

15:18-1

LEGISLATIVE FACT SHEET

ON "Educational Endowment Management Act"

N.J.R.S. 15:18-1

( Amendment )

LAWS OF 1971

CHAPTER 256 July 1, 1971

SENATE 2164

ASSEMBLY

INTRODUCED March 25, 1971

BY Bateman, Hering, Sears, Stout, Ridolfi

also Governor's Stmt. STATEMENT on signing.

YES

NO

AMENDED DURING PASSAGE

YES

NO

HEARING

VETO

STATEMENT to S2164, 1971

This bill is designed to encourage nonprofit educational institutions to take the greatest possible advantage of their endowments in meeting both their present and future needs by adopting an investment policy whose objective is to obtain the highest possible total rate of return.

Two objectives in investing endowment funds are invariably in competition: the desire to maximize interest and dividend income for current operations on the one hand, and the need for capital gains to preserve the true value of the corpus on the other. Under present practice, these opposing concerns are key factors in the process of investment decision making, to the detriment of overall investment efficiency and yield.

The practices authorized by this bill will permit, first, the allocation of resources between the needs of the present and those of the future to be rationally and explicitly made in the process of financial planning and budget making, and, second, investment decisions to be made solely on the basis of actual and expected conditions in money and capital markets and the prospects for various securities and other types of investment.

Each institution's plan of operation under the provisions of this bill is subject to court review and approval.

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7-22-68 L3/RSL

SENATE, No. 2164

STATE OF NEW JERSEY

INTRODUCED MARCH 25, 1971

By Senators BATEMAN, HIERING, SEARS, STOUT  
and RIDOLFI

Referred to Committee on Education

AN ACT concerning the investment and administration of endowment funds and the use of the return therefrom by nonprofit educational institutions and supplementing Title 15 of the Revised Statutes.

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

1 1. As used in this act, unless the context otherwise requires:

2 a. "Educational institution" means a nonprofit educational in-  
3 stitution created by special charter or organized under any general  
4 law of this State;

5 b. "Property" means money, preferred and common stocks,  
6 warrants, rights, options, bonds, debentures and other obligations  
7 of any corporation or governmental agency, notes or bonds secured  
8 by mortgages on real property, real property, leases, oil or  
9 mineral rights, timber rights or other property given to an educa-  
10 tional institution for endowment or without restriction;

11 c. "Endowment" means any property given to an educational  
12 institution which is permanently appropriated to any object or  
13 purpose by the terms of the gift instrument and with the use  
14 limited to the income from such property;

15 d. "Endowment pool" means a fund or funds established and  
16 maintained by an educational institution with property hereto-  
17 fore or hereafter given to it by a gift instrument either as en-  
18 dowment or for general use to which unit values are assigned for  
19 the collective investment and reinvestment of such property;

20 e. "Endowment pool income" means interest, dividends,  
21 warrants, rights, options, realized and unrealized gains adjusted  
22 for realized and unrealized losses, and other increments collected,  
23 received or accrued to an endowment pool;

24 f. "Gift instrument" means the will, deed, agreement, court  
25 order, pledge, subscription or other instrument or writing pur-  
26 suant to which property is given to an educational institution.

1 2. It is hereby declared to be in the public interest and to be  
2 the policy of the State to promote by all reasonable means the  
3 maintenance and growth of nonprofit educational institutions by  
4 encouraging them to establish and continue investment policies  
5 which will provide them with the means to meet the present and  
6 future needs of such educational institutions pursuant to the pro-  
7 visions of this act and at the same time secure the safety of the  
8 principal in an endowment pool.

1 3. Any educational institution may establish an endowment pool  
2 or pools consisting of any property or endowment heretofore or  
3 hereafter given to it by any gift instrument, and administer the  
4 property in such endowment pool in accordance with policies  
5 established by the educational institution and the terms of this act  
6 unless the gift instrument clearly and expressly otherwise provides.

1 4. In the establishment and maintenance of an endowment pool,  
2 or upon the transfer of property to an endowment pool after such  
3 pool is established, the educational institution shall divide the  
4 endowment pool into as many units as it may deem advisable, and  
5 it may increase or decrease the number of such units from time to  
6 time. Each unit shall at all times have the same value as every  
7 other unit or fraction of the same endowment pool. Participation  
8 in an endowment pool may consist of a whole unit or a number of  
9 whole units and may provide for the withdrawal of a whole unit  
10 only or a number of whole units.

1 5. In determining the value of a unit in an endowment pool:

2 a. An investment which is listed upon a stock, securities or in-  
3 vestment exchange, shall be valued at the last recorded sales price  
4 in the ten-day period next preceding the date as of which the valua-  
5 tion is made, unless, within the said ten-day period, and subsequent  
6 to the date of the last recorded sales price, there have been recorded  
7 bid and asked prices, in which case the mean of the latest of such  
8 bid and asked prices shall be taken to be the value of such invest-  
9 ment. An investment which is not listed upon a stock, securities or  
10 investment exchange, but which has an over-the-counter market,  
11 shall be valued at the mean of the last recorded bid and asked  
12 prices in the ten-day period next preceding the date as of which  
13 such valuation is made. If within the said ten-day period, there  
14 have been no recorded sales and no recorded bid and asked prices,  
15 the investment shall be valued at the mean of the last bid and

16 asked prices as of a date not earlier than thirty days prior to the  
17 date as of which such valuation is made as supplied by two stock  
18 or securities brokers deemed by the administrator or administrators  
19 of such endowment pool to be reliable. For the purposes of this  
20 paragraph a., recorded sales prices, and recorded bid and asked  
21 prices shall be those which appear in a newspaper of general  
22 circulation, or in a financial, statistical, investment, rating or other  
23 publication or service, published for the use of and accepted as  
24 reliable by investors in like investments or in the records of a  
25 stock, securities, or investment exchange;

26 b. Obligations of the United States which are not transferable  
27 or negotiable shall be valued at the redemption price thereof;

28 c. An investment about to be made, and an investment made and  
29 awaiting delivery against payment, shall be valued at the cost of  
30 acquisition thereof, and the cash account of the endowment pool  
31 shall be adjusted to reflect such cost of acquisition;

32 d. An investment sold but not delivered pending receipt of the  
33 proceeds of sale shall be valued at the net sale price thereof;

34 e. Uninvested funds of an endowment pool shall be included in  
35 the aggregate value of all the property of an endowment pool;

36 f. An investment which is not susceptible of valuation pursuant  
37 to the foregoing paragraphs of this section shall be valued by the  
38 treasurer or other chief financial officer of the educational  
39 institution;

40 g. The educational institution shall not amortize premiums paid  
41 upon the purchase of an investment for an endowment pool, nor  
42 shall it accumulate discount in respect of investments purchased at  
43 less than face or par value;

44 h. For the purposes of this act, an investment made pursuant  
45 to a commitment therefor shall be deemed to be made on the date  
46 when the commitment was made.

1 6. In investing and reinvesting money and property of an en-  
2 dowment pool and in acquiring, retaining, selling, exchanging and  
3 managing investments therein, an educational institution shall  
4 exercise such care and judgment under the circumstances then  
5 prevailing which persons of ordinary prudence and reasonable dis-  
6 cretion exercise in the management of their own affairs, considering  
7 the probable income as well as the probable safety of their capital  
8 in relation to their immediate and future needs.

1 7. The privilege and power conferred by this act shall be in  
2 addition to and not in restriction of any right, privilege or power  
3 which an educational institution may have with respect to the

4 creation, operation and administration of an endowment pool or  
5 which it may have by the provisions of the gift instrument.

1 8. In order to encourage educational institutions to attain the  
2 highest possible endowment pool income from investments in an  
3 endowment pool, an educational institution in establishing, main-  
4 taining or operating an endowment pool or pools may adopt a  
5 plan for the allocation of endowment pool income to the annual  
6 operating expenses of the institution and other recurring or non-  
7 recurring expenses of the institution in excess of the actual in-  
8 terest, dividends, income, rents, issues and profits yielded or earned  
9 by the endowment pool. Such plan shall not be effective until  
10 approved by the Superior Court of New Jersey, in a civil action  
11 instituted by the educational institution, to which the Attorney  
12 General of the State of New Jersey shall be made a party, in which  
13 action the court may proceed in a summary manner or otherwise.

1 9. If it appears in such action that the plan for allocation of  
2 endowment pool income to the annual operating and other recurring  
3 or nonrecurring expenses of the educational institution, constitutes  
4 a fair and equitable allocation of such income and is consistent with  
5 attaining the objects and carrying out the purposes of the institu-  
6 tion, in the light of present and future needs, the court shall  
7 approve the same and authorize the institution to carry out such  
8 plan until such time as the Court otherwise orders.

1 10. Whenever any gift instrument transferring property to an  
2 educational institution directs or authorizes it, or any agent or mem-  
3 ber thereof, to use, for the purpose of carrying out the gift, only the  
4 "income" or the "interest" or the "dividends" or the "rents,  
5 issues or profits" or uses words of similar import, such words shall,  
6 in the absence of an express provision to the contrary contained in  
7 such gift instrument, be deemed by the court in such action to in-  
8 clude such portion of endowment pool income as it may approve.

1 11. Such plan for allocation of a portion of endowment pool in-  
2 come need not conform to the provisions of the Principal and In-  
3 come Act (N. J. S. 3A:14A-1 et seq.) or any other statute or  
4 decisional law appertaining to the distribution of income, dividends,  
5 capital gains realized or unrealized, or other increments of value  
6 as between a life or other tenant and remainderman in a trust estate.

1 12. The powers conferred by this act shall not be deemed as any  
2 indication that educational institutions did not possess such powers  
3 prior to the effective date of this act.

1 13. Endowment pools established by an educational institution  
2 prior to the effective date of this act which conform with the pro-  
3 visions of sections 3 and 4 of this act are hereby validated.

1 14. This act shall be known and may be cited as the "Educational  
2 Endowment Management Act."

1 15. This act shall become effective immediately.

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#### STATEMENT

This bill is designed to encourage nonprofit educational institutions to take the greatest possible advantage of their endowments in meeting *both* their present and future needs by adopting an investment policy whose objective is to obtain the highest possible *total* rate of return.

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Each institution's plan of operation under the provisions of this bill is subject to court review and approval.

Statement of

Governor William T. Cahill

on Signing Senate Bill No. 2164

Senate Bill No. 2164 is a most important piece of legislation which will help insure the continued fiscal vitality of our private nonprofit educational institutions in New Jersey. The bill is called the Educational Endowment Management Act and will authorize private schools, with the approval of the Superior Court, to utilize a portion of the increasing principal value of their endowment funds to offset the cost of operating the institution.

Under the present law, only the interest and dividend income from endowment securities may be used by such educational institutions for current expenses. However, experience has shown that many investments held in trust generate very low current earnings but substantial increments in principal value from year to year. The act will allow the conversion of a portion of this incremental value into funds available to defer the current cost of education.

This bill has been uniformly recommended by all private educational institutions in the State, as well as my own Chancellor of Higher Education. Without such legislation the financial plight of our private educational institutions would soon reach the crisis point. I am happy to approve this method of allowing such institutions to utilize their funds most effectively to carry out their educational goals.