# Legislative Analysis

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**COLLECTIVE INVESTMENT FUNDS ACT**

**House Bill 5833 as enrolled**
**Public Act 586 of 2004**
**Sponsor: Rep. Matt Milosch**
**House Committee: Commerce**
**Senate Committee: Banking and Financial Institutions**

**Complete to 1-6-05**

**A SUMMARY OF HOUSE BILL 5833 AS ENROLLED**

The bill would amend Public Act 174 of 1941, commonly known as the Common Trust Fund Act, to allow financial institutions to establish and invest in collective investment funds and, accordingly, to name the act as the "Collective Investment Funds Act." Unless otherwise specified, provisions of the act would apply to both common trust funds and collective investment funds.

**NOTE:** The bill essentially incorporates into state statute the language from Regulation 9-18 of the federal Office of the Comptroller of the Currency. Regulation 9.18 governs the use of collective investment funds by nationally chartered financial institutions. The bill would bring the state and federal regulations on this subject into conformity.

The following is a description of major provisions in the bill.

Under the act, financial institutions may maintain a fund exclusively for the collective investment and reinvestment of money contributed by the institution in its capacity as a fiduciary or co-fiduciary of a trust fund participant. The bill would allow for the establishment and maintenance of collective investment funds, which would be defined to mean funds maintained by a financial institution or by one or more affiliated institutions that consist solely of assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income tax.

Written Plan. The act requires common trust funds to be established and maintained in accordance with a written plan that is approved by the board of directors of the financial institution and "competent legal counsel." The bill would no longer require the approval of legal counsel, but would allow a committee authorized by the board of directors to approve the plan of a fund. The plan must include provisions related to how the fund is to be operated, investment powers, allocation and apportionment of income, profits and losses, admission and withdrawal of investments, auditing and settlement of accounts, methods for valuing assets, and termination of the fund. The bill would add that the plan would have to include provisions related to fees and expenses charged by the financial institution, the expected frequency of income distribution from the fund to participating accounts, the minimum frequency of valuation of fund assets, and the period of time following a valuation date in which a valuation of fund assets must be made. A financial

institution could invest and reinvest the assets of a fund in accordance with the plan for that fund.

Audits and Financial Reports. The bill would require funds to be audited at least once during a 12-month period by auditors responsible only to the financial institution's board of directors. The bill would also require a financial report based on the audit to be submitted at least once during a 12-month period that discloses the fund's fees and expenses, list of investments, cost and current market value of each investment, and a statement covering the period since the previous report that includes a summary of purchases and sales, income to and distributions from the fund, and a description of any investments in default. The financial report or a notice of the report would be provided to each person who ordinarily receives a periodic accounting of each participating account, and could be made available to others for a reasonable charge.

Conflicts of Interest. A financial institution administering a fund would be prohibited from having an interest in that fund other than its fiduciary capacity. If the institution were to acquire interest in a participating account, it would have to withdraw the account from the fund on the next withdrawal date. However, a financial institution could invest assets that it holds as fiduciary for its own employees in a fund. In addition, a financial institution would be prohibited from making any loan secured by a participant's interest in the fund. A financial institution could purchase any defaulted investment held by the fund instead of segregating the investment if the cost of segregating it would be excessive compared to the market value of the investment. A defaulted investment would have to be purchased for the greater of the market value or the sum of the cost and accrued unpaid interest on the defaulted investment.

Fund Management. The act provides that a financial institution has the exclusive management and control of each fund that it administers and grants it the sole right to sell, convert, exchange, transfer, or otherwise change or dispose of the assets of the fund. The bill would add that the exclusive management and control would include, though would not be limited to, the right to delegate responsibilities to others to the extent a fiduciary can delegate responsibilities under state law.

Frequency of Valuation. The act provides that a financial institution shall determine the value of the assets of the fund at least every three months. The bill would specify that this requirement would apply to funds that are not invested primarily in real estate or other assets that are not readily marketable. The value of funds that are primarily invested in real estate or other assets that aren't readily marketable would have to be determined at least once per year.

Admission and Withdrawal of Accounts. A financial institution administering a fund could admit an account to or withdraw an account from the fund only if the financial institution has approved a request (or notice of intent) for admitting or withdrawing the account on or before the valuation date on which the admission or withdrawal is based. A request or notice could not be canceled or countermanded after the valuation date

The act provides that distributions to participants withdrawing from the fund may be in cash or ratably in kind (or a combination of both). The bill would add that distributions can be made in any other manner consistent with applicable law in the state in which the financial institution maintains the fund, and that if an investment is withdrawn in kind from a fund for the benefit of all participants but is not distributed ratably in kind, the financial institution would have to segregate and administer the investment for the benefit ratably of all participants in the fund at the time of the withdrawal.

Other Collective Investments. The bill would add that in addition to investing assets in a common trust fund or collective investment fund, a financial institution could invest assets that it holds as fiduciary in any of the following to the extent not prohibited by applicable law:

- If the financial institution's only interest in the loan or obligation is its capacity as fiduciary, (1) in a single real estate loan, a direct obligation of the U.S., or an obligation fully guaranteed by the U.S. or a single fixed amount security, obligation, or property of a single issuer, or (2) in a variable amount note of a borrower of prime credit, if the financial institution uses the note solely for investment of funds held in its fiduciary accounts.

- In a fund the financial institution maintains for the collective investment of cash balances received or held in its capacity as trustee, personal representative, executor, administrator, guardian, or custodian, under a uniform gifts or transfer to minors act of any state, because the cash balance is considered to be too small to be invested separately. [The number of participating accounts could not exceed 100, and total assets in such a fund could not exceed more than $1 million.]

- In any investment specifically authorized by the instrument creating the fiduciary account or in a court order (in the case of corporation-created trusts), or by several individual closely related settlers.

- In any collected investment authorized by applicable law, including an investment under a pre-need funeral statute of any state; and

- In any other manner described by the financial institution in a written plan approved by state and federal regulators. In order to obtain a special exemption, the institution would have to submit to its regulator a written play setting forth why a special exemption is necessary, provisions of the fund that are inconsistent with the act, provisions in the act for which the exemption is sought, and the manner in which the fund addresses the rights and interests of the participating accounts.

MCL 555.101 et al

**FISCAL IMPACT:**

There may be an increased regulatory burden resulting in additional compliance investigative functions, monitoring and follow-up on complaints. Without additional staff there may be an increase in the time it takes to conduct financial institutions examinations. The increased costs of operation to the State are indeterminate and there is no fiscal impact to local units of government.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.