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APPROVED AND SIGNED BY THE GOVERNOR

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OFFICE  
ECY. OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

## ENROLLED

SENATE BILL NO. 88

(By Mr. Marland & Mr. Hince)

PASSED March 10, 1979

In Effect ninety days from Passage

No. 88

19 MAR 27 PII: 43

ENROLLED

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### Senate Bill No. 88

(By MR. MORELAND and MR. HINKLE)

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[Passed March 10, 1979; in effect ninety days from passage.]

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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article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter forty-four of said code be amended by adding thereto a new article, designated article six-a, to read as follows: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 Manage-  
2 ment of Institutional Funds Act."

##### §44-6A-2. Definitions.

1 The following words or phrases as used in this article  
2 shall have the meanings ascribed to them in this section,  
3 unless the context of this article clearly indicates other-  
4 wise:

5 (a) "Endowment fund" means an institutional fund,  
6 or any part thereof, not wholly expendable by the institu-  
7 tion on a current basis under the terms of the applicable  
8 gift instrument;

9 (b) "Gift instrument" means a will, deed, grant, con-  
10 veyance, agreement, memorandum, writing or other gov-  
11 erning document (including the terms of any institu-  
12 tional solicitations from which an institutional fund re-  
13 sulted) under which property is transferred to or held  
14 by an institution as an institutional fund;

15 (c) "Governing board" means the body responsible  
16 for the management of an institution or of an institu-  
17 tional fund;

18 (d) "Historic dollar value" means the aggregate fair  
19 value in dollars of (i) an endowment fund at the time it  
20 became an endowment fund, (ii) each subsequent dona-  
21 tion to the fund at the time it is made, and (iii) each  
22 accumulation made pursuant to a direction in the appli-  
23 cable gift instrument at the time the accumulation is  
24 added to the fund. The determination of historic dollar  
25 value made in good faith by the institution is conclusive;

26 (e) "Institution" means an incorporated or unincor-  
27 porated organization organized and operated exclusively  
28 for educational, religious, charitable or other eleemosy-  
29 nary purpose, or a governmental organization to the  
30 extent that it holds funds exclusively for any of these  
31 purposes;

32 (f) "Institutional fund" means a fund held by an in-  
33 ~~situation~~stitution for its exclusive use, benefit or purposes, but  
34 does not include (i) a fund held for an institution by a  
35 trustee that is not an institution or (ii) a fund in which  
36 a beneficiary that is not an institution has an interest,  
37 other than possible rights that could arise upon violation  
38 or failure of the purposes of the fund.

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

1 (a) The governing board may appropriate for expen-  
2 diture for the uses and purposes for which an endowment  
3 fund is established so much of the net appreciation, re-  
4 alized and unrealized, in the fair value of the assets of an

*gov* *stitution*

5 endowment fund over the historic dollar value of the fund  
6 as is prudent under the standard established by section  
7 six of this article. This section does not limit the authority  
8 of the governing board to expend funds as permitted  
9 under other law, the terms of the applicable gift instru-  
10 ment, or the charter of the institution.

11 (b) Subsection (a) of this section does not apply if  
12 the applicable gift instrument indicates the donor's in-  
13 tention that net appreciation shall not be expended. A  
14 restriction upon the expenditure of net appreciation may  
15 not be implied from a designation of a gift as an endow-  
16 ment, or from a direction or authorization in the appli-  
17 cable gift instrument to use only "income," "interest,"  
18 "dividends," or "rents, issues or profits," or "to preserve  
19 the principal intact," or a direction which contains other  
20 words of similar import. This rule of construction applies  
21 to gift instruments executed or in effect before or after  
21 the effective date of this article.

**§44-6A-4. Investment authority.**

1 In addition to an investment otherwise authorized by  
2 law or by the applicable gift instrument, and without  
3 restriction to investments a fiduciary may make, the  
4 governing board, subject to any specific limitations set  
5 forth in the applicable gift instrument or in the appli-  
6 cable law other than law relating to investments by a  
7 fiduciary, may:

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

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

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

22 (d) Invest all or any part of an institutional fund in  
23 any other pooled or common fund available for invest-  
24 ment, including shares or interests in regulated invest-  
25 ment companies, mutual funds, common trust funds,  
26 investment partnerships, real estate investment trusts or  
27 similar organizations in which funds are commingled and  
28 investment determinations are made by persons other  
29 than the governing board.

**§44-6A-5. Delegation of investment management.**

1 Except as otherwise provided by the applicable gift  
2 instrument or by applicable law relating to governmental  
3 institutions or funds, the governing board may (1) dele-  
4 gate to its committees, officers or employees of the insti-  
5 tution or the fund, or agents, including investment coun-  
6 sel, the authority to act in place of the board in invest-  
7 ment and reinvestment of institutional funds, (2) con-  
8 tract with independent investment advisors, investment  
9 counsel or managers, banks or trust companies, so to act,  
10 and (3) authorize the payment of compensation for in-  
11 vestment advisory or management services.

**§44-6A-6. Standard of conduct.**

1 In the administration of the powers to appropriate  
2 appreciation, to make and retain investments, and to  
3 delegate investment management of institutional funds,  
4 members of a governing board shall exercise ordinary  
5 business care and prudence under the facts and circum-  
6 stances prevailing at the time of the action or decision.  
7 In so doing they shall consider long and short term needs  
8 of the institution in carrying out its educational, religious,  
9 charitable or other eleemosynary purposes, its present  
10 and anticipated financial requirements, expected total  
11 return on its investments, price level trends and general  
12 economic conditions.

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

- 1 (a) With the written consent of the donor, the gov-  
2 erning board may release, in whole or in part, a restric-  
3 tion imposed by the applicable gift instrument on the  
4 use or investment of an institutional fund.
- 5 (b) If written consent of the donor cannot be obtained

6 by reason of his death, disability, unavailability or im-  
7 possibility of identification, the governing board may  
8 apply in the name of the institution to the circuit court  
9 of the county in which the institution is located for  
10 release of a restriction imposed by the applicable gift  
11 instrument on the use or investment of an institutional  
12 fund. The attorney general shall be notified of the ap-  
13 plication and shall be given an opportunity to be heard.  
14 If the court finds that the restriction is obsolete, inap-  
15 propriate or impracticable, it may by order release the  
16 restriction in whole or in part. A release under this  
17 subsection may not change an endowment fund to a fund  
18 that is not an endowment fund.

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

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

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

1 This article shall be so applied and construed as to  
2 effectuate its general purpose to make uniform the law  
3 with respect to the subject of this act among those states  
4 which enact it.

Enr. S. B. No. 88]

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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*James L. Davis*  
Chairman Senate Committee

*Clarence C. Christensen*  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

*J. C. Dillon Jr.*  
Clerk of the Senate

*W. B. Blackenship*  
Clerk of the House of Delegates

*W. B. Blackenship*  
President of the Senate

*W. B. Blackenship*  
Speaker House of Delegates

The within *is approved* this the *27*

day of *March*, 1979.

*John A. Riley*  
Governor





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