/18/2004	
				_____			

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

*none  
needed*

<END>

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/?	pgrant 02/17/2004	wjackson 02/17/2004		_____			
/1			jfrantze 02/17/2004	_____	mbarman 02/17/2004		

02/17/2004 02:17:05 PM

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**LRB-4276**

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1?	pgrant	1 Wlj 2/17	2/17	2/17			

FE Sent For:

<END>

2/16/04

Guthman  
Maggie

hrg. Thursday  
(needed Tues. or Wed)

~~last~~ <sup>WANT</sup> ~~out~~ p. 35 → to one

except WANT SSA1 to 015B <sup>159</sup> if diff. then 2349

- only diff is in 881.01 (2) :

- 2349 adds " except as  
provided in s. 112.10 "

think that's needed. Maggie will call  
me back.

Today

LRB-4276/1  
MSL:opg:wjl:

# 2003 BILL

LPS:  
Pages are missing from the underlying draft - they are omitted from this draft.

regenerate

1 AN ACT to renumber and amend 701.24; to amend 20.907 (1), 23.0918 (2),  
 2 25.70, 36.29 (1), 40.82 (2), 861.015 (2), 881.02 and 881.06; to repeal and  
 3 recreate 701.20 and 881.01; and to create 701.24 (2) of the statutes; relating  
 4 to: regulating the investments of personal representatives, trustees,  
 5 conservators, and guardians of the estate, and providing rules for allocations  
 6 between principal and income for trusts and estates.

## Analysis by the Legislative Reference Bureau

### Uniform Principal and Income Act

Currently, the Revised Uniform Principal and Income Act of 1962 provides rules for trustees and personal representatives (fiduciaries) for apportioning trust and estate receipts and disbursements between principal and income. This bill replaces these rules with the Uniform Principal and Income Act of 1997, as amended. The Uniform Principal and Income Act of 1997 addresses essentially the same issues as the Revised Uniform Principal and Income Act of 1962, but is more extensive and detailed, takes into account the widespread use of revocable living trusts as will replacements, and provides rules related to financial instruments and transactions that were not in use previously.

As under current law, the bill specifies that, in allocating receipts and disbursements between income and principal in the administration of trusts and

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estates, the terms of the trust or will control. The fiduciary may exercise discretion in the allocation if the trust or will so provides. If the trust or will does not contain a conflicting provision or provide discretionary powers, however, the fiduciary must follow the allocation rules provided in the bill in administering a trust or estate.

Under a trust, some beneficiaries may have a beneficial interest in receiving trust income, while other beneficiaries may receive the principal that remains after the trust terminates. The bill specifies which receipts by a trust are to be allocated to income and which are to be allocated to principal. For example: 1) If part of a payment from an annuity, pension plan, or other retirement account is characterized as interest or dividend, that part of the payment must be allocated to income and the balance must be allocated to principal. If no part of such a payment is characterized as interest or dividend, however, 10% of the payment must be allocated to income and the balance must be allocated to principal. 2) Receipts from rental property must be allocated to income, but a refundable deposit, such as a security deposit, must be allocated to principal and may not be distributed to a beneficiary until the trustee's contractual obligations with respect to the amount have been satisfied. 3) Proceeds of a life insurance policy must be allocated to principal. Dividends on an insurance policy, however, must be allocated to income if the premiums on the policy are paid from income and allocated to principal if the premiums are paid from principal. 4) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, however, 90% of the amount received must be allocated to principal and the balance must be allocated to income.

The bill also specifies which distributions from a trust are to be made from income and which are to be made from principal. Generally, ordinary administrative expenses are paid from income. One-half of the trustee's regular compensation is paid from income and one-half from principal, but the trustee's compensation for certain activities, such as disbursements made to prepare property for sale, are paid from principal. Expenses of proceedings that concern primarily principal must be paid from principal. Estate, inheritance, and other transfer taxes must be paid from principal, but a tax that is based on receipts allocated to income must be paid from income.

Under the bill, a trustee is authorized to transfer to principal a reasonable amount of the cash receipts from a principal asset that is subject to depreciation and to transfer an appropriate amount from income to principal to reimburse principal or provide a reserve for future principal disbursements if the trustee makes or expects to make a principal disbursement of a type specified in the bill, such as a capital improvement to a principal asset or disbursements to prepare a property for rental. Under the bill, a fiduciary may make adjustments between principal and income to offset any inequities resulting from tax rules or tax elections.

The bill prohibits a court from granting relief from a fiduciary's decision to exercise or not to exercise a discretionary power conferred under the bill, such as whether and to what extent an amount should be transferred from principal to income or from income to principal, unless the court determines that the fiduciary abused his or her discretion. In that case, the court may require certain actions to be taken to place the beneficiaries in the positions that they would have occupied had

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the discretion not been abused and may even require the fiduciary to pay one or more beneficiaries from the fiduciary's own funds.

The bill provides general rules for fiduciaries to use for distributing income to beneficiaries and principal to remainder beneficiaries in an estate or after an income interest in a trust ends, rules for determining when a right to income begins and ends in different circumstances, rules for allocating income receipts and disbursements between income and principal on the basis of the relation in time to the decedent's death or the date on which an income interest begins, and rules for distributing undistributed income after an income interest in a trust ends.

***Uniform Prudent Investor Act***

Under current law, personal representatives, guardians of the estate, and fiduciaries are bound by the prudent person rule, which requires them to invest the assets of their trusts and estates conservatively. For example, no more than 50% of the assets may consist of common stocks. This bill replaces the prudent person rule with the Uniform Prudent Investor Act, which sets general standards for fiduciaries, allows them greater flexibility in choosing investments, specifies that their work is to be judged on the basis of the performance of all their investments, allows them to delegate investment decisions, and requires them to consider the tax consequences of investments. These changes affect state and local deferred compensation plans, the historical society's funds that are invested by the investment board, municipal cemetery funds, employee welfare funds, wards' estates, care funds, and preneed trust funds. The bill also adds conservators to the types of fiduciaries to which the Uniform Prudent Investor Act applies. A conservator is appointed by a court to manage the property or income of a person who is competent and who has requested that the conservator be appointed.

State

percent

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1        ~~SECTION 1. 20.907 (1) of the statutes is amended to read:~~  
2            ~~20.907 (1) ACCEPTANCE AND INVESTMENT. Unless otherwise provided by law, all~~  
3        ~~gifts, grants, bequests, and devises to the state or to any state agency for the benefit~~  
4        ~~or advantage of the state, whether made to trustees or otherwise, shall be legal and~~  
5        ~~valid when approved by the joint committee on finance and shall be executed and~~  
6        ~~enforced according to the provisions of the instrument making the same, including~~  
7        ~~all provisions and directions in any such instrument for accumulation of the income~~  
8        ~~of any fund or rents and profits of any real estate without being subject to the~~

## BILL

1 limitations and restrictions provided by law in other cases; but no such accumulation  
2 shall be allowed to produce a fund more than 20 times as great as that originally  
3 given. ~~When such gifts, grants, bequests or devises include common stocks or other~~  
4 ~~investments which are not authorized by s. 881.01, such common stocks or other~~  
5 ~~investments may be held and may be exchanged, invested or reinvested in similar~~  
6 ~~types of investments without being subject to the limitations provided by law in other~~  
7 ~~cases.~~

8 **SECTION 2.** 23.0918 (2) of the statutes is amended to read:

9 23.0918 (2) Unless the natural resources board determines otherwise in a  
10 specific case, only the income from the gifts, grants, or bequests in the fund is  
11 available for expenditure. The natural resources board may authorize expenditures  
12 only for preserving, developing, managing, or maintaining land under the  
13 jurisdiction of the department that is used for any of the purposes specified in s. 23.09  
14 (2) (d). In this subsection, unless otherwise provided in a gift, grant, or bequest,  
15 principal and income are determined as provided under s. 701.20 (3).

16 **SECTION 3.** 25.70 of the statutes is amended to read:

17 **25.70 Historical society trust fund.** There is established a separate  
18 nonlapsible trust fund designated as the historical society trust fund, consisting of  
19 all endowment principal and income and all cash balances of the historical society.  
20 Unless the board of curators of the historical society determines otherwise in each  
21 case, only the income from the assets in the historical society trust fund is available  
22 for expenditure. In this section, unless otherwise provided in the gift, grant, or  
23 bequest, principal and income are determined as provided under s. 701.20 (3).

24 **SECTION ~~4~~ 36.29** (1) of the statutes is amended to read:

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1           36.29 (1) All gifts, grants, and bequests for the benefit or advantage of the  
2 system or any of its institutions, departments, or facilities or to provide any means  
3 of instruction, illustration, or knowledge in connection therewith, whether made to  
4 trustees or otherwise, shall be valid notwithstanding any other provision of this  
5 chapter except as otherwise provided in this subsection and shall be executed and  
6 enforced according to the provisions of the instrument making the same, including  
7 all provisions and directions in any such instrument for accumulation of the income  
8 of any fund or rents and profits of any real estate without being subject to the  
9 limitations and restrictions provided by law in other cases; but no such income  
10 accumulation shall be allowed to produce a fund more than 20 times as great as that  
11 originally given. ~~When such gifts, grants or bequests include common stocks or other~~  
12 ~~investments which are not authorized by ch. 881, the board may continue to hold~~  
13 ~~such common stocks or other investments and exchange, invest or reinvest the funds~~  
14 ~~of such gift, grant or bequest in similar types of investments without being subject~~  
15 ~~to the limitations and restrictions provided by law in other cases. No such~~  
16 ~~investment of the funds of such gifts, grants, or bequests shall knowingly be made~~  
17 ~~in any company, corporation, subsidiary, or affiliate which that practices or condones~~  
18 ~~through its actions discrimination on the basis of race, religion, color, creed, or sex.~~  
19 ~~Except as otherwise provided in this section, the board may invest not to exceed 85%~~  
20 ~~of trust funds held and administered by the board in common stocks, the limitation~~  
21 ~~of 50% in s. 881.01 (2) to the contrary notwithstanding. This subsection does not~~  
22 ~~apply to a gift, grant, or bequest that the board declines to accept or that the board~~  
23 ~~is not authorized to accept under this section.~~

24           SECTION ~~40~~<sup>41</sup> 40.82 (2) of the statutes is amended to read:

**BILL**

1           40.82 (2) Compensation ~~which~~ that is withheld under a deferred compensation  
 2 plan contract between an employer and an employee may be invested by the  
 3 employer or a person other than the employer who is authorized by contract to  
 4 administer the funds. The employer may determine the types of investments in  
 5 which the deferred compensation funds may be invested. The deferred compensation  
 6 funds may be invested and reinvested in the same manner provided for investments  
 7 under s. 881.01 (1).

**INSERT 6-7 →**

**SECTION 6.** 701.20 of the statutes is repealed and recreated to read:

8           **701.20 Uniform principal and income act.** (1) ~~CITING SECTION.~~ This section  
 9 may be cited as the Uniform Principal and Income Act.  
 10

(2) **DEFINITIONS.** In this section:

11           (a) "Accounting period" means a calendar year, unless another 12-month  
 12 period is selected by a fiduciary, and includes a portion of a calendar year or other  
 13 12-month period that begins when an income interest begins or that ends when an  
 14 income interest ends.  
 15

16           (b) "Beneficiary" means a person who has a beneficial interest in a trust or an  
 17 estate and includes, in the case of a decedent's estate, an heir, a legatee, and a devisee  
 18 and, in the case of a trust, an income beneficiary and a remainder beneficiary.

19           (c) "Fiduciary" means a personal representative or a trustee and includes an  
 20 executor, administrator, successor personal representative, special administrator,  
 21 and a person performing substantially the same function as any of those.

22           (d) "Income" means money or property that a fiduciary receives as current  
 23 return from a principal asset. "Income" includes a portion of receipts from a sale,  
 24 exchange, or liquidation of a principal asset, to the extent provided in subs. (10) to

(24)

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1 861.015 (2) For purposes of this section, property subject to a directive is valued  
 2 by its clear market value on the date of the decedent's death. Satisfaction of the  
 3 nonholding spouse's marital property interest in the property subject to the directive  
 4 shall be based on that value, plus any income from the property subject to the  
 5 directive after the death of the decedent and before satisfaction. For purposes of  
 6 determining the income from the property subject to a directive, such property shall  
 7 be treated as a legacy or devise of property other than money under s. 701.20 (5) (b)

8 1.  
 9 **SECTION 10.** 881.01 of the statutes is repealed and recreated to read:

10 **881.01 Uniform prudent investor act. (1) DEFINITION.** In this section:

11 (a) "Beneficiary" with respect to a guardianship of the estate, means a ward  
 12 for whom a guardian of the estate has been appointed and, with respect to a  
 13 conservator, means a person for whose estate a conservator has been appointed.

14 (b) "Fiduciary" means personal representative, trustee, conservator, or  
 15 guardian of the estate.

16 (2) PRUDENT INVESTOR RULE. (a) Except as provided in s. 112.10 and except as  
 17 otherwise provided in par. (b), a fiduciary who invests and manages assets owes a  
 18 duty to the beneficiaries to comply with the prudent investor rule set forth in this  
 19 section.

20 (b) The prudent investor rule, a default rule, may be expanded, restricted,  
 21 eliminated or otherwise altered by the provisions of a will, trust, or court order. A  
 22 fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in  
 23 reasonable reliance on the provisions of the will, trust, or court order.

24 (3) STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES. (a) A  
 25 fiduciary shall invest and manage assets as a prudent investor would, by considering

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1 the purposes, terms, distribution requirements, and other circumstances of the  
2 estate, trust, conservatorship, or guardianship. In satisfying this standard, the  
3 fiduciary shall exercise reasonable care, skill, and caution.

4 (b) A fiduciary's investment and management decisions about individual assets  
5 shall be evaluated not in isolation but in the context of the portfolio as a whole and  
6 as a part of an overall investment strategy having risk and return objectives  
7 reasonably suited to the estate, trust, conservatorship, or guardianship.

8 (c) Among circumstances that a fiduciary shall consider in investing and  
9 managing assets are those of the following that are relevant to the estate, trust,  
10 conservatorship, or guardianship or its beneficiaries:

- 11 1. General economic conditions.
- 12 2. The possible effect of inflation or deflation.
- 13 3. The expected tax consequences of investment decisions or strategies.
- 14 4. The role that each investment or course of action plays within the overall  
15 portfolio, which may include financial assets, interests in closely held enterprises,  
16 tangible and intangible personal property, and real property.
- 17 5. The expected total return from income and the appreciation of capital.
- 18 6. Other resources of the beneficiaries.
- 19 7. Needs for liquidity, regularity of income, and preservation or appreciation  
20 of capital.
- 21 8. An asset's special relationship or special value to the purposes of the estate,  
22 trust, conservatorship, or guardianship or to one or more of the beneficiaries.
- 23 (d) A fiduciary shall make a reasonable effort to verify facts relevant to the  
24 investment and management of assets.

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1 (e) A fiduciary may invest in any kind of property or type of investment  
2 consistent with the standards of this section.

3 (f) A fiduciary who has special skills or expertise, or <sup>who</sup> is named fiduciary in  
4 reliance upon the fiduciary's representation that the fiduciary has special skills or  
5 expertise, has a duty to use those special skills or expertise.

6 (4) DIVERSIFICATION. A fiduciary shall diversify investments unless the  
7 fiduciary reasonably determines that, because of special circumstances, the  
8 purposes of the estate, trust, conservatorship, or guardianship are better served  
9 without diversifying.

10 (5) DUTIES AT INCEPTION. Within a reasonable time after accepting a fiduciary  
11 appointment or receiving assets, a fiduciary shall review the assets and make and  
12 implement decisions concerning the retention and disposition of assets, in order to  
13 bring the portfolio into compliance with the purposes, terms, distribution  
14 requirements, and other circumstances of the estate, trust, conservatorship, or  
15 guardianship and with the requirements of this section.

16 (6) LOYALTY. A fiduciary shall invest and manage the assets solely in the  
17 interest of the beneficiaries.

18 (7) IMPARTIALITY. If an estate, trust, conservatorship, or guardianship has 2 or  
19 more beneficiaries, the fiduciary shall act impartially in investing and managing the  
20 assets, taking into account the differences between the interests of the beneficiaries.

21 (8) INVESTMENT COSTS. In investing and managing assets, a fiduciary may incur  
22 only costs that are appropriate and reasonable in relation to the assets, the purposes  
23 of the estate, trust, conservatorship, or guardianship, and the skills of the fiduciary.

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1           (9) REVIEWING COMPLIANCE. Compliance with the prudent investor rule is  
2 determined in light of the facts and circumstances existing at the time of a fiduciary's  
3 decision or action and not by hindsight.

4           (10) DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS. (a) A fiduciary  
5 may delegate investment and management functions that a prudent fiduciary of  
6 similar skills could properly delegate under the circumstances. The fiduciary shall  
7 exercise reasonable care, skill, and caution in all of the following:

8           1. Selecting an agent.

9           2. Establishing the scope and terms of the delegation, consistent with the  
10 purposes and terms of the estate, trust, conservatorship, or guardianship.

11           3. Periodically reviewing the agent's actions in order to monitor the agent's  
12 performance and compliance with the terms of the delegation.

13           (b) In performing a delegated function, an agent owes a duty to the estate, trust,  
14 conservatorship, or guardianship to exercise reasonable care to comply with the  
15 terms of the delegation.

16           (c) A fiduciary who complies with the requirements of par. (a) is not liable to  
17 the beneficiaries or to the estate, trust, conservatorship, or guardianship for the  
18 decisions or actions of the agent to whom a function was delegated.

19           (d) By accepting the delegation of a function from the fiduciary of an estate,  
20 trust, conservatorship, or guardianship that is subject to the law of this state, an  
21 agent submits to the jurisdiction of the courts of this state.

22           (11) PHRASES INVOKING STANDARD OF THIS SECTION. The following phrases or  
23 similar phrases in a will, trust, or court order, unless otherwise limited or modified,  
24 authorize any investment or strategy permitted under this section: "investments  
25 permissible by law for investment of trust funds"; "legal investments"; "authorized

**BILL**

1 investments”; “using the judgment and care under the circumstances then  
2 prevailing that persons of prudence, discretion, and intelligence exercise in the  
3 management of their own affairs, not in regard to speculation but in regard to the  
4 permanent disposition of their funds, considering the probable income as well as the  
5 probable safety of their capital”; “prudent man rule”; “prudent trustee rule”;  
6 “prudent person rule”; and “prudent investor rule”.

7 (12) APPLICATION TO EXISTING ESTATES, TRUSTS, CONSERVATORSHIPS, AND  
8 GUARDIANSHIPS. This section applies to estates, trusts, conservatorships, and  
9 guardianships of the estate existing on, or created on or after, the effective date of  
10 this subsection ... [revisor inserts date]. As applied to estates, trusts,  
11 conservatorships, and guardianships of the estate existing on the effective date of  
12 this subsection ... [revisor inserts date], this section governs only decisions or actions  
13 occurring after that date.

14 (13) UNIFORMITY OF APPLICATION AND CONSTRUCTION. This section shall be  
15 applied and construed to effectuate its general purpose to make uniform the law with  
16 respect to the subject of this section among the states that have enacted this uniform  
17 legislation.

18 SECTION 11. 881.02 of the statutes is amended to read:

19 **881.02 Construction; court orders; written instruments.** Nothing  
20 contained in this chapter shall be construed as authorizing any departure from, or  
21 variation of, the express terms or limitations set forth in any will, agreement, court  
22 order, or other instrument creating or defining the fiduciary’s duties and powers, but  
23 the terms “legal investment” or “authorized investment” or words of similar import,  
24 as used in any such instrument, shall be taken to mean any investment which is  
25 permitted by the terms of this chapter.



INSERT 6-7

AM; 66.0603 (1m)(b)

66.0603(1m)(b) <sup>ⓐ</sup> No ff

(b) A town, city, or village may invest surplus funds in any bonds or securities issued under the authority of the municipality, whether the bonds or securities create a general municipality liability or a liability of the property owners of the municipality for special improvements, and may sell or hypothecate the bonds or securities. Funds of an employer, as defined by s. 40.02 (28), in a deferred compensation plan may also be invested and reinvested in the same manner authorized for investments under s. 881.01 ~~(+)~~. Funds of any school district operating under ch. 119, held in trust for pension plans intended to qualify under section 401 (a) of the Internal Revenue Code, other than funds held in the public employee trust fund, may be invested and reinvested in the same manner as is authorized for investments under s. 881.01. <sup>plan period</sup>

**Basford, Sarah**

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**From:** Emerson, James  
**Sent:** Tuesday, February 17, 2004 5:28 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-4276/1 Topic: Uniform prudent investor act

It has been requested by <Emerson, James> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-4276/1 Topic: Uniform prudent investor act