

LEGAL SERVICES

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MEMORANDUM

March 22, 2010

SUBJECT: HB 416, a bill adopting and relating to the Uniform Prudent Management of Institutional Funds Act
(Work Order No. 26-LS1591\R)

TO: Representative Kurt Olson
Attn: Konrad Jackson

FROM:  Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Adds a new chapter adopting the Uniform Prudent Management of Institutional Funds Act.

Sec. 13.70.010. Directs an institution, when managing and investing an institutional fund, to consider the institution's charitable purposes and the fund's purposes. Directs the responsible persons to comply with the duty of loyalty and to act in good faith and with the care an ordinarily prudent person would exercise in the circumstances. Gives directions regarding cost incurrence and fact verification regarding fund investment and management. Allows an institution to pool funds. Provides management and investment rules, including the factors to consider, appropriate investment property, and diversification.

Sec. 13.70.020. Allows an institution to appropriate or accumulate as much of an endowment fund that is prudent for the fund. Makes this subject to the donor's intent. Generally characterizes fund assets as donor-restricted until appropriated. Requires an institution to act in good faith and with the care an ordinarily prudent person would exercise in similar circumstances, and to consider, when relevant, certain listed factors. Requires a gift instrument to specifically state any limitation on appropriation or accumulation. Indicates what certain terms and words, including similar words, mean for an endowment fund.

Sec. 13.70.030. Allows an institution to delegate the management and investment of an endowment fund to an external agent if prudent. Makes this subject to certain exceptions. Directs the institution to act in good faith and with the care of an ordinarily prudent person in similar circumstances when performing certain listed acts. Describes the duty

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the agent owes to the institution. Removes the liability of an institution that complies with (a) for the agent's acts. States that an agent for an institution subject to this state's laws is subject to this state's jurisdiction. Allows an institution to delegate to its own persons as authorized by other law.

Sec. 13.70.040. Allows an institution, under certain conditions, to release or change gift instrument restrictions. Allows a court to modify a gift instrument's restriction if it is impractical or wasteful or impairs the fund's management or investment, or if it will further the fund's purpose. Requires the institution to notify the attorney general of the court application. Requires a modification to be made, as far as possible, in accordance with the donor's intent. Allows a court to modify a fund's purpose or a restriction if unlawful, impractical, unachievable, or wasteful. Allows an institution to release or modify a restriction on the fund's management, investment, or purpose under certain conditions. Requires notification of the attorney general.

Sec. 13.70.050. Directs that compliance with this chapter be determined in light of the facts and circumstances existing at the time.

Sec. 13.70.060. Indicates how this chapter relates to the Electronic Signatures in Global and National Commerce Act.

Sec. 13.70.070. Indicates that another law or a governing instrument of an institution governs over this chapter when there is a conflict.

Sec. 13.70.080. Provides for uniformity of the application and construction of this chapter with other states' laws.

Sec. 13.70.090. Defines terms for the chapter.

Sec. 13.70.095. Gives the chapter a short title.

Section 2. Indicates how the new chapter and AS 37.10.071 apply to the management and investment of gifts, bequests, and endowments made to the University of Alaska.

Section 3. Indicates how the new chapter and AS 37.10.071 apply to the Board of Regents of the University of Alaska as the fiduciary of the university's endowment trust fund.

Section 4. Indicates that the chapter will apply to institutions and their decisions after its effective date.

If I may be of further assistance, please advise.

TLB:plm
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