Bill as Introduced

HB 404 – AS INTRODUCED

2003 SESSION

03-0425
06/01

HOUSE BILL ***404***

AN ACT relative to common trust funds.

SPONSORS: Rep. Hunt, Ches 28; Sen. Kenney, Dist 3

COMMITTEE: Commerce

ANALYSIS

This bill allows a New Hampshire bank to provide its common trust funds for investments by an affiliated bank located either in-state or out-of-state. It also allows a New Hampshire bank to invest funds in a common trust fund established by an affiliated bank located either in New Hampshire or in another state.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 404 – AS INTRODUCED

03-0425
06/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to common trust funds.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Establishment and Use of Common Trust by Bank Holding Company Affiliates Located Both In-State and Out-of-State. Amend RSA 391:1-a to read as follows:

391:1-a Establishment and Use of Common Trust by Bank Holding Company Affiliates. Any such bank or trust company which is an affiliate of a bank holding company, as ***the term "affiliate"*** is defined by the federal Bank Holding Company Act of 1956, as amended, or of a savings and loan holding company as defined by the federal Savings and Loan Holding Company Act, as amended, may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, to other affiliates of the same holding company qualified to act as fiduciary in this state [~~as fiduciary~~] ***or in any other state***, or to itself and others as co-fiduciaries, or to such other affiliates and others as co-fiduciaries. Subject to the limitations upon the investment of funds held in a fiduciary capacity in common trust funds contained in RSA 391:1, [~~the~~] ***any such*** bank or trust company [~~affiliate of a holding company~~] establishing such common trust funds and other affiliates of the same holding company qualified to act as fiduciary in this state ***or in any other state*** may, as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment [~~in interest~~] in such common trust funds. ***Any such bank or trust company may also invest funds which it holds in a fiduciary capacity in any collective investment fund or common trust fund established by such other affiliates of the same holding company under the laws of any state; provided, however, that any such investment is not prohibited by the instrument, judgment, decree, or order creating the fiduciary relationship.*** [~~The~~] ***Any*** bank or trust company establishing, maintaining, or so utilizing any [~~such~~] common trust fund ***established under this chapter*** shall comply with and be subject to all of the provisions of this chapter as though such bank or trust company and the other [~~banks or trust companies~~] ***affiliates*** participating in such common trust fund [~~or funds~~] were one and the same corporate entity. Any person acting as a co-fiduciary with any such bank or trust company is hereby authorized to consent to the investment in interest in a common trust fund or funds created hereunder.

2 Effective Date. This act shall take effect 60 days after its passage.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 404 Date 2-11-03

Committee Commerce

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
Senator Joseph D. Kenney				✓	

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE

PUBLIC HEARING ON HB 404

BILL TITLE: relative to common trust funds.

DATE: February 11, 2003

LOB ROOM: 302 **Time Public Hearing Called to Order:** 10 am

Time Adjourned: 10:20 am

(please circle if present)

Committee Members: Reps. Hunt, L. Fraser, Francoeur, Belanger, Langley, DiFruscia, D. Flanders, Spiess, Holden, Liebl, Quandt, Charles Clark, Brady, Scamman, Stepanek, Reardon, Kathleen Taylor, Meader, DeStefano, Vachon and Kopka.

Bill Sponsors: Rep. Hunt and Sen. Kenney

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep. John Hunt, prime sponsor** – This bill is intended to bring New Hampshire banks into conformity with other states. See written testimony.

Anthony Galvagua, attorney, New Hampshire Bankers' Association – This bill will expand the power of banks to co-mingle investments in common trust funds with other banks, to provide diversification of investments. Current law has not been updated since 1977. Current law limits investments to a bank's own common funds. This change would allow banks to mix common trust funds with other affiliated banks. By increasing the pool of funds there will be more opportunity to diversify investments and reduce costs.

Q: Rep. Paul Spiess – Is this proposed ability to co-mingle funds limited solely to affiliates?

A: Yes.

Q: Does that mean that the fiduciary responsibility of the bank remains within the organization?

A: Yes.

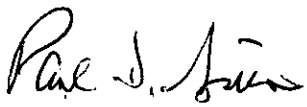
Q: Rep. Leo Fraser – Can two small independent banks in New Hampshire presently pool these funds?

A: No.

Q: Rep. Angeline Kopka – Would both banks be insured for these activities?

A: Yes, acting in their fiduciary capacity.

Respectfully Submitted:



Paul D. Spiess, Clerk

Sub-Committee Actions

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON HB 404

BILL TITLE: relative to common trust funds.`

DATE: March 7, 2003

Subcommittee Members: Reps. Fraser, Stepanek and Kopka

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Stepanek

Seconded by Rep. Kopka

Vote: 3-0

Respectfully submitted,

Rep. Leo W. Fraser
Subcommittee Chairman/Clerk

Testimony

HB 404 - Relative to Common Trust Funds

This bill would allow a New Hampshire Bank to provide its common trust funds for investments by an affiliated bank located in New Hampshire or out-of-state; and it would allow a New Hampshire bank to invest funds in a common trust fund established by an affiliated bank located in New Hampshire or out-of-state.

As a general rule, a trustee may not combine the assets of one trust with the assets of another trust for investment purposes, absent express authority in the trust instrument. However, this generally does not apply to particular arrangements known as common trust funds. A common trust fund is a type of trust arrangement that allows a bank to pool the investment of funds held by the bank in its capacity as trustee of other trusts. All fifty states have enacted some form of enabling legislation permitting the formation and use of common trust funds, including New Hampshire.

The intended benefit behind common trust funds is to provide cost-efficient administration and diversified investments for small trust accounts. Each of the underlying trusts participating in a common trust fund essentially purchases a fractional beneficial interest in the group of investments held by the common trust fund. In this way, each participating trust benefits because it obtains a level of diversification that would be very difficult for a small trust to acquire on its own. It is also more efficient for the trustee to make and oversee investments in this manner than it is to make many separate, smaller investments for the participating trusts.

New Hampshire law currently allows any bank qualified to act as fiduciary (e.g., as a trustee) in New Hampshire to establish common trust funds for its own use and for use by any affiliated banks that are qualified to act as a fiduciary in New Hampshire. The bill will allow a New Hampshire bank to provide its common trust funds for investments by an affiliated bank qualified to act as a fiduciary in this state **or in any other state**; and will allow a New Hampshire bank **to invest funds it holds in a common trust fund established by such other affiliates of the same holding company under the laws of any state.**

The proposed changes would bring New Hampshire law into closer conformity with modern interstate banking practices. Interstate banking did not exist when RSA 391 - New Hampshire's Common Trust Fund statute was enacted in 1953 and subsequently amended in 1977. The banking landscape has changed dramatically since then, with banks now able to provide a vastly wider array of services and products to larger markets. The current common trust fund statute in New Hampshire has not been updated to keep pace.

This bill would help create a more level playing field for smaller banks which have common trust funds and may not have the financial resources to create and maintain their own mutual funds. Offering the currently limited range of common trust funds is the only in-house, collective investment option smaller banks have to offer trust clients.

Consequently, trust clients desiring a wider array of investment choices "under one roof" may decide to transfer funds to larger banks offering a wider selection of investment options in the form of their own mutual funds.

The proposed changes would help increase the number of available investment options for New Hampshire trust clients and may also translate into lower overall costs. Trust clients who decide to stay invested in common trust funds may benefit from the lower management fees generally associated with common trust funds, when compared to the fees charged by mutual funds

In summary, passage of this bill will permit broader flexibility to invest in common trust funds established by New Hampshire banks and their affiliates. The proposed changes would bring New Hampshire law into closer conformity with modern, interstate banking practices, provide cost benefits to New Hampshire consumers and help prevent competitive disadvantages for smaller New Hampshire banks.

Voting Sheets

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION on HB 404

BILL TITLE: **relative to common trust funds.**

DATE: March 18, 2003

LOB ROOM: 302

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

Motions: (OTP) OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Fraser

Seconded by Rep. Stepanek

Vote: 19-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 19-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Paul D. Spiess, Clerk

OFFICE OF THE HOUSE CLERK 2003 SESSION

COMMERCE

Bill #: 504 **Title:**

PH Date: / / **Exec Session Date:** 3/18/03

Motion: OTP **Amendment #:**

MEMBER	YEAS	NAYS
Hunt. John B. Chairman		
Fraser. Leo W. V Chairman	✓	
Francoeur. Sheila T	✓	
Belanger. Ronald J	✓	
Langley. Jane S	✓	
DiFruscia. Anthony R	✓	
Flanders. Donald H		
Spiess. Paul D	✓	
Holden. Randolph N	✓	
Liebl. George J	✓	
Quandt. Matthew J	✓	
Clark. Charles L	✓	
Brady. Mark A	✓	
Scamman. Stella	✓	
Stepanek. Stephen B	✓	
Reardon. Tara G	✓	
Taylor. Kathleen N	✓	
Meader. David R	✓	
DeStefano. Stephen T	✓	
Vachon. Dennis P	✓	
Kopka. Angeline A	✓	
	19	0

TOTAL VOTE:
Printed: 1/6/2003

Committee Report

COMMITTEE REPORT

COMMITTEE: **Commerce**

BILL NUMBER: **HB 404**

TITLE: relative to common trust funds.

DATE: March 18, 2003 CONSENT CALENDAR YES ☒ NO ☐

☒ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill would expand the power of banks to co-mingle investments in common trust funds. This co-mingling applies only to banks and their affiliates. Since 1977 banks have been limited to a bank's own common trust funds. With the ability to co-mingle common trusts a fund with affiliates, a larger pool is created affording more opportunity to diversify investments and at the same time reduces costs.

Vote 19-0.

Rep. {Leo W. Fraser, Jr.
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Commerce

HB 404, relative to common trust funds. **OUGHT TO PASS**

Rep. Leo W. Fraser, Jr. for Commerce: This bill would expand the power of banks to co-mingle investments in common trust funds. This co-mingling applies only to banks and their affiliates. Since 1977 banks have been limited to a bank's own common trust funds. With the ability to co-mingle common trusts a fund with affiliates, a larger pool is created affording more opportunity to diversify investments and at the same time reduces costs.

Vote 19-0.

HB 404

Rep. Leo W. Fraser

This bill would expand the power of banks to co-mingle investments in common trust funds. This co-mingling applies only to banks and their affiliates. Since 1977 banks have been limited to a bank's own common trust funds. With the ability to co-mingle common trusts a fund with affiliates, a larger pool is created affording more opportunity to diversify investments and at the same time reduces costs.



HB404.

This bill will expand the Power of banks to co-mingle investments in Common trust funds

This co-mingling applies only to banks and their affiliates

Since 1977 banks have been limited to a bank's own Common trust funds. With the ability to co-mingle ~~their~~ Common trust funds with affiliates, a larger pool is created affording more opportunity to diversify ~~the~~ investments and at the same time reduce costs