

HB

416

<target><bill>HB 416</bill><subject>HB
416</subject><comm>HFIN26</comm></target>



ALASKA STATE LEGISLATURE

HOUSE LABOR & COMMERCE COMMITTEE

REP. KURT OLSON

Chairman
State Capitol, Room 124
Juneau, AK 99801-1182
(907) 465-2693 FAX 465-3835

Rep. Mark Neuman, V-Chair
Rep. Bob Lynn
Rep. Lindsey Holmes

Rep. Mike Chenault
Rep. Tammie Wilson
Rep. Bob Buch

Sponsor Statement

House Bill 416

" 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"

House Bill 416 would allow the State of Alaska to adopt the Uniform Prudent Management of Institutional Funds Act (UPMIFA).

UPMIFA replaces obsolete rules and concepts of investment and management of endowments and charitable funds currently in use. It provides current, industry best practices guidelines, essential to proper management.

HB 416 will help administrators fulfill their fiduciary responsibilities to the funds they manage. Clear definitions on prudent practices and applicable standards are laid out for administrators of charitable funds and endowments.

The UPMIFA will assist nonprofits and volunteer trustees to minimize exposure to disputes and legal challenges over issues related to currently unclear administrative rules and practices.

Traditional trust principles regarding the distribution of what might otherwise be considered the corpus differ from the UPMIFA. In conjunction with Financial Accounting Standards Board requirements, UPMIFA allows advances against future earnings to the extent such advances are prudent and consistent with the mission and purpose of the endowment.

At present, only 3 other states have not adopted or introduced UPMIFA legislation.

I urge your support of House Bill 416.

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

SEAN PARNELL, GOVERNOR

LEGISLATION & REGULATIONS SECTION
P.O. BOX 110300
DIMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2520

March 18, 2010

RECEIVED

MAR 18 2010

Honorable Kurt Olson, Chair
Labor and Commerce Committee
Alaska State Legislature
State Capitol, Room 24
Juneau, Alaska 99801-1182

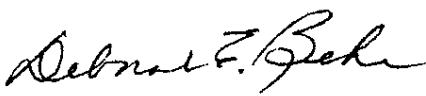
Re: HB 416 -- Uniform Prudent Management of Institutional Funds Act

Dear Representative Olson:

The Alaska Uniform Law delegation met on March 8, 2010 and discussed the Uniform Prudent Management of Institutional Funds Act. HB 416 was introduced, which would enact the Uniform Prudent Management of Institutional Funds Act into state law. We believe that the bill would make important improvements to the law on management of institutional funds in this state by providing statutory guidelines for management, investment, and expenditures of endorsement funds held by charitable institutions. The bill is based on a Uniform Act that brings the law governing charitable institutions in line with modern investment and expenditure practices. About 45 states have enacted a version of the Uniform Act.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: 
Deborah E. Behr
Chief Assistant Attorney General

DEB:pav

cc: Senator Joe Paskvan, Alaska State Legislature
Jim Lynch, University of Alaska Fairbanks
Jerry Gallagher, Legislative Director, Office of the Governor
Randy Ruaro, Deputy Chief of Staff, Office of the Governor
Mike Ford, Legislative Liaison, Dept. of Law
Alaska Uniform Law Delegation

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 416
(H) Publish Date: 4/6/10

Identifier (file name): HB416-LAW-CIV-04-02-10 Dept. Affected: Law
Title: An Act relating to the Uniform Prudent Management of RDU Civil
Institutional Funds Component Commercial and Fair Business
Sponsor Labor & Commerce
Requester Labor & Commerce Component Number 2717

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This act revises the Uniform Management of Institutional Funds Act of 1972, bringing the law governing charitable institutions in line with modern investment and expenditure practice. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager
Division: Administrative Services
Approved by: Daniel S. Sullivan, Attorney General
Department of Law

Phone 465-5427
Date/Time 4/2/10 2:00 PM
Date 4/2/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 416
 (H) Publish Date: 4/6/10

Identifier (file name): HB416-UA-Sysbra-03-26-10 Dept. Affected: University of Alaska
 Title: PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS RDU: University of Alaska
 Sponsor: Labor & Commerce Component: Sysbra
 Requester: Representative Olson Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Passage of HB416 is not anticipated to have a measurable fiscal impact on the University of Alaska.

Prepared by: Alesia Kruckenberg Phone 450-8426
 Division: Statewide Budget, University of Alaska Date/Time 03/26/2010;10:00am
 Approved by: Michelle Rizk Date 3/26/2010
AVP Statewide Budget, University of Alaska

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Deliveries to: 129 6th St., Rm. 329

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

Representative Kurt Olson
March 22, 2010
Page 2

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
10-162.plm

UPMIFA

uniform prudent management of institutional funds act

WHY STATES SHOULD ADOPT THE ACT

This 2006 Uniform Prudent Management of Institutional Funds Act replaces and updates the 1972 Uniform Management of Institutional Funds Act. Its rules govern investment of the funds of charitable organizations and total return expenditure of those funds. It establishes a prudent management investment regime derived from the Uniform Prudent Investor Act (which applies only to trusts) and a prudent total return expenditure based upon performance of the portfolio held by a charitable institution. It also provides for delegation of authority for investment to outside agents and reformation of donor restrictions (cy pres) on funds when these are so outdated that the original objective can no longer be honored.

States should adopt the Uniform Prudent Management of Institutional Funds Act:

1. To make sure that the best investment practices govern the actual investment of institutional funds.
2. To withdraw obsolete rules governing prudent total return expenditure and provide a modern rule of prudence consistent with the rules that govern investment.
3. To eliminate differences in investment and expenditure rules that apply to different types of nonprofit organizations. The same rules govern all under UPMIFA.
4. To encourage growth of institutional funds while eliminating investment risks that threaten principal.
5. To assure that there are adequate assets in any institutional fund to meet program needs.
6. To make the law governing institutional funds uniform in every state.



Uniform Law Commission

For Questions About UPMIFA Please Call Uniform Law Commission/NCCUSL 312.915.0195 | www.nccusl.org | www.upmifa.org

UPMIFA

uniform prudent management of institutional funds act



Uniform Law Commission

Home	The Act	History	State Law Comparisons	Materials	Enactment Status	About the ULC	Educational Partnership
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History of UPMIFA and UMIFA

At its annual meeting in July 2006, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Prudent Management of Institutional Funds Act (UPMIFA) and recommended it for enactment by the legislatures of the various states. UPMIFA is designed to replace the existing Uniform Management of Institutional Funds Act (UMIFA), which was approved by NCCUSL in 1972 and has since been enacted in 47 states. UMIFA was a pioneering statute, providing uniform and fundamental rules for the investment of funds held by charitable institutions and the expenditure of funds donated as "endowments" to those institutions. Those rules supported two general principles: 1) that assets would be invested prudently in diversified investments that sought growth as well as income, and 2) that appreciation of assets could prudently be spent for the purposes of any endowment fund held by a charitable institution. These two principles have been the twin lodestars of asset management for endowments since UMIFA became the law of the land in nearly all U.S. jurisdictions.

UPMIFA continues these fundamental principles as a needed upgrade of UMIFA. Both investment in assets and expenditure for charitable purposes have grown exponentially in the 35 years since UMIFA was drafted; asset management theory and practice have also advanced. UPMIFA, as an up-date and successor to UMIFA, establishes an even sounder and more unified basis for charitable fund management than UMIFA has done.

INVESTMENT

In 1972, UMIFA represented a revolutionary advance over prevailing practices which imposed upon endowments the limited investment opportunities available for managing trust assets – even endowments not organized as trusts. By stating the first prudent investor rule in statutory law, UMIFA allowed endowments to invest in any kind of assets, to pool endowment funds for investment purposes, and to delegate investment management to other persons (e.g., professional investment advisors), as long as the governing board of the charitable institution exercised ordinary business care and prudence in making these decisions. A range of factors guided the exercise of prudence.

UPMIFA incorporates the experience gained in the last 35 years under UMIFA by providing even stronger guidance for investment management and enumerating a more exact set of rules for investing in a prudent manner. It requires investment "in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances." It requires prudence in incurring investment costs, authorizing "only costs that are appropriate and reasonable." Factors to be considered in investing are expanded to include, for example, the effects of inflation. UPMIFA emphasizes that investment decisions must be made in relation to the overall resources of the institution and its charitable purposes. No investment decision may be made in isolation, but must be made in light of the fund's entire portfolio, and as a part of an investment strategy "having risk and return

objectives reasonably suited to the fund and to the institution." A charitable institution must diversify assets as an affirmative obligation unless "special circumstances" dictate otherwise. Assets must be reviewed within a reasonable time after they come into the possession of the institution in order to conform them to the investment strategy and objectives of the fund. Investment experts, whether in-house or hired for the purpose, are held to a standard of care consistent with that expertise.

UMIFA initiated the era of modern portfolio management for charitable institutions. UPMIFA provides the standards and guidelines that subsequent experience tells us are the most appropriate for the purpose. Charitable institutions will have more precise standards to guide them. Courts will have more precise standards with which to measure prudence in the event of a challenge. The result should be more money for programs supported by charitable funds, including endowments.

EXPENDITURE

UMIFA initiated the concept of total return expenditure of endowment assets for charitable program purposes, expressly permitting prudent expenditure of both appreciation and income and replacing the old trust law concept that only income (e.g., interest and dividends) could be spent. Thus, asset growth and income could be appropriated for program purposes, subject to the rule that a fund could not be spent below "historic dollar value."

UPMIFA builds upon UMIFA's rule on appreciation, but it eliminates the concept of "historic dollar value." UPMIFA, instead, provides better guidance on prudence and makes the need for a floor on spending unnecessary. UPMIFA states that the institution "may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines to be prudent for the uses, benefits, purposes and duration for which the endowment fund is established." Seven criteria guide the institution in its yearly expenditure decisions: "1) duration and preservation of the endowment fund; 2) the purposes of the institution and the endowment fund; 3) general economic conditions; 4) 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." These standards mirror the standards that apply to investment decision-making, thus unifying both investment and expenditure decisions more concretely.

UPMIFA includes an optional provision that allows states to enact another kind of safeguard against excessive expenditure. If a state does not want to rely solely upon the rule of prudence provided in UPMIFA, the state may adopt a provision that creates a rebuttable presumption of imprudence if an institution expends an amount greater than seven percent of fair market value of a fund, calculated in an averaging formula over three years. While the seven percent rule is likely not to be necessary, it is available for those states that may be uncomfortable with the general standards.

RELEASE OR MODIFICATION OF RESTRICTIONS

UPMIFA recognizes and protects donor intent more broadly than UMIFA did, in part by providing a more comprehensive treatment of the modification of restrictions on charitable funds. Sometimes a restriction imposed by a donor becomes impracticable or wasteful or may impair the management of a fund. The donor may consent to release the restriction, if the donor is still alive and able to do so, but if the donor is not available the charity can ask

for court approval of a modification of the restriction. The trust law doctrines of cy pres (modifying a purpose restriction) and deviation (modifying a management restriction) probably already apply to charitable funds held by nonprofit corporations. UPMIFA makes this clear. Under UMIFA, the only option with respect to a restriction was release of the restriction. UPMIFA instead authorizes a modification that a court determines to be in accordance with the donor's probable intention. If the charity asks for court approval of a modification, the charity must notify the state's chief charitable regulator and the regulator may participate in the proceeding.

UPMIFA adds a new provision that allows a charity to modify a restriction on a small (less than \$25,000) and old (over 20 years old) fund without going to court. If a restriction has become impracticable or wasteful, the charity may notify the state charitable regulator, wait 60 days, and then, unless the regulator objects, modify the restriction in a manner consistent with the charitable purposes expressed in any documents that were part of the original gift.

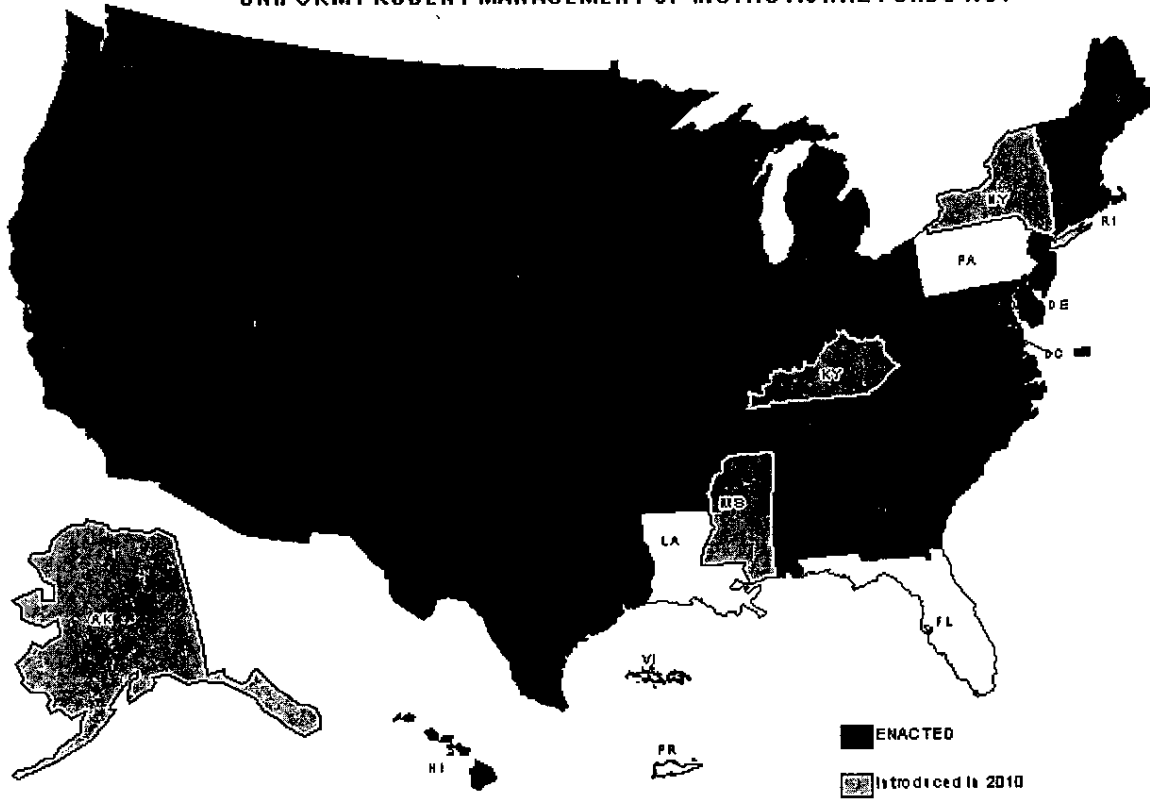
CONCLUSION

UPMIFA reflects and incorporates the 35 years of experience that has accumulated under the original UMIFA. Rather than changing institutional investment or expenditure practices, it brings them up to date and unifies them across a broad range of charitable funds. The better charitable institutions manage investments and prudently control expenditures, the more money they should have for program purposes.

©Uniform Prudent Management of Institutional Funds Act
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Chicago, Illinois 60602

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UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT



March 15, 2010



Standing Beside Alaska's Nonprofits

161 Klevin Street, Suite 101

Anchorage, AK 99508

Phone: (907) 743-1200 Fax: (907) 276-5014

March 24, 2010

**Foraker Group
Governance Board**

Bill Allen
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Wayne Stevens
Joy Steward
Saralyn Tabachnick
Deborah Vo

The Honorable Representative Kurt Olson, Chair
House Labor and Commerce Committee
Alaska State Capitol, Room # 24
Juneau, AK 99801

Dear Representative Olson:

Please allow me to thank the House Labor and Commerce Committee for your sponsorship of House Bill 416. It is a timely piece of legislation which replaces obsolete rules, and in doing so brings Alaska trust law into this century. But the real value The Foraker Group sees in this legislation is the ability to provide solid options and realistic opportunities for Alaska nonprofit institutions and the University of Alaska in pursuing long-term sustainability.

The Foraker Group is a statewide Management Support Organization established in 2000, with a straightforward mission: Assuring the success of Alaska's nonprofit organizations by helping them build their own sustainability. Foraker does this by providing high-quality, efficient, and cost-effective assistance to staff and boards of directors in three broad areas: shared/professional services, education and training, and organizational development. And more and more, we are also speaking out on behalf of Alaska's nonprofit sector – this is what leads us to submit a letter of support for House Bill 416. Last year we wrote in support of the companion bill SB 134.

We support House Bill 134 because the legislation can have positive impacts on Alaska nonprofits, as well as the University of Alaska. Simply stated, developing an Alaska version of the Uniform Prudent Management of Institutional Funds Act (UPMIFA) provides solid guidance to managers and investors of charitable funds and endowments. As they respond to the nation's economic crisis and build their sustainability, this kind of "best practice" is essential to nonprofit organizations of all kinds.

The best possible response to economic uncertainty is rooted in long-term sustainability. Alaska organizations of all shapes and sizes are responding to threats to sustainability in many ways, all in pursuit of important missions in their communities. Building a sustainable income stream and ensuring financial resilience is essential in Alaska's nonprofit sector – sustainable organizations are better positioned to meet their important missions, are more effective, more efficient and above all more self-reliant. They form the foundation of a strong Alaska economy, and healthy, productive Alaska communities.

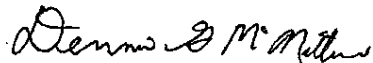
The current economic crisis has proven to be especially troublesome for organizations that manage or rely on charitable funds and endowments. But it would be a mistake to portray the passage of HB 416 as a response to economic uncertainty. The “fixes” in HB 416 are not made in response to economic turmoil – the changes are warranted now, regardless of economic circumstances. It is all about being “good stewards” of the donated or endowed dollars of others – a task that becomes harder and harder in the face of growing economic turmoil.

Prudent stewardship is all the more difficult in a demanding digital age using antiquated and inadequate analog tools. The proposed legislation can provide the tools to meet that donor intent while at the same time help develop long-term sustainability.

We know the economy is in turmoil, and that turmoil is hitting all Alaska organizations – government, corporate entities, education, tribal, private foundations, the nonprofit sector, and the University of Alaska. The economic situation makes this legislation timely, but it is change that should come regardless.

Please feel free to contact Foraker Vice President Dr. Michael Walsh with any questions you might have. He can be reached via email at mwalsh@forakergroup.org

Sincerely,

A handwritten signature in cursive script that reads "Dennis McMillian".

Dennis McMillian, President
The Foraker Group