

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1119**

61st Legislature  
2009 Regular Session

Passed by the House April 24, 2009  
Yeas 93 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate April 22, 2009  
Yeas 49 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1119** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1119**

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AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

**State of Washington                      61st Legislature                      2009 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Pedersen, Rodne, Goodman, and Kelley; by request of Uniform Legislation Commission)

READ FIRST TIME 01/26/09.

1            AN ACT Relating to the management of funds held by nonprofit  
2 institutions; adding a new chapter to Title 24 RCW; repealing RCW  
3 24.44.010, 24.44.020, 24.44.030, 24.44.040, 24.44.050, 24.44.060,  
4 24.44.070, 24.44.080, 24.44.090, and 24.44.900; providing an effective  
5 date; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

10            (1) "Charitable purpose" means the relief of poverty, the  
11 advancement of education or religion, the promotion of health, the  
12 promotion of a governmental purpose, or any other purpose the  
13 achievement of which is beneficial to the community.

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

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

4 (4) "Institution" means:

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

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

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

12 (5) "Institutional fund" means a fund held by an institution  
13 exclusively for charitable purposes. "Institutional fund" does not  
14 include:

15 (a) Program-related assets;

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

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

21 (6) "Person" means an individual, corporation, business trust,  
22 estate, trust, partnership, limited liability company, association,  
23 joint venture, public corporation, government or governmental  
24 subdivision, agency, or instrumentality, or any other legal or  
25 commercial entity.

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

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

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

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

6 (3) In managing and investing an institutional fund, an  
7 institution:

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

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

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

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

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

19 (i) General economic conditions;

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

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

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

25 (v) The expected total return from income and the appreciation of  
26 investments;

27 (vi) Other resources of the institution;

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

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

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

37 (c) Except as otherwise provided by law, an institution may invest

1 in any kind of property or type of investment consistent with this  
2 section.

3 (d) An institution shall diversify the investments of an  
4 institutional fund unless the institution reasonably determines that,  
5 because of special circumstances, the purposes of the fund are better  
6 served without diversification.

7 (e) Within a reasonable time after receiving property, an  
8 institution shall make and carry out decisions concerning the retention  
9 or disposition of the property or to rebalance a portfolio, in order to  
10 bring the institutional fund into compliance with the purposes, terms,  
11 and distribution requirements of the institution as necessary to meet  
12 other circumstances of the institution and the requirements of this  
13 chapter.

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

18 NEW SECTION. **Sec. 4.** APPROPRIATION FOR EXPENDITURE OR  
19 ACCUMULATION OF ENDOWMENT FUND--RULES OF CONSTRUCTION. (1) Subject to  
20 the intent of a donor expressed in the gift instrument, an institution  
21 may appropriate for expenditure or accumulate so much of an endowment  
22 fund as the institution determines is prudent for the uses, benefits,  
23 purposes, and duration for which the endowment fund is established.  
24 Unless stated otherwise in the gift instrument, the assets in an  
25 endowment fund are donor-restricted assets until appropriated for  
26 expenditure by the institution. In making a determination to  
27 appropriate or accumulate, the institution shall act in good faith,  
28 with the care that an ordinarily prudent person in a like position  
29 would exercise under similar circumstances, and shall consider, if  
30 relevant, the following factors:

- 31 (a) The duration and preservation of the endowment fund;  
32 (b) The purposes of the institution and the endowment fund;  
33 (c) General economic conditions;  
34 (d) The possible effect of inflation or deflation;  
35 (e) The expected total return from income and the appreciation of  
36 investments;  
37 (f) Other resources of the institution; and

1 (g) The investment policy of the institution.

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

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

9 (a) Create an endowment fund of permanent duration unless other  
10 language in the gift instrument limits the duration or purpose of the  
11 fund; and

12 (b) Do not otherwise limit the authority to appropriate for  
13 expenditure or accumulate under subsection (1) of this section.

14 NEW SECTION. **Sec. 5.** DELEGATION OF MANAGEMENT AND INVESTMENT  
15 FUNCTIONS. (1) Subject to any specific limitation set forth in a gift  
16 instrument or in law other than this chapter, an institution may  
17 delegate to an external agent the management and investment of an  
18 institutional fund to the extent that an institution could prudently  
19 delegate under the circumstances. An institution shall act in good  
20 faith, with the care that an ordinarily prudent person in a like  
21 position would exercise under similar circumstances, in:

22 (a) Selecting an agent;

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

25 (c) Periodically reviewing the agent's actions in order to monitor  
26 the agent's performance and compliance with the scope and terms of the  
27 delegation.

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

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

34 (4) By accepting delegation of a management or investment function  
35 from an institution that is subject to the laws of this state, an agent  
36 submits to the jurisdiction of the courts of this state in all

1 proceedings arising from or related to the delegation or the  
2 performance of the delegated function.

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

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

12 (2) The court, upon application of an institution, may modify a  
13 restriction contained in a gift instrument regarding the management or  
14 investment of an institutional fund if the restriction has become  
15 impracticable or wasteful, if it impairs the management or investment  
16 of the fund, or if, because of circumstances not anticipated by the  
17 donor, a modification of a restriction will further the purposes of the  
18 fund. The institution shall notify the attorney general of the  
19 application, and the attorney general must be given an opportunity to  
20 be heard. To the extent practicable, any modification must be made in  
21 accordance with the donor's probable intention.

22 (3) If a particular charitable purpose or a restriction contained  
23 in a gift instrument on the use of an institutional fund becomes  
24 unlawful, impracticable, impossible to achieve, or wasteful, the court,  
25 upon application of an institution, may modify the purpose of the fund  
26 or the restriction on the use of the fund in a manner consistent with  
27 the charitable purposes expressed in the gift instrument. The  
28 institution shall notify the attorney general of the application, and  
29 the attorney general must be given an opportunity to be heard.

30 (4) If an institution determines that a restriction contained in a  
31 gift instrument on the management, investment, or purpose of an  
32 institutional fund is unlawful, impracticable, impossible to achieve,  
33 or wasteful, the institution, sixty days after notification to the  
34 attorney general, may release or modify the restriction, in whole or  
35 part, if:

36 (a) The institutional fund subject to the restriction has a total  
37 value of less than seventy-five thousand dollars. On the first day of

1 July of each year, beginning on July 1, 2011, the dollar limit provided  
2 in this subsection (4)(a) shall increase by an amount of two thousand  
3 five hundred dollars;

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

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

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

12 NEW SECTION. **Sec. 8.** APPLICATION TO EXISTING INSTITUTIONAL FUNDS.  
13 (1) Before July 1, 2009, this chapter applies to an institutional fund  
14 existing on the effective date of this act only if the institution's  
15 governing body elects to apply this chapter to the institutional fund  
16 before July 1, 2009.

17 (2) On and after July 1, 2009, this chapter applies to all  
18 institutional funds.

19 (3) As applied to institutional funds existing on the effective  
20 date of this act, this chapter governs only decisions made or actions  
21 taken on or after July 1, 2009, except that in the case of an  
22 institution that makes the election under subsection (1) of this  
23 section this chapter governs decisions made or actions taken on or  
24 after the date the institution elects to be covered by this chapter.

25 NEW SECTION. **Sec. 9.** RELATION TO ELECTRONIC SIGNATURES IN GLOBAL  
26 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and  
27 supersedes the electronic signatures in global and national commerce  
28 act (15 U.S.C. Sec. 7001 et seq.), but does not modify, limit, or  
29 supersede 15 U.S.C. Sec. 7001(a), or authorize electronic delivery of  
30 any of the notices described in 15 U.S.C. Sec. 7003(b).

31 NEW SECTION. **Sec. 10.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
32 In applying and construing this uniform act, consideration must be  
33 given to the need to promote uniformity of the law with respect to its  
34 subject matter among states that enact it.



1        NEW SECTION.    **Sec. 11.**    CAPTIONS NOT LAW.    Captions used in this  
2 act are not any part of the law.

3        NEW SECTION.    **Sec. 12.**    Sections 1 through 11 of this act  
4 constitute a new chapter in Title 24 RCW.

5        NEW SECTION.    **Sec. 13.**    The following acts or parts of acts are  
6 each repealed, effective July 1, 2009:

- 7        (1) RCW 24.44.010 (Definitions) and 1973 c 17 s 1;
- 8        (2) RCW 24.44.020 (Appropriation of appreciation) and 1973 c 17 s  
9        2;
- 10       (3) RCW 24.44.030 (Investment authority) and 1973 c 17 s 3;
- 11       (4) RCW 24.44.040 (Delegation of investment management) and 1973 c  
12       17 s 4;
- 13       (5) RCW 24.44.050 (Standard of conduct) and 1973 c 17 s 5;
- 14       (6) RCW 24.44.060 (Release of restrictions on use or investments)  
15       and 1973 c 17 s 6;
- 16       (7) RCW 24.44.070 (Uniformity of application and construction) and  
17       1973 c 17 s 8;
- 18       (8) RCW 24.44.080 (Short title) and 1973 c 17 s 9;
- 19       (9) RCW 24.44.090 (Section headings) and 1973 c 17 s 10; and
- 20       (10) RCW 24.44.900 (Severability--1973 c 17) and 1973 c 17 s 7.

21       NEW SECTION.    **Sec. 14.**    This act is necessary for the immediate  
22 preservation of the public peace, health, or safety, or support of the  
23 state government and its existing public institutions, and takes effect  
24 immediately.

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