

15:18-22 et seq.

LEGISLATIVE HISTORY CHECKLIST

NJSA 15:18-22 et seq.

Laws of 1975 Chapter 26

Bill No. S 947

Sponsor(s) Feldman

Date Introduced March 18, 1974

Committee: Assembly Taxation

Senate Labor, Industry & Professions

Amended during passage Yes No

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Following statements are attached if available:

Sponsor statement Yes No

Committee Statement: Assembly No

Senate No

Fiscal Note No

Veto message No

Message on signing No

Following were printed:

Reports No

Hearings No

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See; ~~TB100~~ "Uniform Management of Institutional Funds Act" in
~~N277~~ Handbook of the National Conference of Commissioners
on Uniform State Laws (1972), pp. 187-200

10/4/76

MAR 1977

CHAPTER 26 LAWS OF N. J. 1975
APPROVED 3-5-75

SENATE, No. 947

STATE OF NEW JERSEY

INTRODUCED MARCH 18, 1974

By Senator FELDMAN

Referred to Committee on Labor, Industry and Professions

AN ACT to establish guidelines for the management and use of investments held by eleemosynary institutions and funds, and repealing P. L. 1971, c. 256 (C. 15:18-1 et seq.).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. In this act:

2 a. "Institution" means an incorporated or unincorporated
3 organization organized and operated exclusively for educational,
4 religious, charitable, hospital or other eleemosynary purposes, or a
5 governmental organization to the extent that it holds funds
6 exclusively for any of these purposes;

7 b. "Institutional fund" means a fund held by an institution for
8 its exclusive use, benefit, or purposes, but does not include (1) a
9 fund held for an institution by a trustee that is not an institution
10 or (2) a fund in which a beneficiary that is not an institution has
11 an interest; other than possible rights that could arise upon viola-
12 tion or failure of the purposes of the fund;

13 c. "Endowment fund" means an institutional fund, or any part
14 thereof, not wholly expendable by the institution on a current basis
15 under the terms of the applicable gift instrument;

16 d. "Governing board" means the body responsible for the
17 management of an institution or of an institutional fund;

18 e. "Historic dollar value" means the aggregate fair value in
19 dollars of (1) an endowment fund at the time it became an endow-
20 ment fund, (2) each subsequent donation to the fund at the time
21 it is made, and (3) each accumulation made pursuant to a direction
22 in the applicable gift instrument at the time the accumulation is
23 added to the fund. The determination of historic dollar value
24 made in good faith by the institution is conclusive.

25 f. "Gift instrument" means a will, deed, grant, conveyance,
26 agreement, memorandum, writing, or other governing document
27 (including the terms of any institutional solicitations from which
28 an institutional fund resulted) under which property is transferred
29 to or held by an institution as an institutional fund.

1 2. The governing board may appropriate for expenditure for the
2 uses and purposes for which an endowment fund is established so
3 much of the net appreciation, realized and unrealized, in the fair
4 value of the assets of an endowment fund over the historic dollar
5 value of the fund as is prudent under the standard established by
6 section 6. This section does not limit the authority of the govern-
7 ing board to expend funds as permitted under other law, the terms
8 of the applicable gift instrument, or the charter of the institution.

1 3. Section 2 does not apply if the applicable gift instrument in-
2 dicates the donor's intention that net appreciation shall not be
3 expended. A restriction upon the expenditure of net appreciation
4 may not be implied from a designation of a gift as an endowment,
5 or from a direction or authorization in the applicable gift instru-
6 ment to use only "income," "interest," "dividends," or "rents,
7 issues or profits," or "to preserve the principal intact," or a
8 direction which contains other words of similar import. This rule
9 of construction applies to gift instruments executed or in effect
10 before or after the effective date of this act.

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

7 a. Invest and reinvest an institutional fund in any real or per-
8 sonal property deemed advisable by the governing board, whether
9 or not it produces a current return, including mortgages, stocks,
10 bonds, debentures, and other securities of profit or nonprofit
11 corporations, shares in or obligations of associations, partner-
12 ships, or individuals, and obligations of any government or sub-
13 division or instrumentality thereof;

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

16 c. Include all or any part of an institutional fund in any pooled
17 or common fund maintained by the institution; and

18 d. Invest all or any part of an institutional fund in any other
19 pooled or common fund available for investment, including shares

20 or interests in regulated investment companies, mutual funds,
21 common trust funds, investment partnerships, real estate invest-
22 ment trusts, or similar organizations in which funds are com-
23 mingled and investment determinations are made by persons other
24 than the governing board.

1 5. Except as otherwise provided by the applicable gift instru-
2 ment or by applicable law relating to governmental institutions or
3 funds, the governing board may a. delegate to its committees,
4 officers or employees of the institution or the fund, or agents, in-
5 cluding investment counsel, the authority to act in place of the
6 board in investment and reinvestment of institutional funds, b.
7 contract with independent investment advisors, investment counsel
8 or managers, banks, or trust companies, so to act, and c. authorize
9 the payment of compensation for investment advisory or manage-
10 ment services.

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

1 7. a. With the written consent of the donor, the governing board
2 may release, in whole or in part, a restriction imposed by the
3 applicable gift instrument on the use or investment of an institu-
4 tional fund.

5 b. If written consent of the donor cannot be obtained by reason
6 of his death, disability, unavailability, or impossibility of identifica-
7 tion, the governing board may apply in the name of the institution
8 to the Superior Court for release of a restriction imposed by the
9 applicable gift instrument on the use or investment of an institu-
10 tional fund. The Attorney General shall be notified of the applica-
11 tion and shall be given an opportunity to be heard. If the court
12 finds that the restriction is obsolete, inappropriate, or impracti-
13 cable, it may by order release the restriction in whole or in part.
14 A release under this subsection may not change an endowment
15 fund to a fund that is not an endowment fund.

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

19 d. This section does not limit the application of the doctrine of
20 *cy pres*.

1 8. If any provision of this act or the application thereof to any
2 person or circumstances is held invalid, the invalidity shall not
3 affect other provisions or applications of the act which can be
4 given effect without the invalid provision or application, and to
5 this end the provisions of this act are declared severable.

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

1 10. This act may be cited as the "Uniform Management of In-
2 stitutional Funds Act."

1 11. "The Educational Endowment Management Act," P. L. 1971,
2 c. 256 (C. 15:18-1 through C. 15:18-14) is repealed.

1 12. This act shall take effect immediately.

STATEMENT

This bill is a product of the National Conference of Commissioners on Uniform State Laws and is recommended by it for enactment in all states. Its purpose is to allow governing boards of eleemosynary institutions make more effective use of endowment and other investment funds. It provides for the use of appreciation of endowment funds, presently permitted under some circumstances by P. L. 1971, c. 256 (C. 15:18-1 et seq.). This existing law is similar in substance to the proposed act, but differs as follows:

1. The existing law applies only to "educational institutions," while the proposed act will apply to educational institutions, hospitals, religious institutions, etc.

2. The existing law requires approval of the Superior Court in a civil action to which the Attorney General is a party before the institution may use the appreciation of endowment funds for current expenses. Court approval is not required in the Uniform Act.

The Uniform Act also regulates areas not included in the existing law, as follows:

1. In a section on investment authority, it sets guidelines on the types of investment that can be made.

2. It clarifies the ability of the governing body of the institution to delegate investment management.

3. It provides for removal of outmoded restrictions on gifts, with the consent of the donor or by a civil action in the Superior Court.