

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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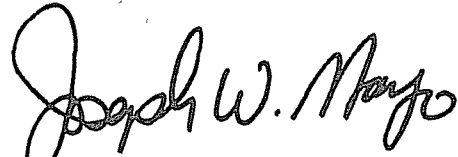
H.P. 796

House of Representatives, March 30, 1993

**An Act Adopting the Uniform Management of Institutional Funds Act.**

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Reference to the Committee on Judiciary suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative OTT of York.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 13 MRSA c. 95, as amended, is repealed.

6 Sec. 2. 13 MRSA c. 97 is enacted to read:

8 CHAPTER 97

10 UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

12 §4100. Short title

14 This chapter may be known and cited as the "Uniform Management of Institutional Funds Act."

16 §4101. Definitions

18 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

20 1. Endowment fund. "Endowment fund" means an institutional fund, or any part of an institutional fund, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

22 2. Gift instrument. "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

24 3. Governing board. "Governing board" means the body responsible for the management of an institution or an institutional fund.

26 4. Historic dollar value. "Historic dollar value" means the aggregate fair value in dollars of:

28 A. An endowment fund at the time it became an endowment fund;

30 B. Each subsequent donation to an endowment fund at the time it is made; and

32 C. Each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to an endowment fund.

34 The determination of historic dollar value made in good faith by the institution is conclusive.

2        5. Institution. "Institution" means an incorporated or  
4        unincorporated organization organized and operated exclusively  
6        for educational, religious, philanthropic or other charitable  
8        purposes, or a governmental organization to the extent that it  
10       holds funds exclusively for any of these purposes.

12       6. Institutional fund. "Institutional fund" means a fund  
14       held by an institution for its exclusive use, benefit or  
16       purposes, but does not include:

18           A. A fund held for an institution by a trustee that is not  
20           an institution; or

22           B. A fund in which a beneficiary that is not an institution  
24           has an interest, other than possible rights that could arise  
26           upon violation or failure of the purposes of the fund.

28        **§4102. Appropriation of appreciation**

30        The governing board may appropriate for expenditure for the  
32        uses and purposes for which an endowment fund is established as  
34        much of the net appreciation, realized and unrealized, in the  
36        fair value of the assets of an endowment fund over the historic  
38        dollar value of the fund as is prudent under the standard  
40        established by section 4106. This section does not limit the  
42        authority of the governing board to expend funds as permitted  
44        under other law, the terms of the applicable gift instrument or  
46        the charter of the institution.

48        **§4103. Rule of construction**

50        Section 4102 does not apply if the applicable gift  
52        instrument indicates the donor's intention that net appreciation  
54        not be expended. A restriction upon the expenditure of net  
56        appreciation may not be implied from a designation of a gift as  
58        an endowment or from a direction or authorization in the  
60        applicable gift instrument to use only income, interest,  
62        dividends or rents, issues or profits or to preserve the  
64        principal intact or a direction that contains other words of  
66        similar import. This rule of construction applies to gift  
68        instruments executed or in effect before or after the effective  
70        date of this chapter.

72        **§4104. Investment authority**

74        In addition to an investment otherwise authorized by law or  
76        by the applicable gift instrument, and without restriction to  
78        investments a fiduciary may make, the governing board, subject to  
80        any specific limitations set forth in the applicable gift  
82        instrument or in the applicable law other than a law relating to  
84        investments by a fiduciary, may:

2 1. Investment of fund in property. Invest and reinvest an  
4 institutional fund in any real or personal property considered  
6 advisable by the governing board, regardless of whether it  
8 produces a current return, including mortgages, stocks, bonds,  
debentures and other securities of profit or nonprofit  
corporations; shares in or obligations of associations,  
partnerships or individuals; and obligations of any government or  
subdivision or instrumentality of that government;

10 2. Retention of contributed property. Retain property  
12 contributed by a donor to an institutional fund for as long as  
the governing board considers advisable;

14 3. Inclusion of fund in another fund. Include all or any  
16 part of an institutional fund in any pooled or common fund  
maintained by the institution; and

18 4. Investment of fund in another fund. Invest all or any  
20 part of an institutional fund in any other pooled or common fund  
22 available for investment, including shares or interests in  
24 regulated investment companies, mutual funds, common trust funds,  
investment partnerships, real estate investment trusts or similar  
organizations in which funds are commingled and investment  
determinations are made by persons other than the governing board.

26 **§4105. Delegation of investment management**

28 Except as otherwise provided by the applicable gift  
30 instrument or by applicable law relating to governmental  
institutions or funds, the governing board may:

32 1. Delegation of authority. Delegate to its committees;  
34 officers or employees of the institution or the fund; or agents,  
36 including investment counsel, the authority to act in place of  
the governing board in investment and reinvestment of  
institutional funds;

38 2. Contracts. Contract with independent investment  
40 advisors, investment counsel, investment managers, banks or trust  
42 companies to act in place of the governing board in investment or  
reinvestment of institutional funds; and

44 3. Payment. Authorize the payment of compensation for  
46 investment advisory or management services.

46 **§4106. Standard of conduct**

48 In the administration of the powers to appropriate  
50 appreciation, to make and retain investments and to delegate  
52 investment management of institutional funds, members of a  
governing board shall exercise ordinary business care and  
prudence under the facts and circumstances prevailing at the time

2 of the action or decision. In so doing they shall consider  
4 long-term and short-term needs of the institution in carrying out  
6 its educational, religious, philanthropic or other charitable  
8 purposes; its present and anticipated financial requirements;  
10 expected total return on its investments; price-level trends; and  
12 general economic conditions.

14 **§4107. Release of restrictions on use or investment**

16 **1. Release of restriction with written consent.** With the  
18 written consent of the donor, the governing board may release, in  
20 whole or in part, a restriction imposed by the applicable gift  
22 instrument on the use or investment of an institutional fund.

24 **2. Release of restriction without written consent.** If  
26 written consent of the donor can not be obtained by reason of the  
28 donor's death, disability or unavailability or the impossibility  
30 of identification, the governing board may apply in the name of  
32 the institution to the appropriate court for release of a  
34 restriction imposed by the applicable gift instrument on the use  
36 or investment of an institutional fund. The Attorney General  
38 must be notified of the application and must be given an  
40 opportunity to be heard. If the court finds that the restriction  
42 is obsolete, inappropriate or impracticable, it may by order  
44 release the restriction in whole or in part. A release under  
46 this subsection may not change an endowment fund to a fund that  
48 is not an endowment fund.

50 **3. Purposes must remain charitable.** A release under this  
section may not allow an institutional fund to be used for  
purposes other than the educational, religious, philanthropic or  
charitable purposes of the institution affected.

**4. Cy pres doctrine unaffected.** This section does not  
limit the application of the doctrine of cy pres.

**§4108. Uniformity of application and construction**

This Act must be applied and construed as to effectuate its  
general purpose to make uniform the laws with respect to the  
subject of this Act among those states that enact it.

**§4109. Application**

This chapter applies to all institutional funds and  
endowment funds existing as of the effective date of this Act.

**Sec. 3. 18-A MRS §3-906, sub-§(a), ¶(4),** as enacted by PL 1979,  
c. 540, §1, is repealed and the following enacted in its place:

