BILL ANALYSIS

Judiciary Committee

HB 1119

Title: An act relating to the management of funds held by nonprofit institutions.

Brief Description: Concerning the management of funds held by nonprofit institutions.

Sponsors: Representatives Pedersen, Rodne, Goodman and Kelley; by request of Uniform Legislation Commission.

Brief Summary of Bill

- Adopts the Uniform Prudent Management of Institutional Funds Act, which updates and expands the standards that govern the management, investment, and expenditure of funds held by charitable institutions.

Hearing Date: 1/21/09

Staff: Edie Adams (786-7180)

Background:

The Legislature adopted the Uniform Management of Institutional Funds Act (UMIFA) in 1973. The UMIFA provides guidelines for the management, investment, and expenditure of funds held by charitable institutions. UMIFA applies to institutions that are organized and operated exclusively for educational, religious or charitable purposes, including governmental organizations if they hold funds exclusively for any of these purposes.

The UMIFA establishes the standard of conduct that applies to an institution's decisions in managing institutional funds, making investment decisions, and authorizing expenditures from the fund. The institution must exercise ordinary business care and prudence, considering the long- and short-term needs of the institution, its present and anticipated financial requirements, expected total return on investments, price level trends, and general economic conditions.

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.

The UMIFA provides specific investment authority for an institution, unless limited in a gift instrument, to invest in any type of property, retain property contributed by a donor, and invest institutional funds in a pooled or common fund. An institution may delegate the authority to make investment decisions to its committees or agents or to independent investment advisors.

The UMIFA allows an institution to spend as much of the net appreciation of an endowment fund over the historic dollar value of the fund as the institution deems prudent. Historic dollar value means the total of all contributions to the fund, with each contribution valued at the time it was made.

The UMIFA also contains procedures for removing restrictions in a gift instrument on the use or investment of the gift. A restriction in the gift instrument may be released either with the written consent of the donor, or through court order if the court finds that the restriction is obsolete, inappropriate, or impracticable, and the donor's consent cannot be obtained due to death, disability, or unavailability.

In 2006, the National Conference of Commissioners on Uniform State Laws approved a revised version of UMIFA, the Uniform Prudent Management of Institutional Funds Act, to update the standards and guidelines that apply to managing, investing, and spending funds of charitable institutions.

Summary of Bill:

The Uniform Management of Institutional Funds Act is repealed and replaced with the Uniform Prudent Management of Institutional Funds Act (UPMIFA). The UPMIFA establishes updated and more specific standards and guidelines for the management and investment of charitable funds and the expenditure of a charitable institution's endowment funds.

<u>Standard of Conduct</u>

Decisions regarding management and investment of institutional funds and expenditures or accumulations of endowment funds must be made in good faith and with the care an ordinarily prudent person would use in similar circumstances.

<u>Managing and Investing Institutional Funds</u>

An institution, in managing and investing an institutional fund, must consider the charitable purposes of the institution and the purposes of the institutional fund.

Additional rules are provided for the management and investment of institutional funds. The factors that must be considered in making investment decisions are expanded to include: tax consequences of investment decisions; the role each investment or course of action plays in the overall investment portfolio; other resources of the institution; and any special relationship or value of an asset to the charitable purposes of the institution. Decisions concerning an individual asset must be made not in isolation, but in the context of the overall investment strategy. The institution must diversify investments unless the purposes of the fund are better served without diversification.

A person with special skills or expertise has a duty to use the skills or expertise in managing and investing institutional funds.

Delegation of Management and Investment of Institutional Funds

Standards for the delegation of management and investment decisions to an agent are provided. An institution must act in good faith with the care of a reasonably prudent person in selecting an agent, establishing the scope and objectives of the delegation, and periodically reviewing and supervising the agent. An agent has the duty to use reasonable care in managing and investing institutional funds. An institution that makes a delegation in conformance with the prudence standard is not liable for acts of the agent.

Expenditures or Accumulations of Endowment Funds

The standard that applies to an institution's decisions about making expenditures from or allowing accumulations to an endowment fund is revised. An institution may make expenditures from or accumulate as much of the endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Seven factors are established in evaluating expenditure decisions.

A rebuttable presumption is created that expenditure in any year of more than 7 percent of the fair market value of the endowment fund is imprudent. The authority of an institution to expend endowment funds may be limited by the gift instrument if the limitation is specifically stated.

Restrictions on Use or Investment of Institutional Funds

The circumstances under which a court may modify a restriction in a gift instrument that is impracticable, wasteful, unlawful, or impossible to achieve are expanded. Any modification must be consistent with the donor's probable intent and the charitable purposes expressed in the gift instrument.

An institution may release a restriction in a gift instrument without court approval if the fund subject to the restriction is more than 20 years old and has a value of less than $25,000, as long as the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

The Attorney General must be provided notice of any proposed modification of a restriction in a gift instrument.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.