

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 200  
Judiciary

(Delegate Carter)

Judicial Proceedings

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Maryland Uniform Prudent Management of Institutional Funds Act

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This emergency bill establishes the Maryland Uniform Prudent Management of Institutional Funds Act, replacing the existing Maryland Uniform Management of Institutional Funds Act.

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Fiscal Summary

**State Effect:** The bill is not expected to directly affect State finances.

**Local Effect:** The bill is not expected to directly affect local government finances.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill generally applies to institutional funds held exclusively for charitable purposes by (1) an institution organized and operated exclusively for charitable purposes; (2) a governmental entity; or (3) a trust for which a charity acts as trustee. The bill contains various provisions concerning:

- management and investment conduct, including exercising ordinary business care and prudence under the existing, prevailing facts and circumstances, an express obligation regarding cost management, a standard of whole portfolio management, a diversification requirement, and provision for a special skills standard of performance;

- expenditure or accumulation of endowment funds, including elimination of the concept of historic dollar value;
- a rebuttable presumption of imprudence of the appropriation for expenditure in any year of an amount greater than 7% of the fair market value of an endowment fund and a requirement that the Attorney General be notified of such an appropriation (not applicable to appropriations permitted under other law or by the gift instrument);
- delegation of management and investment functions, including: (1) requiring that ordinary business care and prudence under the existing, prevailing facts and circumstances be exercised in selecting an external agent, establishing the scope and terms of the delegation, and periodically reviewing the actions of the agent; (2) establishing a duty of reasonable care for the agent; and (3) subjecting the agent to court jurisdiction;
- release or modification of a restriction on the management, investment, or purpose of an institutional fund with the consent of the donor;
- standards for the release or modification of a restriction on the management, investment, or purpose of an institutional fund: (1) by a court of competent jurisdiction (modification only), on application of an institution; or (2) in the case of a fund with a total value of less than \$50,000 that has been in existence for more than 20 years, by the institution 60 days after notification of the Attorney General; and
- standards for the modification of a charitable purpose, or restriction on the use, of an institutional fund, by a court of competent jurisdiction on application of an institution.

The bill applies to institutional funds existing on or established after the date the bill takes effect. With respect to funds existing on the date the bill takes effect, it only governs decisions made or actions taken on or after that date.

**Current Law:** The existing Maryland Uniform Management of Institutional Funds Act, which is similar to the bill, generally applies to institutional funds held by (1) an incorporated or unincorporated organization organized and operated exclusively for charitable or other specified purposes, for the institution’s exclusive use, benefit, or purposes; or (2) a governmental organization to the extent it holds funds exclusively for charitable or other specified purposes. The existing act includes provisions relating to:

- prudent spending of realized and unrealized net appreciation in the assets of an endowment fund in excess of the specified “historic dollar value” of the fund (generally the dollar value of the fund, at the time of its establishment, and of

assets donated to or accumulated by the fund at the time of their donation or accumulation);

- permissible investment and management of an institutional fund;
- the ability of an institution to delegate authority to invest and reinvest institutional funds to committees, officers, or employees of the institution or fund and to contract with investment advisors, investment counsel or managers, banks, or trust companies;
- exercise of ordinary business care and prudence by the governing body of the institution, under the existing, prevailing facts and circumstances, and related considerations to be taken into account;
- release of a restriction on the use or investment of an institutional fund with the consent of the donor; and
- release of a restriction on the use or investment of an institutional fund, if the consent of the donor cannot be obtained, by a circuit court on application of the institution.

**Background:** The Maryland Uniform Prudent Management of Institutional Funds Act (UPMIFA) is a slightly modified version of the 2006 UPMIFA drafted and approved and recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws (NCCUSL). According to NCCUSL, the 2006 UPMIFA has so far been adopted in 28 states and the District of Columbia. NCCUSL also drafted and approved in 1972 the Uniform Management of Institutional Funds Act (UMIFA), which was enacted by 47 states, including Maryland, and the District of Columbia. The Maryland UMIFA was enacted by Chapter 838 of 1973 and has not been substantively amended since.

According to a prefatory note of the 2006 UPMIFA the new Act “provides modern articulations of the prudence standards for the management and investment of charitable funds and for endowment spending.” Notably, NCCUSL indicates the Act (1) gives updated and more useful guidance for management and investment of institutional funds; (2) improves the protection of donor intent with respect to endowment spending; (3) improves endowment spending requirements by eliminating the “historic dollar value” concept and instead providing better guidance with respect to the operation of the prudence standard, with emphasis on the permanent nature of the endowment fund; (4) includes an optional provision establishing a presumption of imprudence of spending of more than 7% of an endowment fund in any year; and (5) updates provisions regarding the release or modification of fund restrictions to allow for more efficient management of a fund.

## **Additional Information**

**Prior Introductions:** HB 1467 of 2008, a similar bill, passed the House and received a hearing in the Senate Judicial Proceedings Committee but no further action was taken.

**Cross File:** None.

**Information Source(s):** Comptroller's Office, Judiciary (Administrative Office of the Courts), St. Mary's College, University System of Maryland, National Conference of Commissioners on Uniform State Laws, Department of Legislative Services

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