

SHB 1119 - S AMD 445

By Senators Kohl-Welles, Kline

ADOPTED 04/22/2009

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 (1) Before July 1, 2009, this chapter applies to an institutional fund
33 existing on the effective date of this act only if the institution's
34 governing body elects to apply this chapter to the institutional fund
35 before July 1, 2009.

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

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

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

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

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

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

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24 each repealed, effective July 1, 2009:

- 25 (1) RCW 24.44.010 (Definitions) and 1973 c 17 s 1;
26 (2) RCW 24.44.020 (Appropriation of appreciation) and 1973 c 17 s
27 2;
28 (3) RCW 24.44.030 (Investment authority) and 1973 c 17 s 3;
29 (4) RCW 24.44.040 (Delegation of investment management) and 1973 c
30 17 s 4;
31 (5) RCW 24.44.050 (Standard of conduct) and 1973 c 17 s 5;
32 (6) RCW 24.44.060 (Release of restrictions on use or investments)
33 and 1973 c 17 s 6;

1 (7) RCW 24.44.070 (Uniformity of application and construction) and
2 1973 c 17 s 8;
3 (8) RCW 24.44.080 (Short title) and 1973 c 17 s 9;
4 (9) RCW 24.44.090 (Section headings) and 1973 c 17 s 10; and
5 (10) RCW 24.44.900 (Severability--1973 c 17) and 1973 c 17 s 7.

6 NEW SECTION. **Sec. 14.** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of the
8 state government and its existing public institutions, and takes effect
9 immediately."

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10 On page 1, line 2 of the title, after "institutions;" strike the
11 remainder of the title and insert "adding a new chapter to Title 24
12 RCW; repealing RCW 24.44.010, 24.44.020, 24.44.030, 24.44.040,
13 24.44.050, 24.44.060, 24.44.070, 24.44.080, 24.44.090, and 24.44.900;
14 providing an effective date; and declaring an emergency."

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