

## INSTITUTIONAL FUNDS MANAGEMENT

### Footnotes

This chapter not enacted as a part of this title;  
transferred from chapter 122C in Code 1993

#### **540A.1 Short title.**

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

90 Acts, ch 1096, §1

C91, § 122C.1

C93, § 540A.1

#### **540A.2 Definitions.**

For purposes of this chapter and unless the context otherwise requires:

1. "*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*" 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. "*Historic dollar value*" means the aggregate fair value in dollars of all of the following:
  - a. An endowment fund at the time it becomes an endowment fund.
  - b. Each subsequent donation to the fund at the time it is made.
  - c. Each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.
4. "*Institution*" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.
5. "*Institutional fund*" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include a fund held for an institution by a trustee that is not an institution and does not include a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

90 Acts, ch 1096, §2

C91, § 122C.2

C93, § 540A.2

### **540A.3 Appropriation of appreciation.**

The governing board of an institution may appropriate for expenditure for the uses and purposes for which an endowment fund is established so 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 540A.7. 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.

90 Acts, ch 1096, §3

C91, § 122C.3

C93, § 540A.3

### **540A.4 Rule of construction.**

Section 540A.3 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation shall 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 which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after July 1, 1990.

90 Acts, ch 1096, §4

C91, § 122C.4

C93, § 540A.4

### **540A.5 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 of an institution, subject to specific limitations set forth in the applicable gift instrument or in the applicable law, other than law relating to investments by a fiduciary, may do any of the following:

1. Invest and reinvest an institutional fund in real or personal property deemed advisable by the governing board, whether or not the investment or reinvestment 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 a government or subdivision or instrumentality of a government.
2. Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.
3. Include all or any part of an institutional fund in any pooled or common fund maintained by the institution.
4. Invest all or part of an institutional fund in another 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.

90 Acts, ch 1096, §5

C91, § 122C.5

C93, § 540A.5

#### **540A.6 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 of an institution may do any of the following:

1. Delegate to committees, officers, or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in the investment and reinvestment of institutional funds.
2. Contract with independent investment advisors, investment counsel or managers, banks, or trust companies, to act in place of the board in the investment and reinvestment of institutional funds.
3. Authorize the payment of compensation for investment advisory or management services.

90 Acts, ch 1096, §6

C91, § 122C.6

C93, § 540A.6

#### **540A.7 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 of an institution 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, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

90 Acts, ch 1096, §7

C91, § 122C.7

C93, § 540A.7

#### **540A.8 Release of restrictions on use or investment.**

1. With the written consent of the donor, the governing board of an institution 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. If written consent of the donor cannot be obtained by reason of death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the district court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall 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 shall not change an endowment fund into a fund that is not an endowment fund.

3. A release under this section shall not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

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

90 Acts, ch 1096, §8

C91, § 122C.8

C93, § 540A.8

#### **540A.9 Uniformity of application and construction.**

This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact the uniform management of institutional funds Act.

90 Acts, ch 1096, §9

C91, § 122C.9

C93, § 540A.9