

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION

October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR

FIRST REGULAR SESSION

NON-EMERGENCY LAWS IS

OCTOBER 13, 1993

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1993

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

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

Sec. 1. 13 MRSA c. 95, as amended, is repealed.

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

CHAPTER 97

UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

§4100. Short title

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

§4101. Definitions

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

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.

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.

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

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

- A. An endowment fund at the time it became an endowment fund;
- B. Each subsequent donation to an endowment fund at the time it is made; and
- C. Each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to an endowment fund.

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

5. Institution. "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, philanthropic or other charitable purposes, or a governmental organi-

zation to the extent that it holds funds exclusively for any of these purposes.

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

- A. A fund held for an institution by a trustee that is not an institution; or
- B. A fund in which a beneficiary that is not an institution has an interest, unless that interest is specifically set forth in the gift instrument as arising only upon violation or failure of the purpose of the fund.

§4102. Appropriation of appreciation

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

§4103. Rule of construction

Section 4102 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment or from a direction or authorization in the applicable gift instrument to use only income, interest, dividends or rents, issues or profits or to preserve the principal intact or a direction that contains other words of similar import.

§4104. Investment authority

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

1. Investment of fund in property. Invest and reinvest an institutional fund in any real or personal property considered advisable by the governing board, regardless of whether it 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;

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

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

4. Investment of fund in another fund. Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in 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.

§4105. Delegation of investment management

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

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

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

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

§4106. Standard of conduct

In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate 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 of the action or decision. In so doing they shall consider long-term and short-term needs of the institution in carrying out its educational, religious, philanthropic or other charitable purposes; its present and anticipated financial requirements; expected total return on its investments; price-level trends; and general economic conditions.

§4107. Release of restrictions on use or investment

1. Release of restriction with written consent. With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by

the applicable gift instrument on the use or investment of an institutional fund.

2. Release of restriction without written consent. If written consent of the donor can not be obtained by reason of the donor's death, disability or unavailability after a good faith effort to locate the donor or the impossibility of identification, the governing board may apply in the name of the institution to the appropriate court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. Unless the gift instrument specifically requires notice to other persons, only the Attorney General must be notified of the application and be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

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 Act applies to all institutional funds and endowment funds existing on or after the effective date of this Act. This Act applies to gift instruments executed or in effect on or after the effective date of this Act.

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

(4) The residuary estate must be distributed in a manner that is equitable.

Sec. 4. 19 MRSA §146, as enacted by PL 1987, c. 302, is amended by adding at the end a new paragraph to read:

This section does not apply to premarital agreements executed on or after October 1, 1993.

See title page for effective date.