An Act To Enact the Uniform Prudent Management of Institutional Funds Act

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

Sec. 1. 13 MRSA c. 97, as amended, is repealed.

Sec. 2. 13 MRSA c. 99 is enacted to read:

CHAPTER 99

UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

§ 5101. Short title

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

§ 5102. Definitions

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

1. Charitable purpose. "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose or any other purpose the achievement of which is beneficial to the community.

2. Endowment fund. "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. "Endowment fund" does not include assets that an institution designates as an endowment fund for its own use.

3. Gift instrument. "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to or held by an institution as an institutional fund.

4. Institution. "Institution" means:

A. A person, other than an individual, organized and operated exclusively for charitable purposes;

B. A government or governmental subdivision, agency or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or

C. A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

5. Institutional fund. "Institutional fund" means a fund held by an institution exclusively for charitable purposes. "Institutional fund" does not include:

A. Program-related assets;

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

C. A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

6. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

7. Program-related asset. "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

8. Record. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 5103. Standard of conduct in managing and investing institutional fund

1. Consideration of purposes. Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

2. Loyalty; good faith; care. In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

3. Costs; facts. In managing and investing an institutional fund, an institution:

A. May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution and the skills available to the institution; and

B. Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

4. Pooling funds. An institution may pool 2 or more institutional funds for purposes of management and investment.

5. Rules. Except as otherwise provided by a gift instrument, the following rules apply.

A. In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences, if any, of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall investment portfolio of the fund;

(5) The expected total return from income and the appreciation of investments;

(6) Other resources of the institution;

(7) The needs of the institution and the fund to make distributions and to preserve capital; and

(8) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

B. Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

C. Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

D. An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

E. Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

F. A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

§ 5104. Appropriation for expenditure or accumulation of endowment fund; rules of construction

1. Appropriate; accumulate; donor-restricted; good faith; care. Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

A. The duration and preservation of the endowment fund;

B. The purposes of the institution and the endowment fund;

C. General economic conditions;

D. The possible effect of inflation or deflation;

E. The expected total return from income and the appreciation of investments;

F. Other resources of the institution; and

G. The investment policy of the institution.

2. Limitation. To limit the authority to appropriate for expenditure or accumulate under subsection 1, a gift instrument must specifically state the limitation.

3. Terms. Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends" or "rents, issues or profits," or "to preserve the principal intact" or words of similar import:

A. Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

B. Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection 1.

§ 5105. Delegation of management and investment functions

1. Delegation. Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

A. Selecting an agent;

B. Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

C. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

2. Agent's duty. In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

3. Liability of institution. An institution that complies with subsection 1 is not liable for the decisions or actions of an agent to which the function was delegated.

4. Submits to jurisdiction. By accepting delegation of a management or investment function from an institution that is subject to the laws of this State, an agent submits to the jurisdiction of the courts of this State in all proceedings arising from or related to the delegation or the performance of the delegated function.

5. Committees; officers; employees. An institution may delegate management and investment functions to its committees, officers or employees as authorized by the laws of this State other than provisions of this chapter.

§ 5106. Release or modification of restrictions on management, investment or purpose

1. Release or modification of restriction with consent. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

2. Modification of restriction by court. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

3. Modification by court when unlawful, impracticable, impossible or wasteful restriction. If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application and the Attorney General must be given an opportunity to be heard.

4. Release or modification by institution. If an institution determines that a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund is unlawful, impracticable, impossible to achieve or wasteful, the institution, 60 days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

A. The institutional fund subject to the restriction has a total value of less than $100,000, except that the dollar limit established in this paragraph must be adjusted for inflation in accordance with the annual percentage change in the Consumer Price Index for all Urban Consumers, CPI-U, as compiled by the United States Department of Labor, Bureau of Labor Statistics, or its successor index, using 2007 as the base year. On or before January 1, 2010, and each even-numbered year thereafter, the Attorney General shall calculate the adjusted dollar amount for the next 2-year cycle using inflation for the prior 2 calendar years as of the date of the calculation. The adjusted exemption must be rounded upward to the nearest $100 increment. The Attorney General shall certify the amount of the adjustment for the next 2-year cycle and shall publish the amount on the Attorney General's publicly accessible website;

B. More than 20 years have elapsed since the fund was established; and

C. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

§ 5107. Reviewing compliance

Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken and not by hindsight.

§ 5108. Application to existing institutional funds

This chapter applies to institutional funds existing on or established after July 1, 2010. As applied to institutional funds existing on July 1, 2010, this chapter governs only decisions made or actions taken on or after that date.

§ 5109. Relation to federal Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(a), or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b).

§ 5110. Uniformity of application and construction

In applying and construing this uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 5111. Effective date

This chapter takes effect July 1, 2010.

SUMMARY

This bill repeals the existing Uniform Management of Institutional Funds Act and replaces it with the Uniform Prudent Management of Institutional Funds Act adopted by the National Conference of Commissioners on Uniform State Laws in 2006. The Prefatory Note and Uniform Comments are included.

This bill does not include the optional clause identifying 7% as the maximum level of "prudent spending."

This bill increases the amount that defines a small fund for which an institution may release or modify a restriction according to cy pres principles but without court approval. The dollar limit is established at $100,000, but must be indexed to inflation by the Attorney General. The restriction may be released or modified only if the fund is at least 20 years old and the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

This bill takes effect July 1, 2010.