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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

ENROLLED

SENATE BILL NO. 88

(By Mr. Maryland and Mr. Hinkle)

PASSED March 10, 1979

In Effect ninety days from Passage
AN ACT to repeal sections two-a and two-b, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter forty-four of said code by adding thereto a new article, designated article six-a, relating to adoption of the "Uniform Management of Institutional Funds Act"; short title; definitions; appreciation; investment authority; delegation of management; standard of conduct; release of restrictions on use of investment; and uniformity of application and construction.

Be it enacted by the Legislature of West Virginia:

That sections two-a and two-b, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter forty-four of said code be amended by adding thereto a new article, designated article six-a, to read as follows:

ARTICLE 6A. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT.

§44-6A-1. Short title.

1 This article shall be known as the "Uniform Management of Institutional Funds Act."

§44-6A-2. Definitions.

1 The following words or phrases as used in this article shall have the meanings ascribed to them in this section, unless the context of this article clearly indicates otherwise:
(a) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

(b) "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;

(c) "Governing board" means the body responsible for the management of an institution or of an institutional fund;

(d) "Historic dollar value" means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) 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;

(e) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable or other eleemosynary purpose, or a governmental organization to the extent that it holds funds exclusively for any of these purposes;

(f) "Institutional fund" means a fund held by an institution for its exclusive use, benefit or purposes, but does not include (i) a fund held for an institution by a trustee that is not an institution or (ii) 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.

§44-6A-3. Appropriation of appreciation; rule of construction.

(a) The governing board 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
six of this article. 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 instru-
ment, or the charter of the institution.

(b) Subsection (a) of this section does not apply if
the applicable gift instrument indicates the donor's in-
tention that net appreciation shall not be expended. A
restriction upon the expenditure of net appreciation may
not be implied from a designation of a gift as an endow-
ment, or from a direction or authorization in the appli-
cable 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
the effective date of this article.

§44-6A-4. 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 appli-
cable law other than law relating to investments by a
fiduciary, may:

(a) Invest and reinvest an institutional fund in any
real or personal property deemed advisable by the gov-
erning board, whether or not it produces a current re-
turn, including mortgages, stocks, bonds, debentures and
other securities of profit or nonprofit corporations, shares
in or obligations of associations, partnerships or individ-
uals, and obligations of any government or subdivision
or instrumentality thereof;

(b) Retain property contributed by a donor to an
institutional fund for as long as the governing board
deems advisable;

(c) Include all or any part of an institutional fund in
any pooled or common fund maintained by the institu-
tion; and
(d) 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.


Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may (1) 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 board in investment and reinvestment of institutional funds, (2) contract with independent investment advisors, investment counsel or managers, banks or trust companies, so to act, and (3) authorize the payment of compensation for investment advisory or management services.


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 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.

§44-6A-7. Release of restrictions on use or investment; cy pres.

(a) 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.

(b) If written consent of the donor cannot be obtained
by reason of his death, disability, unavailability or impossibility of identification, the governing board may apply in the name of the institution to the circuit court of the county in which the institution is located 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 may not change an endowment fund to a fund that is not an endowment fund.

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

(d) This section does not limit the application of the doctrine of *cy pres*.

§44-6A-8. Uniformity of application and construction.

This article shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. Wilcomb Wills
Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ____________ this the ____________ day of ____________, 1979.

Governor