

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 594
Judiciary

(Delegates Eckardt and Schisler)

Management of Institutional Funds - Appropriations from Endowment Funds

This bill modifies the Uniform Management of Institutional Funds Act (UMIFA) to authorize a governing board of an institutional fund to appropriate annually a fixed percentage of the historic dollar value of an endowment fund, either with written consent of the donor, or by circuit court order when the donor is unable to consent due to death, disability, or unavailability, or is impossible to identify. A circuit court is authorized to issue an order allowing a governing board to appropriate not more than 4% of the historic dollar value of a fund.

The bill applies to each endowment fund existing on or after the October 1, 2003 effective date.

Fiscal Summary

State Effect: The bill would not materially affect State operations or finances.

Local Effect: It is expected that any increase in the number of requests for court orders could be handled with existing resources of the circuit court.

Small Business Effect: None.

Analysis

Bill Summary: This bill allows a governing board of an institutional fund to appropriate for expenditure in whole or in part, the historic dollar value of an endowment fund with the written consent of a donor. When written consent of the donor cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, a governing board may apply to a circuit court for an order authorizing the governing board to appropriate annually a fixed percentage of the historic dollar of an endowment fund.

Requirements for Circuit Court Order

A circuit court is authorized to pass an order allowing a governing board to appropriate annually a fixed percentage of not more than 4% of the historic dollar value of an endowment fund if the court finds that (1) the governing board meets each statutory requirement concerning the investment and management of the endowment fund; (2) the order will enable the governing board to implement to a greater extent the intent of the gift instrument; and (3) the governing board complies with the notice requirement under the Act.

Additionally, a court must consider all factors relevant to the endowment fund, including the following:

- the nature, purpose, and expected duration of the endowment fund;
- intent of the donor of the property subject to the gift instrument;
- the identity and circumstances of each interested person under the gift instrument;
- the need for liquidity, regularity of income, and appreciation of capital;
- the nature, use, and source of the assets in the endowment fund;
- the terms of the gift instrument;
- the nature of previous appropriations from the historic dollar value or appreciation of the endowment fund;
- actual and anticipated effect of economic conditions on the historic dollar value and appreciation of the fund, including the effect of inflation and deflation; and
- anticipated tax consequences of an appropriation from the historic dollar value of a fund.

Restrictions on Appropriations

A governing board may not appropriate more than the percentage of the historic dollar value authorized under a court order, averaged over the lesser of the preceding three years or the period that the endowment fund has been in existence. A court order does not affect any provision in a gift instrument that directs or authorizes the governing board to appropriate a portion of the historic dollar value. Appropriations authorized under the bill would be paid first from the net appreciation of the endowment fund and then from the historic dollar value.

Duties of the Governing Board

The governing board is required to determine:

- the effect of other payments from or contributions to the endowment fund, on the historic dollar value;
- how frequently to value nonliquid assets in an endowment fund and whether to estimate their value; and
- whether to omit from the calculations endowment fund property that is occupied or possessed by an interested person under the gift instrument.

Limitations on a Circuit Court Order

A circuit court may not pass an order authorizing an appropriation from the historic dollar value of a fund that would change the amount payable as a fixed annuity or fixed fraction of the endowment fund assets. Nor may a court order **require** a governing board to appropriate an expenditure from the historic dollar value of a fund.

Notice Requirements

A governing board is required to mail notice of its application for a court order to each interested person under the applicable gift instrument who is known to the board who does not consent in writing to the order. The notice must include (1) the name and address of the governing board and the name and telephone number of a contact person; (2) a description of the application filed; (3) the time within which written consent may be given to the board; and (4) the date on or after which a court order regarding the application may be passed. The time period for giving written consent to the board must be at least 30 days after the mailing. A court order may not be passed before the consent period has expired.

Interested persons under the gift instrument who do not consent to the application for a court order may file an answer in the circuit court in which the application is filed and enter an appearance as a party in the proceeding.

Current Law: UMIFA was adopted in Maryland in 1973. This Act clarifies the right of governing boards to invest funds of institutions such as hospitals and colleges for total return. This means that governing boards could, for example, invest in growth stocks paying low or no dividends but having a high potential for appreciation in long-term value, rather than concentrate entirely on investments with immediate high-income yields.

The Act also sets a standard of conduct for governing boards of institutions that requires members to exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing, they must consider long- and short-term needs of the institution in carrying out its purposes, its

present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

A governing board may appropriate so much of the net appreciation 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 of conduct. "Historic dollar value" means the aggregate fair value in dollars of (1) an endowment fund at the time it became an endowment fund; (2) each subsequent donation to the fund at the time it is made; and (3) 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. This provision 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.

Under UMIFA, governing boards are allowed to retain professional investment counsel and managers, and to seek removal of restrictions on gifts which have become obsolete, inappropriate, or impracticable.

The Act also defines an institution as 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.

Additional Information

Prior Introductions: None.

Cross File: SB 470 (Senator Colburn) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), State Prosecutor's Office, Comptroller's Office, Department of Legislative Services

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