FINAL BILL REPORT
SHB 1119

C 436 L 09
Synopsis as Enacted

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

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Pedersen, Rodne, Goodman and Kelley; by request of Uniform Legislation Commission).

House Committee on Judiciary
Senate Committee on Judiciary

Background:

The Uniform Management of Institutional Funds Act (UMIFA) was enacted in 1973. The UMIFA provides guidelines for the management, investment, and expenditure of funds held by charitable institutions. The 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.

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.

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 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released either with the written consent of the donor, or through court order if the court finds that the restriction is obsolete, inappropriate, or impracticable, and the donor's consent cannot be obtained due to death, disability, or unavailability.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 the 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:

The UMIFA is repealed and replaced with the Uniform Prudent Management of Institutional Funds Act.

Standard of Conduct.

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.

Managing and Investing Institutional Funds.

Additional rules are provided for the management and investment of institutional funds. An institution must consider the charitable purposes of the institution and the institutional fund, and 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.

The factors that must be considered in making investment decisions are expanded, and decisions concerning an individual asset must be made not in isolation, but in the context of the overall investment strategy.

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, purposes, and duration for which the endowment fund is established. Seven factors are established in evaluating expenditure decisions.

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, 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 $75,000, as long as the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument. The $75,000 limitation is increased annually by $2,500, beginning July 1, 2011.

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

Application.
The act applies to all institutional funds on and after July 1, 2009. Before July 1, 2009, the act applies to institutional funds that existed on the effective date of the act only if the institution's governing body elects to apply the act to the institutional funds before July 1, 2009.

Votes on Final Passage:

House	96	0	
Senate	45	0	(Senate amended)
House			(House refuses to concur)
Senate	49	0	(Senate amended)
House	93	0	(House concurred)

Effective: May 11, 2009