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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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.

Committee Minutes

Date: May 13, 2003
Time: 2:00 p.m.
Room: 103 LOB

The Senate Committee on Banks held a hearing on the following:

HB 404 relative to common trust funds.

Members of Committee present: Senator Flanders
Senator Barnes

The Chair, Senator Robert B. Flanders, opened the hearing.

I'd like to open the hearing on HB 404. I recognize the gentleman from the New Hampshire Bankers Association.

Robert Gerseny, New Hampshire Bankers Association: Common trust funds. Back in the 50;s the state passed legislation permitting bank trust departments to create common trust funds. Those are essentially a pool of assets from a group of trusts that the bank runs as a single portfolio. They do this for efficiency and for performance and for cost and for reliability. That's the current practice. That happens all the time now. It happens in most of our banks. Common trust funds have become a very reliable source of invest programs for trusts within trust departments.

Since interstate banking occurred there are a number of banks that have affiliates in a different states. Many of those state amended their common trust fund statutes at the point interstate banking became a reality to allow banks to essentially run individual common trust funds that apply to several jurisdictions. In New Hampshire we currently require a bank to run a common trust fund for New Hampshire trusts. If the bank has an affiliate bank in Vermont or Maine, they must maintain separate common trust funds.

The bill allows a bank to have a common trust fund in New Hampshire managed by an affiliate. It doesn't necessarily provide that we'll merge common trust funds. What it does say though that your main affiliate bank can manage the assets inside your New Hampshire common trust fund or your New Hampshire affiliate can manage assets in another trust fund.

The reason for this is number one, cost. Instead of creating duplicative trust funds in every different state you can maintain a much more efficient structure. Second, performance. If you have multiple common trust funds being managed in separate jurisdictions they tend to compete with each other. So what you want to do is create an even investment product for all your customers.

So in this case what we have is the statute would allow affiliate banks to manage common trust funds across jurisdictional lines.

Does that make sense?

Senator John S. Barnes, Jr., D. 17: Would you believe I voted against a bill to do away with all the small banks in New Hampshire a few years ago? I was a strong supporter of not passing that bill. I thought it would destroy the banking business, as we knew it in New Hampshire. I guess I was wrong. I think it's opened up the doors for lots of other things.

Senator Robert B. Flanders, D. 7: Are there 7 New Hampshire banks now?

Diane Vickers: In New Hampshire?

Senator Robert B. Flanders, D. 7: New Hampshire controlled banks.

Ms. Vickers: In all there are 38 banks in New Hampshire.

Senator Robert B. Flanders, D. 7: Only 7 of them come under the control of the New Hampshire Banking Commission.

Ms. Vickers: Oh my gosh, no. No. They have all the mutual banks. I think there are 27 banks that fall under the jurisdiction of the banking department. The other ones are national banks or federally chartered banks. All the mutual banks, Merrimack County Savings Bank, First Colebrook Bank, Lancaster Bank, those are all regulated by the banking department.

Senator John S. Barnes, Jr., D. 17: Would you believe that when I was in business I needed to borrow about $500,000 to build my second McDonald's restaurant. The banker came over to my restaurant and had lunch and we signed the papers in the dining room of the restaurant. I don't think I could do that today. I think that's why I voted against the bill. I sort of like the down home, here have another cup of coffee, pass me the papers and we'll pass the deal right here in the restaurant.

Senator Robert B. Flanders, D. 7: Can you give me an example of where this would work? I know what you're saying that if you've got something that's a pool in the state, give me an example of when it would be needed.

Mr. Gerseny: A bank here such as State Street and it has an affiliate in Massachusetts and it has an affiliate here in New Hampshire and they operate on a national charter but normally a bank under a national charter would run a single common trust fund for trusts either in New Hampshire or in Massachusetts. In the current practice, State Street has to run two distinct common trust funds. One here in New Hampshire for New Hampshire trusts and one in Massachusetts for Massachusetts trusts. Now on its face there is really nothing wrong or bad about that. However it means there is twice as much cost to running those funds and essentially those funds compete against each other. Typically what the investment professionals believe is that a single fund will provide potentially better return. Certainly you'll be able to reduce the cost that is levied against the fund and enhance the return to the shareholders.

Senator Robert B. Flanders, D. 7: Something I've never done before. I think we ought to do this. Ask the person who is going to write some notes understands it. Do you understand everything you need to know?

Ms. Stuart: I do thank you.

Senator Robert B. Flanders, D. 7: Any questions?

Senator John S. Barnes, Jr., D. 17: What's the cost? You mentioned a cost.

Mr. Gerseny: The primary, the largest single cost of running common trust fund is audit fees. A common trust fund has to have an independent audit by a third party independent auditor. So if you have a bank that runs six different common trust funds, they all get audited. Those are $20, 30,000 audits that they run on those common trust funds. So a lot of times what you'll have is a fixed income common trust fund in New Hampshire, Vermont and Maine and they're identical. They get audited three times. They are three independent audits.

Senator John S. Barnes, Jr., D. 17: Who pays for them?

Mr. Gerseny: Ultimately it's the common trust fund that pays for them. It's the participants in the fund.

Senator John S. Barnes, Jr., D. 17: $60,000.

Mr. Gerseny: Yes when in fact a single audit of the single fund would provide the same safeguard to the consumer and the customer.

Senator John S. Barnes, Jr., D. 17: If we pass this they're not going to still charge $60,000?

Mr. Gerseny: That will eliminate a number of audits.

Senator John S. Barnes, Jr., D. 17: That doesn't answer the question. If we pass this bill is it going to stay? I like what you're saying but what guarantee do I have that if I vote for this thing that is what is going to happen?

Mr. Gerseny: Well, it doesn't necessarily, the statute doesn't preclude anyone from running multiple common trust funds. It just allows them to essentially have a single common trust fund.

Senator John S. Barnes, Jr., D. 17: Would you believe I believe there will be no difference in the cost if we pass this or not?

Senator Robert B. Flanders, D. 7: If there is no account how are they going to audit it?

Mr. Gerseny: I know what you mean. Will the fees that the bank trust department charge change by that amount? No. But over time it creates less pressure on the bank trust department to raise fees.

Senator John S. Barnes, Jr., D. 17: So much happens over time. Time takes care of so many things. Thank you for your answer and your honesty.

Mr. Gerseny: Thank you.

Senator Robert B. Flanders, D. 7: Does anyone else wish to speak? If not I'm going to close the hearing on HB 404.

Hearing closed at 2:10 p.m.

Respectfully submitted,

Pamela Manocchi

Pamela Manocchi
May 23, 2003

attachment

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.

Speakers

SENATE BANKS

Date May 13, 2003 Time 2:00 Public Hearing on
Bill # HB 404 relative to common trust funds.

(Please print) Please check box(es) at left that apply.

SPEAKING?	FAVOR	OPPOSED	NAME	REPRESENTING
☐	☑	☐	Senator Joseph Kenney	Dist 3
☒	☒	☐	Robert Gerseny	N H Bankers Association
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Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: May13, 2003

THE COMMITTEE ON Banks

to which was referred House Bill 404

AN ACT relative to common trust funds.

VOTE: 2-0

Having considered the same, report the same without amendment and recommend that the bill: **OUGHT TO PASS.**

Senator Robert B. Flanders
For the Committee

HB404 Docket

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Bill Title: relative to common trust funds.

Date	Body	Description
1/9/2003	H	Introduced and ref to Commerce; HJ 12, p194
1/28/2003	H	Hearing Feb 11 10:00 RM302,LOB
2/12/2003	H	Subcom Work Session Mar 7 2:00 RM302,LOB
2/12/2003	H	(Subcom: Reps Fraser, D Flanders, DeStefano & Kopka)
3/18/2003	H	Maj Report OTP for Mar 25 (Vote 19-0;CC)
3/25/2003	H	Passed; HJ29-pt 1, p822 + pt 2, p965
4/24/2003	S	Introduced and Ref. to Banks; SJ 14, Pg.342
5/7/2003	S	Hearing; May 13, 2003, Room 103, LOB, 2:00 p.m.; SC22
5/15/2003	S	Committee Report; Ought to Pass, [05/22/03]; SC23
5/22/2003	S	Ought to Pass, MA, VV; OT3rdg; SJ 17, Pg.406
5/22/2003	S	Passed by 3rd Reading Resolution; SJ 17, Pg.479
5/29/2003	S	Enrolled;
6/5/2003	H	Enrolled; HJ 47, p1495
6/12/2003	H	Signed by the Governor on 6/12/2003 Eff: 8/11/2003 Chap: 0125

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Docket Abbreviations