

HOUSE BILL NO. HB0118

Uniform Prudent Management of Institutional Funds Act.

Sponsored by: Representative(s) Pedersen, Bonner, Cohee, Gingery, Hammons, Lubnau and Simpson and Senator(s) Coe, Nicholas and Ross

A BILL

for

1 AN ACT relating to institutional funds; adopting the
2 Uniform Prudent Management of Institutional Funds Act
3 (UPMIFA); providing definitions; providing standards for
4 the management and investment of certain funds as
5 specified; providing conditions; providing for management
6 and investment functions; providing applicability;
7 repealing conflicting law; and providing for an effective
8 date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 17-7-301 through 17-7-307 are created
13 to read:

14

15

ARTICLE 3

16

UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

1

2 **17-7-301. Short title.**

3

4 This act shall be known and may be cited as the Uniform
5 Prudent Management of Institutional Funds Act.

6

7 **17-7-302 Definitions.**

8

9 (a) As used in this act:

10

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

16

17 (ii) "Endowment fund" means an institutional
18 fund or part thereof that, under the terms of a gift
19 instrument, is not wholly expendable by the institution on
20 a current basis. The term does not include assets that an
21 institution designates as an endowment fund for its own
22 use;

23

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

5

6 (iv) "Institution" means:

7

8 (A) A person, other than an individual,
9 organized and operated exclusively for charitable purposes;

10

11 (B) A government or governmental
12 subdivision, agency or instrumentality to the extent that
13 it holds funds exclusively for a charitable purpose; or

14

15 (C) A trust that had both charitable and
16 noncharitable interests, after all noncharitable interests
17 have been terminated.

18

19 (v) "Institutional fund" means a fund held by an
20 institution exclusively for charitable purposes. The term
21 does not include:

22

23 (A) Program-related assets;

24

1 (B) A fund held for an institution by a
2 trustee that is not an institution; or

3

4 (C) A fund in which a beneficiary that is
5 not an institution has an interest, other than an interest
6 that could arise upon violation or failure of the purposes
7 of the fund.

8

9 (vi) "Person" means as defined by W.S. 8-1-102;

10

11 (vii) "Program-related asset" means an asset
12 held by an institution primarily to accomplish a charitable
13 purpose of the institution and not primarily for
14 investment;

15

16 (viii) "Record" means information that is
17 inscribed on a tangible medium or that is stored in an
18 electronic or other medium and is retrievable in
19 perceivable form;

20

21 (ix) "This act" means W.S. 17-7-301 through
22 17-7-307.

23

1 **17-7-303. Standard of conduct in managing and**
2 **investing institutional fund.**

3

4 (a) Subject to the intent of a donor expressed in a
5 gift instrument, an institution, in managing and investing
6 an institutional fund, shall consider the charitable
7 purposes of the institution and the purposes of the
8 institutional fund.

9

10 (b) In addition to complying with the duty of loyalty
11 imposed by law other than this act, each person responsible
12 for managing and investing an institutional fund shall
13 manage and invest the fund in good faith and with the care
14 an ordinarily prudent person in a like position would
15 exercise under similar circumstances.

16

17 (c) In managing and investing an institutional fund,
18 an institution:

19

20 (i) May incur only costs that are appropriate
21 and reasonable in relation to the assets, the purposes of
22 the institution and the skills available to the
23 institution; and

24

1 (ii) Shall make a reasonable effort to verify
2 facts relevant to the management and investment of the
3 fund.

4

5 (d) An institution may pool two (2) or more
6 institutional funds for purposes of management and
7 investment.

8

9 (e) Except as otherwise provided by a gift
10 instrument, the following rules shall apply:

11

12 (i) In managing and investing an institutional
13 fund, the following factors if relevant shall be
14 considered:

15

16 (A) General economic conditions;

17

18 (B) The possible effect of inflation or
19 deflation;

20

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

23

1 (D) The role that each investment or course
2 of action plays within the overall investment portfolio of
3 the fund;

4
5 (E) The expected total return from income
6 and the appreciation of investments;

7
8 (F) Other resources of the institution;

9
10 (G) The needs of the institution and the
11 fund to make distributions and to preserve capital; and

12
13 (H) An asset's special relationship or
14 special value, if any, to the charitable purposes of the
15 institution.

16
17 (ii) Management and investment decisions about
18 an individual asset shall be made not in isolation but
19 rather in the context of the institutional fund's portfolio
20 of investments as a whole and as a part of an overall
21 investment strategy having risk and return objectives
22 reasonably suited to the fund and to the institution;

23

1 (iii) Except as otherwise provided by law other
2 than this act, an institution may invest in any kind of
3 property or type of investment consistent with this
4 section;

5

6 (iv) An institution shall diversify the
7 investments of an institutional fund unless the institution
8 reasonably determines that, because of special
9 circumstances, the purposes of the fund are better served
10 without diversification;

11

12 (v) Within a reasonable time after receiving
13 property, an institution shall make and carry out decisions
14 concerning the retention or disposition of the property or
15 to rebalance a portfolio in order to bring the
16 institutional fund into compliance with the purposes, terms
17 and distribution requirements of the institution as
18 necessary to meet other circumstances of the institution
19 and the requirements of this act;

20

21 (vi) A person who has special skills or
22 expertise, or is selected in reliance upon the person's
23 representation that the person has special skills or

1 expertise, has a duty to use those skills or that expertise
2 in managing and investing institutional funds.

3

4 **17-7-304. Appropriation for expenditure or**
5 **accumulation of endowment fund; rules of construction.**

6

7 (a) Subject to subsection (d) of this section and to
8 the intent of a donor expressed in the gift instrument, an
9 institution may appropriate for expenditure or accumulate
10 so much of an endowment fund as the institution determines
11 is prudent for the uses, benefits, purposes and duration
12 for which the endowment fund is established. Unless stated
13 otherwise in the gift instrument, the assets in an
14 endowment fund are donor-restricted assets until
15 appropriated for expenditure by the institution. In making
16 a determination to appropriate or accumulate, the
17 institution shall act in good faith, with the care that an
18 ordinarily prudent person in a like position would exercise
19 under similar circumstances, and shall consider, if
20 relevant, the following factors:

21

22 (i) The duration and preservation of the
23 endowment fund;

24

1 (ii) The purposes of the institution and the
2 endowment fund;

3

4 (iii) General economic conditions;

5

6 (iv) The possible effect of inflation or
7 deflation;

8

9 (v) The expected total return from income and
10 the appreciation of investments;

11

12 (vi) Other resources of the institution; and

13

14 (vii) The investment policy of the institution.

15

16 (b) To limit the authority to appropriate for
17 expenditure or accumulate under subsection (a) of this
18 section, a gift instrument shall specifically state the
19 limitation.

20

21 (c) Terms in a gift instrument designating a gift as
22 an endowment, or a direction or authorization in the gift
23 instrument to use only "income", "interest", "dividends",

1 or "rents, issues or profits", or "to preserve the
2 principal intact" or words of similar import:

3

4 (i) Create an endowment fund of permanent
5 duration unless other language in the gift instrument
6 limits the duration or purpose of the fund; and

7

8 (ii) Do not otherwise limit the authority to
9 appropriate for expenditure or accumulate under subsection
10 (a) of this section.

11

12 (d) The appropriation for expenditure in any year of
13 an amount greater than seven percent (7%) of the fair
14 market value of an endowment fund, calculated on the basis
15 of market values determined at least quarterly and averaged
16 over a period of not less than three (3) years immediately
17 preceding the year in which the appropriation for
18 expenditure is made, creates a rebuttable presumption of
19 imprudence. For an endowment fund in existence for fewer
20 than three (3) years, the fair market value of the
21 endowment fund shall be calculated for the period the
22 endowment fund has been in existence. This subsection
23 shall not:

24

1 (i) Apply to an appropriation for expenditure
2 permitted under law other than this act or by the gift
3 instrument; or

4
5 (ii) Create a presumption of prudence for an
6 appropriation for expenditure of an amount less than or
7 equal to seven percent (7%) of the fair market value of the
8 endowment fund.

9
10 **17-7-305. Delegation of management and investment**
11 **functions.**

12
13 (a) Subject to any specific limitation set forth in a
14 gift instrument or in law other than this act, an
15 institution may delegate to an external agent the
16 management and investment of an institutional fund to the
17 extent that an institution could prudently delegate under
18 the circumstances. An institution shall act in good faith,
19 with the care that an ordinarily prudent person in a like
20 position would exercise under similar circumstances, in:

21
22 (i) Selecting an agent;

23

1 (ii) Establishing the scope and terms of the
2 delegation, consistent with the purposes of the institution
3 and the institutional fund; and

4
5 (iii) Periodically reviewing the agent's actions
6 in order to monitor the agent's performance and compliance
7 with the scope and terms of the delegation.

8
9 (b) In performing a delegated function, an agent owes
10 a duty to the institution to exercise reasonable care to
11 comply with the scope and terms of the delegation.

12
13 (c) An institution that complies with subsection (a)
14 of this section is not liable for the decisions or actions
15 of an agent to which the function was delegated.

16
17 (d) By accepting delegation of a management or
18 investment function from an institution that is subject to
19 the laws of this state, an agent submits to the
20 jurisdiction of the courts of this state in all proceedings
21 arising from or related to the delegation or the
22 performance of the delegated function.

23

1 (e) An institution may delegate management and
2 investment functions to its committees, officers or
3 employees as authorized by law of this state other than
4 this act.

5

6 **17-7-306. Release or modification of restrictions on**
7 **management, investment or purpose.**

8

9 (a) If the donor consents in a record, an institution
10 may release or modify, in whole or in part, a restriction
11 contained in a gift instrument on the management,
12 investment or purpose of an institutional fund. A release
13 or modification may not allow a fund to be used for a
14 purpose other than a charitable purpose of the institution.

15

16 (b) The court upon application of an institution, may
17 modify a restriction contained in a gift instrument
18 regarding the management or investment of an institutional
19 fund if the restriction has become impracticable or
20 wasteful, if it impairs the management or investment of the
21 fund, or if, because of circumstances not anticipated by
22 the donor, a modification of a restriction will further the
23 purposes of the fund. If the institution is a governmental
24 institution as defined by W.S. 17-7-302(a)(iv), the

1 institution shall notify the attorney general of the
2 application, and the attorney general shall be given an
3 opportunity to be heard. To the extent practicable, any
4 modification shall be made in accordance with the donor's
5 probable intention.

6

7 (c) If a particular charitable purpose or a
8 restriction contained in a gift instrument on the use of an
9 institutional fund becomes unlawful, impracticable,
10 impossible to achieve or wasteful, the court, upon
11 application of an institution, may modify the purpose of
12 the fund or the restriction on the use of the fund in a
13 manner consistent with the charitable purposes expressed in
14 the gift instrument. If the institution is a governmental
15 institution as defined by W.S. 17-7-302(a)(iv), the
16 institution shall notify the attorney general of the
17 application, and the attorney general shall be given an
18 opportunity to be heard.

19

20 (d) If an institution determines that a restriction
21 contained in a gift instrument on the management,
22 investment or purposes of an institutional fund is
23 unlawful, impracticable, impossible to achieve or wasteful,
24 the institution, not less than sixty (60) days after

1 notification to the attorney general, may release or modify
2 the restriction, in whole or part, if:

3

4 (i) The institutional fund subject to the
5 restriction has a total value of less than twenty-five
6 thousand dollars (\$25,000.00);

7

8 (ii) More than twenty (20) years have elapsed
9 since the fund was established; and

10

11 (iii) The institution uses the property in a
12 manner consistent with the charitable purposes expressed in
13 the gift instrument.

14

15 **17-7-307. Reviewing compliance.**

16

17 Compliance with this act shall be determined in light of
18 the facts and circumstances existing at the time a decision
19 is made or action is taken.

20

21 **Section 2.** W.S. 17-7-201 through 17-7-205 are
22 repealed.

23

1 **Section 3.** This act shall apply to any institutional
2 fund existing on or established after the effective date of
3 this act. As applied to institutional funds existing on
4 the effective date of this act, this act shall govern only
5 a decision made or action taken on or after that date.

6

7 **Section 4.** This act is effective July 1, 2009.

8

9

(END)