SENATE BILL REPORT
SHB 1119

As Reported by Senate Committee On:
Judiciary, March 25, 2009

Title: An act relating to the management of funds held by nonprofit institutions.

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).

Brief History: Passed House: 2/23/09, 96-0.
Committee Activity: Judiciary: 3/18/09, 3/25/09 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.
Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Kohl-Welles, Roach and Tom.

Staff: Brandon Roche (786-7405)

Background: The Legislature adopted the Uniform Management of Institutional Funds Act (UMIFA) 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 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

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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 of Bill (Recommended Amendments): The UMIFA is repealed and replaced with the Uniform Prudent Management of Institutional Funds Act (UPMIFA). The UPMIFA establishes updated and more specific standards and guidelines for the management and investment of charitable funds and the expenditure of a charitable institution's endowment funds.

<u>Standard of Conduct.</u> 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.

<u>Managing and Investing Institutional Funds.</u> An institution, in managing and investing an institutional fund, must consider the charitable purposes of the institution and the purposes of the institutional fund. Additional rules are provided for the management and investment of institutional funds. The factors that must be considered in making investment decisions are expanded to include tax consequences of investment decisions; the role each investment or course of action plays in the overall investment portfolio; other resources of the institution; and any special relationship or value of an asset to the charitable purposes of the institution. Decisions concerning an individual asset must be made not in isolation, but in the context of the overall investment strategy. The institution must 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.

<u>Restrictions on Use or Investment of Institutional Funds.</u> 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 as long as the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument, if the fund subject to the restriction is more than 20 years old and has a value of less than $75,000. 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.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments): On page 2, line 9, "and" is changed to "or."

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: PRO: The effort here was to modernize the standards. The standards of conduct get closer to one standard across the board in the fund management business. When we introduced the bill we did have the 7 percent rebuttable presumption in there. The Washington Uniform Legislation Commission could not resolve that it was necessary one way or the other and that is why it is considered optional. We are strongly supportive of this. This law will update to current practice the total return spending policies. The historical cost floor did not allow the support for programs that donors wanted to see. The standard of care is there, the fiduciary responsibility is there, and it has all the right pieces. I like that the law emphasizes being careful and consistent.

The endowment I oversee benefits many students and we're always keeping in mind how to manage these funds in perpetuity. An endowment is not one thing, it's much more like a mutual fund. These gifts are given at different times and have different constraints on them. This bill does protect donor intent. It does allow and require that board committees making spending decisions look at various factors in making those decisions. We strongly support the passage of this act.

I don't think there's a need for a cap on the escalator provision. The inflation rate won't even keep up with this $2,500 dollar amount.

Persons Testifying: PRO: Representative Pedersen, prime sponsor; Katherine Davis, University of Puget Sound and Independent Colleges of Washington; Marlin Appelwick, Washington Uniform Legislation Commission; Judy Peterson, University of Washington.