

SHB 1119 - S COMM AMD  
By Committee on Judiciary

ADOPTED AND ENGROSSED 04/08/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** SHORT TITLE. This act may be known and  
4 cited as the uniform prudent management of institutional funds act.

5 NEW SECTION. **Sec. 2.** DEFINITIONS. In this chapter:

6 (1) "Charitable purpose" means the relief of poverty, the  
7 advancement of education or religion, the promotion of health, the  
8 promotion of a governmental purpose, or any other purpose the  
9 achievement of which is beneficial to the community.

10 (2) "Endowment fund" means an institutional fund or part thereof  
11 that, under the terms of a gift instrument, is not wholly expendable by  
12 the institution on a current basis. "Endowment fund" does not include  
13 assets that an institution designates as an endowment fund for its own  
14 use.

15 (3) "Gift instrument" means a record or records, including an  
16 institutional solicitation, under which property is granted to,  
17 transferred to, or held by an institution as an institutional fund.

18 (4) "Institution" means:

19 (a) A person, other than an individual, organized and operated  
20 exclusively for charitable purposes;

21 (b) A government or governmental subdivision, agency, or  
22 instrumentality, to the extent that it holds funds exclusively for a  
23 charitable purpose; or

24 (c) A trust that had both charitable and noncharitable interests,  
25 after all noncharitable interests have terminated.

26 (5) "Institutional fund" means a fund held by an institution  
27 exclusively for charitable purposes. "Institutional fund" does not  
28 include:

29 (a) Program-related assets;

1 (b) A fund held for an institution by a trustee that is not an  
2 institution; or

3 (c) A fund in which a beneficiary that is not an institution has an  
4 interest, other than an interest that could arise upon violation or  
5 failure of the purposes of the fund.

6 (6) "Person" means an individual, corporation, business trust,  
7 estate, trust, partnership, limited liability company, association,  
8 joint venture, public corporation, government or governmental  
9 subdivision, agency, or instrumentality, or any other legal or  
10 commercial entity.

11 (7) "Program-related asset" means an asset held by an institution  
12 primarily to accomplish a charitable purpose of the institution and not  
13 primarily for investment.

14 (8) "Record" means information that is inscribed on a tangible  
15 medium or that is stored in an electronic or other medium and is  
16 retrievable in perceivable form.

17 NEW SECTION. **Sec. 3.** STANDARD OF CONDUCT IN MANAGING AND  
18 INVESTING INSTITUTIONAL FUND. (1) Subject to the intent of a donor  
19 expressed in a gift instrument, an institution, in managing and  
20 investing an institutional fund, shall consider the charitable purposes  
21 of the institution and the purposes of the institutional fund.

22 (2) In addition to complying with the duty of loyalty imposed by  
23 law other than this chapter, each person responsible for managing and  
24 investing an institutional fund shall manage and invest the fund in  
25 good faith and with the care an ordinarily prudent person in a like  
26 position would exercise under similar circumstances.

27 (3) In managing and investing an institutional fund, an  
28 institution:

29 (a) May incur only costs that are appropriate and reasonable in  
30 relation to the assets, the purposes of the institution, and the skills  
31 available to the institution; and

32 (b) Shall make a reasonable effort to verify facts relevant to the  
33 management and investment of the fund.

34 (4) An institution may pool two or more institutional funds for  
35 purposes of management and investment.

36 (5) Except as otherwise provided by a gift instrument, the  
37 following rules apply:

1 (a) In managing and investing an institutional fund, the following  
2 factors, if relevant, must be considered:

3 (i) General economic conditions;

4 (ii) The possible effect of inflation or deflation;

5 (iii) The expected tax consequences, if any, of investment  
6 decisions or strategies;

7 (iv) The role that each investment or course of action plays within  
8 the overall investment portfolio of the fund;

9 (v) The expected total return from income and the appreciation of  
10 investments;

11 (vi) Other resources of the institution;

12 (vii) The needs of the institution and the institutional fund to  
13 make distributions and to preserve capital; and

14 (viii) An asset's special relationship or special value, if any, to  
15 the charitable purposes of the institution.

16 (b) Management and investment decisions about an individual asset  
17 must be made not in isolation but rather in the context of the  
18 institutional fund's portfolio of investments as a whole and as a part  
19 of an overall investment strategy having risk and return objectives  
20 reasonably suited to the institutional fund and to the institution.

21 (c) Except as otherwise provided by law, an institution may invest  
22 in any kind of property or type of investment consistent with this  
23 section.

24 (d) An institution shall diversify the investments of an  
25 institutional fund unless the institution reasonably determines that,  
26 because of special circumstances, the purposes of the fund are better  
27 served without diversification.

28 (e) Within a reasonable time after receiving property, an  
29 institution shall make and carry out decisions concerning the retention  
30 or disposition of the property or to rebalance a portfolio, in order to  
31 bring the institutional fund into compliance with the purposes, terms,  
32 and distribution requirements of the institution as necessary to meet  
33 other circumstances of the institution and the requirements of this  
34 chapter.

35 (f) A person that has special skills or expertise, or is selected  
36 in reliance upon the person's representation that the person has  
37 special skills or expertise, has a duty to use those skills or that  
38 expertise in managing and investing institutional funds.

1           NEW SECTION.       **Sec. 4.**       APPROPRIATION FOR EXPENDITURE OR  
2 ACCUMULATION OF ENDOWMENT FUND--RULES OF CONSTRUCTION. (1) Subject to  
3 the intent of a donor expressed in the gift instrument, an institution  
4 may appropriate for expenditure or accumulate so much of an endowment  
5 fund as the institution determines is prudent for the uses, benefits,  
6 purposes, and duration for which the endowment fund is established.  
7 Unless stated otherwise in the gift instrument, the assets in an  
8 endowment fund are donor-restricted assets until appropriated for  
9 expenditure by the institution. In making a determination to  
10 appropriate or accumulate, the institution shall act in good faith,  
11 with the care that an ordinarily prudent person in a like position  
12 would exercise under similar circumstances, and shall consider, if  
13 relevant, the following factors:

- 14           (a) The duration and preservation of the endowment fund;
- 15           (b) The purposes of the institution and the endowment fund;
- 16           (c) General economic conditions;
- 17           (d) The possible effect of inflation or deflation;
- 18           (e) The expected total return from income and the appreciation of
- 19 investments;
- 20           (f) Other resources of the institution; and
- 21           (g) The investment policy of the institution.

22           (2) To limit the authority to appropriate for expenditure or  
23 accumulate under subsection (1) of this section, a gift instrument must  
24 specifically state the limitation.

25           (3) Terms in a gift instrument designating a gift as an endowment,  
26 or a direction or authorization in the gift instrument to use only  
27 "income," "interest," "dividends," or "rents, issues, or profits," or  
28 "to preserve the principal intact," or words of similar import:

- 29           (a) Create an endowment fund of permanent duration unless other  
30 language in the gift instrument limits the duration or purpose of the  
31 fund; and
- 32           (b) Do not otherwise limit the authority to appropriate for  
33 expenditure or accumulate under subsection (1) of this section.

34           NEW SECTION.       **Sec. 5.**       DELEGATION OF MANAGEMENT AND INVESTMENT  
35 FUNCTIONS. (1) Subject to any specific limitation set forth in a gift  
36 instrument or in law other than this chapter, an institution may  
37 delegate to an external agent the management and investment of an

1 institutional fund to the extent that an institution could prudently  
2 delegate under the circumstances. An institution shall act in good  
3 faith, with the care that an ordinarily prudent person in a like  
4 position would exercise under similar circumstances, in:

5 (a) Selecting an agent;

6 (b) Establishing the scope and terms of the delegation, consistent  
7 with the purposes of the institution and the institutional fund; and

8 (c) Periodically reviewing the agent's actions in order to monitor  
9 the agent's performance and compliance with the scope and terms of the  
10 delegation.

11 (2) In performing a delegated function, an agent owes a duty to the  
12 institution to exercise reasonable care to comply with the scope and  
13 terms of the delegation.

14 (3) An institution that complies with subsection (1) of this  
15 section is not liable for the decisions or actions of an agent to which  
16 the function was delegated.

17 (4) By accepting delegation of a management or investment function  
18 from an institution that is subject to the laws of this state, an agent  
19 submits to the jurisdiction of the courts of this state in all  
20 proceedings arising from or related to the delegation or the  
21 performance of the delegated function.

22 (5) An institution may delegate management and investment functions  
23 to its committees, officers, or employees as authorized by law.

24 NEW SECTION. **Sec. 6.** RELEASE OR MODIFICATION OF RESTRICTIONS ON  
25 MANAGEMENT, INVESTMENT, OR PURPOSE. (1) If the donor consents in a  
26 record, an institution may release or modify, in whole or in part, a  
27 restriction contained in a gift instrument on the management,  
28 investment, or purpose of an institutional fund. A release or  
29 modification may not allow a fund to be used for a purpose other than  
30 a charitable purpose of the institution.

31 (2) The court, upon application of an institution, may modify a  
32 restriction contained in a gift instrument regarding the management or  
33 investment of an institutional fund if the restriction has become  
34 impracticable or wasteful, if it impairs the management or investment  
35 of the fund, or if, because of circumstances not anticipated by the  
36 donor, a modification of a restriction will further the purposes of the  
37 fund. The institution shall notify the attorney general of the

1 application, and the attorney general must be given an opportunity to  
2 be heard. To the extent practicable, any modification must be made in  
3 accordance with the donor's probable intention.

4 (3) If a particular charitable purpose or a restriction contained  
5 in a gift instrument on the use of an institutional fund becomes  
6 unlawful, impracticable, impossible to achieve, or wasteful, the court,  
7 upon application of an institution, may modify the purpose of the fund  
8 or the restriction on the use of the fund in a manner consistent with  
9 the charitable purposes expressed in the gift instrument. The  
10 institution shall notify the attorney general of the application, and  
11 the attorney general must be given an opportunity to be heard.

12 (4) If an institution determines that a restriction contained in a  
13 gift instrument on the management, investment, or purpose of an  
14 institutional fund is unlawful, impracticable, impossible to achieve,  
15 or wasteful, the institution, sixty days after notification to the  
16 attorney general, may release or modify the restriction, in whole or  
17 part, if:

18 (a) The institutional fund subject to the restriction has a total  
19 value of less than seventy-five thousand dollars. On the first day of  
20 July of each year, beginning on July 1, 2011, the dollar limit provided  
21 in this subsection (4)(a) shall increase by an amount of two thousand  
22 five hundred dollars;

23 (b) More than twenty years have elapsed since the fund was  
24 established; and

25 (c) The institution uses the property in a manner consistent with  
26 the charitable purposes expressed in the gift instrument.

27 NEW SECTION. **Sec. 7.** REVIEWING COMPLIANCE. Compliance with this  
28 chapter is determined in light of the facts and circumstances existing  
29 at the time a decision is made or action is taken, and not by  
30 hindsight.

31 NEW SECTION. **Sec. 8.** APPLICATION TO EXISTING INSTITUTIONAL FUNDS.  
32 This chapter applies to institutional funds existing on or established  
33 after the effective date of this act. As applied to institutional  
34 funds existing on the effective date of this act, this chapter governs  
35 only decisions made or actions taken on or after the effective date of  
36 this act.



1 state government and its existing public institutions, and takes effect  
2 immediately."

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3 On page 1, line 2 of the title, after "institutions;" strike the  
4 remainder of the title and insert "adding a new chapter to Title 24  
5 RCW; repealing RCW 24.44.010, 24.44.020, 24.44.030, 24.44.040,  
6 24.44.050, 24.44.060, 24.44.070, 24.44.080, 24.44.090, and 24.44.900;  
7 and declaring an emergency."

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