



## 1997 ASSEMBLY BILL 458

July 15, 1997 - Introduced by Representatives CULLEN and GREEN, cosponsored by Senators GEORGE and HUELSMAN. Referred to Committee on Financial Institutions.

1     **AN ACT** *to repeal* 881.06; *to amend* 20.907 (1), 36.29 (1), 40.82 (2), 66.04 (2) (b)  
2             and 881.02; and *to repeal and recreate* 881.01 of the statutes; **relating to:**  
3             regulating the investments of trustees.

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### *Analysis by the Legislative Reference Bureau*

Under current law, trustees are bound by the prudent person rule. That is, they are required to invest the trust's assets conservatively. For example, no more than 50% of the trust's assets may consist of common stocks. This act replaces the prudent person rule with the Uniform Prudent Investor Act, which sets general standards for trustees, allows them greater flexibility in choosing investments, specifies that their work is to be judged on the basis of the performance of all of their investments, allows them to delegate investment decisions and requires them to consider the tax consequences of investments. These changes also affect state and local deferred compensation plans, the historical society's funds that are invested by the investment board, municipal cemetery funds, employe welfare funds, wards' estates, care funds and preneed trust funds.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

4             **SECTION 1.** 20.907 (1) of the statutes is amended to read:

**ASSEMBLY BILL 458****SECTION 1**

1           20.907 (1) ACCEPTANCE AND INVESTMENT. Unless otherwise provided by law, all  
2 gifts, grants, bequests and devises to the state or to any state agency for the benefit  
3 or advantage of the state, whether made to trustees or otherwise, shall be legal and  
4 valid when approved by the joint committee on finance and shall be executed and  
5 enforced according to the provisions of the instrument making the same, including  
6 all provisions and directions in any such instrument for accumulation of the income  
7 of any fund or rents and profits of any real estate without being subject to the  
8 limitations and restrictions provided by law in other cases; but no such accumulation  
9 shall be allowed to produce a fund more than 20 times as great as that originally  
10 given. ~~When such gifts, grants, bequests or devises include common stocks or other~~  
11 ~~investments which are not authorized by s. 881.01, such common stocks or other~~  
12 ~~investments may be held and may be exchanged, invested or reinvested in similar~~  
13 ~~types of investments without being subject to the limitations provided by law in other~~  
14 ~~cases.~~

15           **SECTION 2.** 36.29 (1) of the statutes is amended to read:

16           36.29 (1) All gifts, grants and bequests for the benefit or advantage of the  
17 system or any of its institutions, departments or facilities or to provide any means  
18 of instruction, illustration or knowledge in connection therewith, whether made to  
19 trustees or otherwise, shall be valid notwithstanding any other provision of this  
20 chapter except as otherwise provided in this subsection and shall be executed and  
21 enforced according to the provisions of the instrument making the same, including  
22 all provisions and directions in any such instrument for accumulation of the income  
23 of any fund or rents and profits of any real estate without being subject to the  
24 limitations and restrictions provided by law in other cases; but no such income  
25 accumulation shall be allowed to produce a fund more than 20 times as great as that

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1 originally given. When such gifts, grants or bequests include common stocks or other  
2 investments which are not authorized by ch. 881, the board may continue to hold  
3 such common stocks or other investments and exchange, invest or reinvest the funds  
4 of such gift, grant or bequest in similar types of investments without being subject  
5 to the limitations and restrictions provided by law in other cases. No such  
6 investment shall knowingly be made in any company, corporation, subsidiary or  
7 affiliate which practices or condones through its actions discrimination on the basis  
8 of race, religion, color, creed or sex. Except as otherwise provided in this section, the  
9 board may invest not to exceed 85% of trust funds held and administered by the board  
10 in common stocks, ~~the limitation of 50% in s. 881.01 (2) to the contrary~~  
11 ~~notwithstanding~~. This subsection does not apply to a gift, grant or bequest that the  
12 board declines to accept or that the board is not authorized to accept under this  
13 section.

14 **SECTION 3.** 40.82 (2) of the statutes is amended to read:

15 40.82 (2) Compensation which is withheld under a deferred compensation plan  
16 contract between an employer and an employe may be invested by the employer or  
17 a person other than the employer who is authorized by contract to administer the  
18 funds. The employer may determine the types of investments in which the deferred  
19 compensation funds may be invested. The deferred compensation funds may be  
20 invested and reinvested in the same manner provided for investments under s.  
21 881.01 (1).

22 **SECTION 4.** 66.04 (2) (b) of the statutes is amended to read:

23 66.04 (2) (b) Any town, city or village may invest surplus funds in any bonds  
24 or securities issued under the authority of the municipality, whether the bonds or  
25 securities create a general municipality liability or a liability of the property owners

**ASSEMBLY BILL 458****SECTION 4**

1 of the municipality for special improvements, and may sell or hypothecate the bonds  
2 or securities. Funds of any employer, as defined by s. 40.02 (28), in a deferred  
3 compensation plan may also be invested and reinvested in the same manner  
4 authorized for investments under s. 881.01 (1).

5 **SECTION 5.** 881.01 of the statutes is repealed and recreated to read:

6 **881.01 Uniform prudent investor act. (1) PRUDENT INVESTOR RULE.** (a)  
7 Except as otherwise provided in par. (b), a trustee who invests and manages trust  
8 assets owes a duty to the beneficiaries of the trust to comply with the prudent  
9 investor rule set forth in this section.

10 (b) The prudent investor rule, a default rule, may be expanded, restricted,  
11 eliminated or otherwise altered by the provisions of a trust. A trustee is not liable  
12 to a beneficiary to the extent that the trustee acted in reasonable reliance on the  
13 provisions of the trust.

14 **(2) STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES.** (a) A  
15 trustee shall invest and manage trust assets as a prudent investor would, by  
16 considering the purposes, terms, distribution requirements and other circumstances  
17 of the trust. In satisfying this standard, the trustee shall exercise reasonable care,  
18 skill and caution.

19 (b) A trustee's investment and management decisions about individual assets  
20 shall be evaluated not in isolation but in the context of the trust portfolio as a whole  
21 and as a part of an overall investment strategy having risk and return objectives  
22 reasonably suited to the trust.

23 (c) Among circumstances that a trustee shall consider in investing and  
24 managing trust assets are those of the following that are relevant to the trust or its  
25 beneficiaries:

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- 1           1. General economic conditions.
- 2           2. The possible effect of inflation or deflation.
- 3           3. The expected tax consequences of investment decisions or strategies.
- 4           4. The role that each investment or course of action plays within the overall
- 5 trust portfolio, which may include financial assets, interests in closely held
- 6 enterprises, tangible and intangible personal property and real property.
- 7           5. The expected total return from income and the appreciation of capital.
- 8           6. Other resources of the beneficiaries.
- 9           7. Needs for liquidity, regularity of income and preservation or appreciation of
- 10 capital.
- 11           8. An asset's special relationship or special value to the purposes of the trust
- 12 or to one or more of the beneficiaries.
- 13           (d) A trustee shall make a reasonable effort to verify facts relevant to the
- 14 investment and management of trust assets.
- 15           (e) A trustee may invest in any kind of property or type of investment consistent
- 16 with the standards of this section.
- 17           (f) A trustee who has special skills or expertise, or is named trustee in reliance
- 18 upon the trustee's representation that the trustee has special skills or expertise, has
- 19 a duty to use those special skills or expertise.
- 20           **(3) DIVERSIFICATION.** A trustee shall diversify the investments of the trust
- 21 unless the trustee reasonably determines that, because of special circumstances, the
- 22 purposes of the trust are better served without diversifying.
- 23           **(4) DUTIES AT INCEPTION OF TRUSTEESHIP.** Within a reasonable time after
- 24 accepting a trusteeship or receiving trust assets, a trustee shall review the trust's
- 25 assets and make and implement decisions concerning the retention and disposition

**ASSEMBLY BILL 458****SECTION 5**

1 of assets, in order to bring the trust portfolio into compliance with the purposes,  
2 terms, distribution requirements and other circumstances of the trust and with the  
3 requirements of this section.

4 (5) **LOYALTY.** A trustee shall invest and manage the trust's assets solely in the  
5 interest of the beneficiaries.

6 (6) **IMPARTIALITY.** If a trust has 2 or more beneficiaries, the trustee shall act  
7 impartially in investing and managing the trust assets, taking into account the  
8 differences between the interests of the beneficiaries.

9 (7) **INVESTMENT COSTS.** In investing and managing trust assets, a trustee may  
10 incur only costs that are appropriate and reasonable in relation to the assets, the  
11 purposes of the trust and the skills of the trustee.

12 (8) **REVIEWING COMPLIANCE.** Compliance with the prudent investor rule is  
13 determined in light of the facts and circumstances existing at the time of a trustee's  
14 decision or action and not by hindsight.

15 (9) **DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS.** (a) A trustee may  
16 delegate investment and management functions that a prudent trustee of similar  
17 skills could properly delegate under the circumstances. The trustee shall exercise  
18 reasonable care, skill and caution in all of the following:

19 1. Selecting an agent.

20 2. Establishing the scope and terms of the delegation, consistent with the  
21 purposes and terms of the trust.

22 3. Periodically reviewing the agent's actions in order to monitor the agent's  
23 performance and compliance with the terms of the delegation.

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

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1 (c) A trustee who complies with the requirements of par. (a) is not liable to the  
2 beneficiaries or to the trust for the decisions or actions of the agent to whom the  
3 function was delegated.

4 (d) By accepting the delegation of a trust function from the trustee of a trust  
5 that is subject to the law of this state, an agent submits to the jurisdiction of the  
6 courts of this state.

7 **(10) PHRASES INVOKING STANDARD OF THIS SECTION.** The following phrases or  
8 similar phrases in a trust, unless otherwise limited or modified, authorize any  
9 investment or strategy permitted under this section: “investments permissible by  
10 law for investment of trust funds”; “legal investments”; “authorized investments”;  
11 “using the judgment and care under the circumstances then prevailing that persons  
12 of prudence, discretion, and intelligence exercise in the management of their own  
13 affairs, not in regard to speculation but in regard to the permanent disposition of  
14 their funds, considering the probable income as well as the probable safety of their  
15 capital”; “prudent man rule”; “prudent trustee rule”; “prudent person rule”; and  
16 “prudent investor rule”.

17 **(11) APPLICATION TO EXISTING TRUSTS.** This section applies to trusts existing on,  
18 or created on or after, the effective date of this subsection .... [revisor inserts date].  
19 As applied to trusts existing on the effective date of this subsection .... [revisor inserts  
20 date], this section governs only decisions or actions occurring after that date.

21 **(12) UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This section shall be  
22 applied and construed to effectuate its general purpose to make uniform the law with  
23 respect to the subject of this section among the states that have enacted this uniform  
24 legislation.

25 **SECTION 6.** 881.02 of the statutes is amended to read:

