

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 230

(Senators Kasemeyer and Frosh)

Judicial Proceedings

Judiciary

Maryland Uniform Prudent Management of Institutional Funds Act

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

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.

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 prudent investor rules, 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 and establishing a prudence rule with specific factors to be considered;
- delegation of management and investment functions, including: (1) establishing a good faith care standard of a prudent person to select an external agent, establish the scope and terms of the delegation, and periodically review 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 (not included in this bill); 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), Morgan State University, St. Mary's College, University System of Maryland, National Conference of Commissioners on Uniform State Laws, Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2009
mam/kdm Revised - Senate Third Reader - March 30, 2009

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510