

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1119

Chapter 436, Laws of 2009

61st Legislature
2009 Regular Session

PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

EFFECTIVE DATE: 05/11/09

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

FRANK CHOPP

Speaker of the House of Representatives

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

BRAD OWEN

President of the Senate

Approved May 11, 2009, 2:41 p.m.

CHRISTINE GREGOIRE

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.

BARBARA BAKER

Chief Clerk

FILED

May 11, 2009

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1119

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.

 Passed by the House April 24, 2009.
 Passed by the Senate April 22, 2009.
 Approved by the Governor May 11, 2009.
 Filed in Office of Secretary of State May 11, 2009.