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CS FOR SENATE BILL NO. 134(EDC)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE EDUCATION COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR PASKVAN

A BILL

FOR AN ACT ENTITLED

"An Act adopting and relating to the Uniform Prudent Management of Institutional Funds Act; relating to the investment of money for charitable purposes by institutions, including governmental institutions; and relating to the University of Alaska."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** AS 13 is amended by adding a new chapter to read:

Chapter 70. Uniform Prudent Management of Institutional Funds.

Sec. 13.70.010. Standard of conduct in managing and investing institutional funds. (a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

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

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

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

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

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

(1) in managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the expected tax consequences, if any, of investment decisions or strategies;

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

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) an asset's special relationship or special value, if any, to the charitable purposes of the institution;

(2) management and investment decisions about an individual asset may not be made in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution;

(3) except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with the

standards of this section;

(4) an institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification;

(5) within a reasonable time after receiving property, an institution shall make and implement decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms, distribution requirements, and other circumstances of the institution and the requirements of this chapter;

(6) a person who has special skills or expertise, or is selected in reliance on the person's representation that the person has special skills or expertise, has a duty to use those special skills or that expertise in managing and investing institutional funds.

Sec. 13.70.020. Appropriation for expenditure or accumulation of endowment fund; rules of construction. (a) Subject to the intent of a donor expressed in a gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in a gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) the duration and preservation of the endowment fund;

(2) the purposes of the institution and the endowment fund;

(3) general economic conditions;

(4) the possible effect of inflation or deflation;

(5) the expected total return from income and the appreciation of investments;

(6) other resources of the institution; and

(7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or similar words

(1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) do not otherwise limit the authority to appropriate for expenditure or accumulate under (a) of this section.

Sec. 13.70.030. Delegation of management and investment functions. (a) Subject to a specific limitation set out in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

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

(c) An institution that complies with (a) of this section is not liable for the decisions or actions of an agent to whom the function was delegated.

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

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law other than this chapter.

Sec. 13.70.040. Release or modification of restrictions on management, investment, or purpose. (a) With the donor's consent in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) If a restriction contained in a gift instrument on the management or investment of an institutional fund becomes impracticable or wasteful or impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund, the court, on application of the institution, may modify the restriction. The institution shall notify the attorney general of the application, who must be given an opportunity to be heard. To the extent practicable, a modification shall be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, on application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 90 days or more after notification of the attorney general, may release or modify the restriction, in whole or part, if

(1) the institutional fund subject to the restriction has a total value of less than $50,000;

(2) more than 20 years have elapsed since the fund was established; and

(3) the institution uses the property in a manner the institution reasonably determines to be consistent with the charitable purposes expressed in the gift instrument.

Sec. 13.70.050. Reviewing compliance. Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or an action is taken.

Sec. 13.70.060. Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act), but does not modify, limit, or supersede 15 U.S.C. 7001(a) or authorize electronic delivery of a notice described in 15 U.S.C. 7003(b).

Sec. 13.70.070. Application. If another provision of law or of a governing instrument of an institution applies to an institutional fund but conflicts with this chapter, the other provision governs.

Sec. 13.70.080. Uniformity of application and construction. In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 13.70.090. Definitions. In this chapter,

(1) "charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or another purpose the achievement of which is beneficial to the community;

(2) "endowment fund" means an institutional fund, or part of an institutional fund, not wholly expendable by the institution on a current basis under the terms of a gift instrument; the term does not include assets of an institution designated by an institution as an endowment fund for its own use;

(3) "gift instrument" means a record, including an institutional solicitation, under which property is granted to, transferred to, or held by an institutional fund;

(4) "institution" means

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

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

(C) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated;

(5) "institutional fund" means a fund held by an institution exclusively for charitable purposes; the term does not include

(A) program-related assets;

(B) a fund held for an institution by a trustee who is not an institution; or

(C) a fund in which a beneficiary who is not an institution has an interest, other than an interest that could arise on a violation or failure of the purposes of the fund;

(6) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or another legal or commercial entity;

(7) "program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for appreciation or the production of income;

(8) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 13.70.095. Short title. This chapter may be cited as the Uniform Prudent Management of Institutional Funds Act.

* **Sec. 2.** AS 14.40.280(c) is amended to read:

(c) Except as provided by (b) of this section, the monetary gifts, bequests, or endowments that are made to the University of Alaska shall be managed and invested by the Board of Regents. In carrying out its management and investment responsibilities under this subsection, the Board of Regents has the same **<u>powers</u>** [POWER] and [OBLIGATIONS TO CARRY OUT] duties with respect to the **<u>gifts, bequests, and</u>** endowments of the University of Alaska as are provided **<u>or</u>** [TO AND] required [OF THE ALASKA RETIREMENT MANAGEMENT BOARD] under **<u>AS 37.10.071 and AS 13.70 (Uniform Prudent Management of Institutional</u>**

Funds Act). Notwithstanding any other provision of law, AS 37.10.071 governs the management and investment responsibilities established under this subsection if

(1) both AS 37.10.071 and AS 13.70 apply to the management and investment responsibilities established under this subsection; and

(2) AS 37.10.071 conflicts with AS 13.70 [AS 37.10.220].

* **Sec. 3.** AS 14.40.400(b) is amended to read:

(b) The Board of Regents is the fiduciary of the fund. The Board of Regents shall account for and invest the fund. In carrying out its investment responsibilities under this subsection, the Board of Regents has the same powers and duties with respect to the fund as are provided **or** [TO AND] required [OF THE ALASKA RETIREMENT MANAGEMENT BOARD] under **AS 37.10.071 and AS 13.70 (Uniform Prudent Management of Institutional Funds Act) Notwithstanding any other provision of law, AS 37.10.071 governs the investment responsibilities established under this subsection if**

(1) both AS 37.10.071 and AS 13.70 apply to the investment responsibilities established under this subsection; and

(2) AS 37.10.071 conflicts with AS 13.70 [AS 37.10.220].

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 13.70, enacted by sec. 1 of this Act, applies to an institutional fund held by an institution on or after the effective date of this Act and to decisions made or action taken by the institution relating to the institutional fund on or after the effective date of this Act. In this section, "institution" and "institutional fund" have the meanings given in AS 13.70.090, enacted by sec. 1 of this Act.