

HOUSE BILL REPORT

SSB 6831

As Passed House:
March 2, 2010

Title: An act relating to estates and trusts.

Brief Description: Concerning estates and trusts.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Parlette).

Brief History:

Committee Activity:

Judiciary: 2/18/10, 2/22/10 [DP];

Finance: 2/26/10 [DP].

Floor Activity:

Passed House: 3/2/10, 96-0.

Brief Summary of Substitute Bill

- Creates a method to address certain wills and trusts that use formulas or terms tied to federal estate and generation skipping-transfer taxes while these taxes are repealed in 2010.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Courtney Barnes (786-7194).

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 8 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Condotta, Ericks, Santos and Springer.

Staff: Jeffrey Mitchell (786-7139).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Federal Estate and Generation Skipping-Transfer Taxes.

On January 1, 2010, the federal estate and generation skipping-transfer (GST) taxes are repealed for one year. Although the U.S. House of Representatives passed a bill in December to extend the 2009 federal estate and GST tax rates and exemptions, the U.S. Senate did not act to provide any similar extension. The federal estate and GST taxes will come back into effect on January 1, 2011.

Many wills and trusts describe gifts in terms of federal estate and GST tax exemption amounts or other formulas tied to the federal estate and GST taxes; however, there are no federal estate and GST taxes in 2010. As a result, some formulas used in wills and trusts may not function to fund trust or estate plans as intended when the will or trust document was created.

Trust and Estate Dispute Resolution Act.

In 1999 the Legislature enacted the Trust and Estate Dispute Resolution Act (TEDRA). The TEDRA established a generally applicable set of procedures for handling the resolution of disputes involving trusts and estates. The TEDRA provides non-judicial methods of resolution such as mediation, arbitration, and simple agreement of the parties as ways to settle disputes.

Summary of Bill:

A method is created to address certain wills and trusts that use formulas or terms tied to federal estate and GST taxes. A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, is deemed to refer to the federal estate and GST tax laws as they applied on December 31, 2009, if the will or trust contains a formula that:

- refers to a unified credit, estate tax exemption, applicable exemption amount, applicable credit amount, applicable exclusion amount, GST tax exemption, marital deduction, maximum marital deduction, or unlimited marital deduction;
- measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal GST taxes; or
- is otherwise based on a similar provision of federal estate or GST tax laws.

This method does not apply to a will or trust that:

- is executed or amended after December 31, 2009; or
- clearly manifests an intent that a contrary rule applies.

A provision is created to address the applicability of the bill if the federal estate and GST taxes come back into effect prior to January 1, 2011.

Trust and Estate Dispute Resolution Act.

The personal representative, trustee, or any affected beneficiary under a will or trust may bring a proceeding under the TEDRA to determine whether the decedent intended for certain

references to be construed with respect to the federal law as it existed after December 31, 2009. The proceeding must be commenced within 12 months following the death of the testator or grantor.

Other.

The bill is remedial in nature and must be applied and construed liberally. The provisions of the bill are retroactive to December 31, 2009.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony (Judiciary):

(In support) The bill will help the courts by giving them guidance to interpret wills and trusts that use federal terms or formulas that have now lapsed. The bill will ensure that Washington estates and trusts refer to the federal estate and GST taxes as they applied in 2009. Many states are passing similar legislation because this issue is of national significance. The bill does not increase or decrease estate taxes. The purpose of the bill is to fulfill the testamentary intent of the decedent. The bill will prevent the accidental and unintended disinheritance of spouses and children when a will or trust refers to an exemption amount that does not exist because of the lapsed federal tax laws.

(Opposed) None.

Staff Summary of Public Testimony (Finance):

(In support) The federal estate tax lapsed in December 2009 and estate planners have been able to change some of the wills; however, they have not been able to change all of them. This bill will address this issue.

(Opposed) None.

Persons Testifying (Judiciary): Senator Parlette, prime sponsor; and Luke Thomas, Real Property Probate and Trust Section of the Washington State Bar Association.

Persons Testifying (Finance): Senator Parlette, prime sponsor.

Persons Signed In To Testify But Not Testifying (Judiciary): None.

Persons Signed In To Testify But Not Testifying (Finance): None.