

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2122

SPONSOR: Senator Garcia

SUBJECT: Common Trust Fund Accounting

DATE: April 12, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill would require that upon the filing of an application to a circuit court by a trust company or trust department for a court-ordered accounting of a common trust fund, the court must assign a time and place for a hearing on the accounting, and order notice by one publication within 30 days, but not less than 20 days, prior to the date of the hearing, in a daily newspaper of general circulation designated by the court.

This bill substantially amends section 660.45, Florida Statutes:

II. Present Situation:

A trust creates a legal right for one party, a trustee, to hold property for the benefit of another party, the beneficiary. Chapter 737, F.S., provides requirements for trust administration, including requirements for trust registration, jurisdiction of courts, and duties, powers, and liabilities of trustees. Chapter 660, F.S., establishes additional requirements for the trust business, primarily applicable to banks or associations having trust powers.

Section 660.44, F.S., requires that a trust company or trust department administering a common trust fund keep proper records of each fiduciary account in the trust fund and at least once during each 12-month period, perform an audit of the trust fund, including a list of the investments, their valuation, a statement of purchases, sales, and other investment Changes, and the income and disbursements since the last audit. The expense of the audit may be charged to the trust fund. The bank, association, or trust company shall “send a copy of the latest report of such audit annually to each person to whom a regular periodic accounting of the fiduciary accounts participating in the common trust fund ordinarily would be rendered or shall send advice to each such person annually that the report is available and that copy will be furnished without charge upon

request.” Section 737.303, F.S., provides that a beneficiary (or a legal representative or natural guardian of the beneficiary) is entitled to a statement of the accounts of the trust annually. For this purpose, “beneficiary” means all current income or principal beneficiaries and all reasonably ascertainable remainder beneficiaries who would take if all income interest immediately terminated.

As required by s. 737.303(3), F.S., the trustee must “provide a beneficiary with relevant information about the assets of the trust and the particulars relating to administration.” Thus, “each trust beneficiary has an enforceable right to an accounting from a trustee.” (*Weiss v. Courshon*, 618 So.2d 255, 257, Fla. 3rd DCA, 1993). Section 660.45, F.S., provides that a trust company or trust department is not required to render a “court accounting” of a common trust fund unless ordered by a court of competent jurisdiction, but the trust company or trust department may apply to a circuit court for approval of a court-ordered accounting “after such notice and on such conditions as the court may establish.”

There is apparently no standard requirement for the type of notice that must be provided in the event of a court-ordered accounting of a trust. The court has the discretion to determine the type of notice required, which is likely to include required written notice to each of the known beneficiaries of record. The court may or may not require publication of the notice.

III. Effect of Proposed Changes:

The bill would require that upon the filing of an application to a circuit court by a trust company or trust department for a court-ordered accounting of a common trust fund, the court must assign a time and place for a hearing on the accounting, and order notice by one publication within 30 days, but not less than 20 days, prior to the date of the hearing, in a daily newspaper of general circulation designated by the court. The court would still be permitted to impose such other conditions as it may establish.

It is not clear if the notice requirements of the bill necessarily apply if a *beneficiary* petitions a court for an accounting of a common trust, because the section being amended refers only to application by a *trust company or trust department* for a court-ordered accounting.

The bill appears to mandate that the court schedule a hearing on the accounting once the application is filed by the trust company or trust department. It is not clear if the court has the discretion to deny the application for the hearing.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Legal daily publications and newspapers may have increased revenues due to the required publication of notice required by this bill.

Costs of publication would be charged to the trust fund.

Persons who may have a financial interest in a common trust, but who may not be a beneficiary, or beneficiaries who may not receive personal notice of a court accounting of a trust, may have an increased likelihood of notice of the accounting.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.