

**S B**

**1 3 4**

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 3/2/09

FURTHER: Finance

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 3/25/09

Education Committee considered SENATE BILL NO. 134

**SB 134 PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS**

"An Act adopting and relating to the Uniform Prudent Management of Institutional Funds Act; relating to the investment of money for charitable purposes by institutions, including governmental institutions; and relating to the University of Alaska."

and recommends:

- be replaced with  SCS or  CS SB 134 (EDC)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
<b>HOUSE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet	Zero	FN#
LAW	3/19/09			✓	

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	OLSON			✓	
	HIGGINS			X	
	DAVIS	X			
CHAIR:	Benjamin Davis				

# ALASKA STATE LEGISLATURE

## Senator Joe Paskvan

Chair, Labor and Commerce  
Vice Chair, Health and Social Services  
Member, Transportation  
Member, State Affairs  
Member, Joint Armed Services



*Senate District E*  
*Fairbanks and Fort Wainwright*

State Capitol Building, Room 7  
Juneau, Alaska 99801-1182

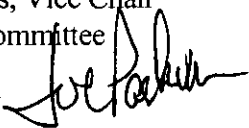
Phone (907) 465-3709

Fax (907) 465-4714

[sen.joe.paskvan@legis.state.ak.us](mailto:sen.joe.paskvan@legis.state.ak.us)

<http://paskvan.aksenate.org/>

To: Senator Bettye Davis, Vice Chair  
Senate Education Committee

From: Senator Joe Paskvan 

CC: Dana Owen, Senate Education Committee Aide

Date: March 9, 2009

Re: Request for Hearing for SB 134 – Prudent Management of Institutional Funds

---

I respectfully request Senate Bill 134 be scheduled for a hearing before the Senate Education Committee at your earliest convenience.

Development of the Uniform Prudent Management of Institutional Funds Act (UPMIFA) was driven by the inadequacy of current laws and guidance to allow effective administration of funds during the market downturn of 2001 and 2002. SB 134 would allow the State of Alaska to adopt UPMIFA standards, bringing to Alaska and its nonprofit community updated guidelines, requirements and standards for the administration of charitable funds and endowments that are consistent with national standards and essential in this time of economic crisis.

Included in this packet:

- Sponsor Statement
- SB 134 – 26-LS0487R
- Sectional Analysis
- Supporting Documents
- List of Witnesses, Teleconference Sites

If you have any questions or comments, please contact Jeff Stepp (465-4747).

Thank you for your consideration.

# ALASKA STATE LEGISLATURE

## Senator Joe Paskvan

Chair, Labor and Commerce  
Vice Chair, Health and Social Services  
Member, Transportation  
Member, State Affairs  
Member, Joint Armed Services

*Senate District E  
Fairbanks and Fort Wainwright*



State Capitol Building, Room 7  
Juneau, Alaska 99801-1182

Phone (907) 465-3709  
Fax (907) 465-4714  
sen.joe.paskvan@legis.state.ak.us  
<http://paskvan.aksenate.org/>

## Sponsor Statement

### Senate Bill 134: Prudent Management of Institutional Funds

Development of the Uniform Prudent Management of Institutional Funds Act (UPMIFA) was driven by the inadequacy of current laws and guidance to allow effective administration of funds during the market downturn of 2001 and 2002. Senate Bill 134 would allow the State of Alaska to adopt UPMIFA standards.

UPMIFA replaces obscure and obsolete rules and concepts with current industry best practices for the investment and management of endowments and charitable funds. It provides clear guidance on prudent practices and applicable standards for nonprofit administrators of endowments and charitable funds. Many of these administrators and trustees are volunteers and public spirited citizens who have much to offer, but little or no training in finance and fiduciary practices.

UPMIFA has already been adopted by 26 states and the District of Columbia during the last two years and is rapidly spreading across the country. It is expected to be adopted by the majority of the remaining states during 2009.

UPMIFA allows administrators to better determine what is expected of them and their institutions, and to determine which actions are prudent and which are not. The bill provides significant latitude for administrators in decision making so that funds can be effectively administered during widely varying conditions, but it identifies the factors to be considered in making prudent decisions regarding charitable funds held for the benefit of others. The bill also clarifies the order of precedence relative to other statutes and the application of the Act as it applies to the Board of Regents.

Senate Bill 134 would bring to Alaska and its nonprofit community updated guidelines, requirements and standards for the administration of charitable funds and endowments that are consistent with national standards and essential in this time of economic crisis.

It is important to note that UPMIFA is default legislation and applies only in the absence of other more specific requirements in law or governing instruments.

I urge your support of this legislation.

## AMENDMENT

OFFERED IN THE SENATE  
TO: SB 134 26-LS0487\R

BY SENATOR

Page 8, Line 21: Delete [ENDOWMENT] and insert institutional:

APPLICABILITY: AS 13.70, enacted by sec. 1 of this ACT, applies to an institutional [ENDOWMENT] fund held by an institution on or after the effective date of this Act and to decisions made or action taken by the institution relating to the institutional fund on or after the effective date of this Act.

# FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB134  
( ) Publish Date: \_\_\_\_\_

Identifier (file name): SB134-LAW-CIV-3-19-09  
Title: An Act relating to the Uniform Prudent Management of Institutional Funds Act  
Sponsor: SENATOR(S) PASKVAN  
Requester: Education  
Dept. Affected: LAW  
RDU: Civil  
Component: Commercial & Fair Business  
Component Number: 2717

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
-----------------------------	--	--	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>								
-------------------------------	--	--	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)

This act revises the Uniform Management of Institutional Funds Act of 1972, bringing the law governing charitable institutions in line with modern investment and expenditure practice. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Robert Meiners, Deputy Director  
Division: Administrative Services Division  
Approved by: Richard Svobodny, Acting Attorney General  
Department of Law

Phone 907-465-5427  
Date/Time 3/19/09 2:15 PM  
Date 3/19/2009

***Sectional Explanation of the  
UPMIFA Legislation  
March 9, 2009***

General:

In July, 2006 the National Commission on Uniform State Law approved the Uniform Prudent Management of Institutional Funds Act ("UPMIFA"). The Commission also approved a recommendation that UPMIFA be enacted by all states.

As of August 1, 2008, UPMIFA has been enacted by 26 states plus the District of Columbia and introduced or expected to be introduced in all but three of the remaining states. The Act provides guidance and authority for charitable organizations, regarding the management and investment of funds held by those organizations. The Act is default legislation, which applies only in the absence of provisions that are more explicit or contrary in law or the governing instruments. It permits charitable organization to use current investment techniques and strategies such as "total return" and to determine endowment fund distributions based on spending rates rather than outdated determinations of principal and income. The Act also provides current articulations of the prudence standard for the administration and investment of charitable funds and endowments.

The Uniform Prudent Investor Act, which was approved by the Commission in 1994 and adopted by the Alaska Legislature in 1998, served as a model for many of the provision of this Act. UPMIFA applies the same basic prudent investor rules and duties to non-profit corporations and associations. It imposes additional duties on the management and investment of charitable funds, which are intended to help assure compliance with the donor's intentions, assist in the implementation of prudent practices applicable to the investment and management of charitable funds, and to protect the charities themselves from the adverse consequences associated with failing to properly manage charitable funds held for the benefit of others when the requirements are not clear. It also clarifies and modernizes the rules governing expenditures from endowments by providing stricter guidelines on spending and allowing more flexibility for charities to cope with the inherent volatility of today's investment markets.

UPMIFA provides more efficient and less costly procedures for modification and/or release of restrictions on certain donated funds when the restrictions are unlawful, wasteful, impracticable, or impossible to achieve.

UPMIFA applies generally to all institutions organized and operated exclusively for charitable purposes. This includes non-profit corporations and associations; governmental subdivisions, agencies, and instrumentalities; trusts if a charity acts as trustee; any other forms of organization so organized and operated.

**Section 1.**

AS 13.70.010 - identifies the standards that apply to managing or investing an institutional fund, including the standard of prudence and the obligation to follow donor intent; the duty of loyalty as may be provided by other applicable statutes; the duty of care; the duty to minimize costs, the duty to investigate, the need to determine the disposition of property timely; the need for individuals to utilize the personal skills or expertise that they possess; and a host of investment issues that must be considered such as diversification, reasonableness of expenses, verification of facts, pooling of investments, economic conditions, total return, program needs, and authorized investments. The provisions of the legislation are default standards; if another standard in law or the governing instruments apply to a fund standards in this section will be of no effect.

AS 13.70.020 - modernizes the rules governing expenditures from endowments. The traditional trust principles limited expenditures from endowments to current realized income (interest, dividends and rents) and precluded the expenditure of capital appreciation, both realized and unrealized. This principle is not conducive to the use of many current investment vehicles and investment strategies, which emphasize total return and diversification and are now considered best practices. Most states abandoned traditional trust principles in the 1970s for the "historic dollar or gift value" principle, which limited distributions to income and capital appreciation in excess of the original amount of donations or contributions to the applicable fund. The historic gift value concept is replaced by a carefully worded prudence standard and a number of specific issues that must be considered in making appropriations for expenditure under UPMIFA.

AS 13.70.030 – provides rules for delegation of investment and management functions to external agents, which are similar to those of the Uniform Prudent Investment Act previously noted as adopted by Alaska in 1998. This section of the Act is actually another default provision. If the governing instruments or other statutes applicable to the fund contain more explicit or contrary provision this section, the governing instruments or other statutes would prevail.

AS 13.70.040 – provides that a restriction on a gift or fund may be released or modified provided the donor approves the release or modification and the funds are utilized for a charitable purposes of the institution. It also provides certain circumstances under which an institution may petition the courts to modify or release a donor restriction, if the Attorney General is notified and given an opportunity to comment on the proposal. This section also provides that the institution may release or modify a restriction if the institution determines that the restriction is unlawful, impracticable, impossible to achieve, or wasteful; the value of the fund is less than \$50,000; the fund has been in existence for more than 20 years; the Attorney General is notified and given an opportunity to comment on the proposal; and the institution utilizes the funds in a manner consistent with the charitable purpose of the fund or gift.

AS 13.70.050 – provides that compliance with this ACT is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not in the light of hindsight.

Sectional Explanation of the Proposed  
UPMIFA Legislation  
March 9, 2009

AS 13.70.060 – authorizes electronic signatures.

AS 13.70.070 – clarifies the default nature of the Act.

AS 13.70.080 – provides for uniformity of application and construction among the states.

AS 13.70.090 – provides definitions for terms which are critical to implementation of the statutory provisions of the Act, such as Charitable Purpose, Endowment Fund, Gift Instrument, Institution, etc.

AS 13.70.095 - provides a short title for the Act.

**Section 2.**

AS 14.40.280 - provides for the application of UPMIFA to the Board of Regents for administration of gifts and endowments received under AS 14.40.280, which is substantially more relevant to management of gifts and endowments than the current reference to the Alaska Retirement Management Board (ARMB) statute, much of which is applicable to pension administration rather than management of gifts and endowments. UPMIFA is structured to address the issues associated with the administration of gifts and endowments and is fully applicable to the Board of Regents responsibilities in this arena. The bill also emphasizes the need for the Board of Regents to comply with AS 37.10.071, which addresses the fiduciary duties and responsibilities for these funds. The current reference to the ARMB statute, AS 37.10.220, resulted from its rote substitution for the original reference to AS 14.25.180 regarding the duties of the Alaska State Pension Board, which was repealed in connection with passage of the TRS/PERS Pension Reform Bill of 2005. It included a description of a few the pension board's fiduciary duties, while AS 37.10.220 includes a host of provisions, many requirements that are applicable to pensions, but not to endowments.

**Section 3.**

AS 14.40.400 - provides for the application of UPMIFA to the Board of Regents for administration of the Endowment Trust Fund under AS 14.40.400, which is substantially more relevant to management of the Endowment Trust Fund than the current reference to the Alaska Retirement Management Board statute, much of which is not applicable to management of endowment funds. The explanation for Section 2 of this bill is equally applicable to Section 3 as well.

**Section 4.**

Sec. 4 provides that the Act applies to all endowment funds held on or after the effective date and to decisions made or actions taken by an institution relating to an endowment on or after the effective date.

DANA

26-LS0487S  
Bannister  
3/23/09

**CS FOR SENATE BILL NO. 134(EDC)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SIXTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE EDUCATION COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATOR PASKVAN**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act adopting and relating to the Uniform Prudent Management of Institutional**  
2 **Funds Act; relating to the investment of money for charitable purposes by institutions,**  
3 **including governmental institutions; and relating to the University of Alaska."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **\* Section 1. AS 13 is amended by adding a new chapter to read:**

6 **Chapter 70. Uniform Prudent Management of Institutional Funds.**

7 **Sec. 13.70.010. Standard of conduct in managing and investing**  
8 **institutional funds.** (a) Subject to the intent of a donor expressed in a gift instrument,  
9 an institution, in managing and investing an institutional fund, shall consider the  
10 charitable purposes of the institution and the purposes of the institutional fund.

11 (b) In addition to complying with the duty of loyalty imposed by law other  
12 than this chapter, each person responsible for managing and investing an institutional  
13 fund shall manage and invest the fund in good faith and with the care an ordinarily  
14 prudent person in a like position would exercise under similar circumstances.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

(c) In managing and investing an institutional fund, an institution

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) in managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the expected tax consequences, if any, of investment decisions or strategies;

(D) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) an asset's special relationship or special value, if any, to the charitable purposes of the institution;

(2) management and investment decisions about an individual asset may not be made in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution;

(3) except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with the

1 standards of this section;

2 (4) an institution shall diversify the investments of an institutional fund  
3 unless the institution reasonably determines that, because of special circumstances, the  
4 purposes of the fund are better served without diversification;

5 (5) within a reasonable time after receiving property, an institution  
6 shall make and implement decisions concerning the retention or disposition of the  
7 property or to rebalance a portfolio in order to bring the institutional fund into  
8 compliance with the purposes, terms, distribution requirements, and other  
9 circumstances of the institution and the requirements of this chapter;

10 (6) a person who has special skills or expertise, or is selected in  
11 reliance on the person's representation that the person has special skills or expertise,  
12 has a duty to use those special skills or that expertise in managing and investing  
13 institutional funds.

14 **Sec. 13.70.020. Appropriation for expenditure or accumulation of**  
15 **endowment fund; rules of construction.** (a) Subject to the intent of a donor  
16 expressed in a gift instrument, an institution may appropriate for expenditure or  
17 accumulate so much of an endowment fund as the institution determines is prudent for  
18 the uses, benefits, purposes, and duration for which the endowment fund is  
19 established. Unless stated otherwise in a gift instrument, the assets in an endowment  
20 fund are donor-restricted assets until appropriated for expenditure by the institution. In  
21 making a determination to appropriate or accumulate, the institution shall act in good  
22 faith, with the care that an ordinarily prudent person in a like position would exercise  
23 under similar circumstances, and shall consider, if relevant, the following factors:

- 24 (1) the duration and preservation of the endowment fund;  
25 (2) the purposes of the institution and the endowment fund;  
26 (3) general economic conditions;  
27 (4) the possible effect of inflation or deflation;  
28 (5) the expected total return from income and the appreciation of  
29 investments;  
30 (6) other resources of the institution; and  
31 (7) the investment policy of the institution.

1 (b) To limit the authority to appropriate for expenditure or accumulate under  
2 (a) of this section, a gift instrument must specifically state the limitation.

3 (c) Terms in a gift instrument designating a gift as an endowment, a direction  
4 or authorization in the gift instrument to use only "income," "interest," "dividends," or  
5 "rents, issues, or profits," or "to preserve the principal intact," or similar words

6 (1) create an endowment fund of permanent duration unless other  
7 language in the gift instrument limits the duration or purpose of the fund; and

8 (2) do not otherwise limit the authority to appropriate for expenditure  
9 or accumulate under (a) of this section.

10 **Sec. 13.70.030. Delegation of management and investment functions.** (a)  
11 Subject to a specific limitation set out in a gift instrument or in law other than this  
12 chapter, an institution may delegate to an external agent the management and  
13 investment of an institutional fund to the extent that an institution could prudently  
14 delegate under the circumstances. An institution shall act in good faith, with the care  
15 that an ordinarily prudent person in a like position would exercise under similar  
16 circumstances, in

17 (1) selecting an agent;

18 (2) establishing the scope and terms of the delegation, consistent with  
19 the purposes of the institution and the institutional fund; and

20 (3) periodically reviewing the agent's actions in order to monitor the  
21 agent's performance and compliance with the scope and terms of the delegation.

22 (b) In performing a delegated function, an agent owes a duty to the institution  
23 to exercise reasonable care to comply with the scope and terms of the delegation.

24 (c) An institution that complies with (a) of this section is not liable for the  
25 decisions or actions of an agent to whom the function was delegated.

26 (d) By accepting delegation of a management or investment function from an  
27 institution that is subject to the laws of this state, an agent submits to the jurisdiction  
28 of the courts of this state in all proceedings arising from or related to the delegation or  
29 the performance of the delegated function.

30 (e) An institution may delegate management and investment functions to its  
31 committees, officers, or employees as authorized by law other than this chapter.

1           **Sec. 13.70.040. Release or modification of restrictions on management,**  
2 **investment, or purpose.** (a) With the donor's consent in a record, an institution may  
3 release or modify, in whole or in part, a restriction contained in a gift instrument on  
4 the management, investment, or purpose of an institutional fund. A release or  
5 modification may not allow a fund to be used for a purpose other than a charitable  
6 purpose of the institution.

7           (b) If a restriction contained in a gift instrument on the management or  
8 investment of an institutional fund becomes impracticable or wasteful or impairs the  
9 management or investment of the fund, or if, because of circumstances not anticipated  
10 by the donor, a modification of a restriction will further the purposes of the fund, the  
11 court, on application of the institution, may modify the restriction. The institution shall  
12 notify the attorney general of the application, who must be given an opportunity to be  
13 heard. To the extent practicable, a modification shall be made in accordance with the  
14 donor's probable intention.

15           (c) If a particular charitable purpose or a restriction contained in a gift  
16 instrument on the use of an institutional fund becomes unlawful, impracticable,  
17 impossible to achieve, or wasteful, the court, on application of an institution, may  
18 modify the purpose of the fund or the restriction on the use of the fund in a manner  
19 consistent with the charitable purposes expressed in the gift instrument.

20           (d) If an institution determines that a restriction contained in a gift instrument  
21 on the management, investment, or purpose of an institutional fund is unlawful,  
22 impracticable, impossible to achieve, or wasteful, the institution, 90 days or more after  
23 notification of the attorney general, may release or modify the restriction, in whole or  
24 part, if

25                   (1) the institutional fund subject to the restriction has a total value of  
26 less than \$50,000;

27                   (2) more than 20 years have elapsed since the fund was established;  
28 and

29                   (3) the institution uses the property in a manner the institution  
30 reasonably determines to be consistent with the charitable purposes expressed in the  
31 gift instrument.

1           **Sec. 13.70.050. Reviewing compliance.** Compliance with this chapter is  
2 determined in light of the facts and circumstances existing at the time a decision is  
3 made or an action is taken.

4           **Sec. 13.70.060. Relation to Electronic Signatures in Global and National**  
5 **Commerce Act.** This chapter modifies, limits, and supersedes 15 U.S.C. 7001 - 7031  
6 (Electronic Signatures in Global and National Commerce Act), but does not modify,  
7 limit, or supersede 15 U.S.C. 7001(a) or authorize electronic delivery of a notice  
8 described in 15 U.S.C. 7003(b).

9           **Sec. 13.70.070. Application.** If another provision of law or of a governing  
10 instrument of an institution applies to an institutional fund but conflicts with this  
11 chapter, the other provision governs.

12           **Sec. 13.70.080. Uniformity of application and construction.** In applying and  
13 construing this chapter, consideration shall be given to the need to promote uniformity  
14 of the law with respect to its subject matter among states that enact it.

15           **Sec. 13.70.090. Definitions.** In this chapter,

16                   (1) "charitable purpose" means the relief of poverty, the advancement  
17 of education or religion, the promotion of health, the promotion of a governmental  
18 purpose, or another purpose the achievement of which is beneficial to the community;

19                   (2) "endowment fund" means an institutional fund, or part of an  
20 institutional fund, not wholly expendable by the institution on a current basis under the  
21 terms of a gift instrument; the term does not include assets of an institution designated  
22 by an institution as an endowment fund for its own use;

23                   (3) "gift instrument" means a record, including an institutional  
24 solicitation, under which property is granted to, transferred to, or held by an  
25 institutional fund;

26                   (4) "institution" means

27                           (A) a person, other than an individual, organized and operated  
28 exclusively for charitable purposes;

29                           (B) a government or governmental subdivision, agency, or  
30 instrumentality, to the extent that it holds funds exclusively for a charitable  
31 purpose; or

1 (C) a trust that had both charitable and noncharitable interests,  
2 after all noncharitable interests have terminated;

3 (5) "institutional fund" means a fund held by an institution exclusively  
4 for charitable purposes; the term does not include

5 (A) program-related assets;

6 (B) a fund held for an institution by a trustee who is not an  
7 institution; or

8 (C) a fund in which a beneficiary who is not an institution has  
9 an interest, other than an interest that could arise on a violation or failure of the  
10 purposes of the fund;

11 (6) "person" means an individual, corporation, business trust, estate,  
12 trust, partnership, limited liability company, association, joint venture, public  
13 corporation, government or governmental subdivision, agency, or instrumentality, or  
14 another legal or commercial entity;

15 (7) "program-related asset" means an asset held by an institution  
16 primarily to accomplish a charitable purpose of the institution and not primarily for  
17 appreciation or the production of income;

18 (8) "record" means information that is inscribed on a tangible medium  
19 or that is stored in an electronic or other medium and is retrievable in perceivable  
20 form.

21 **Sec. 13.70.095. Short title.** This chapter may be cited as the Uniform Prudent  
22 Management of Institutional Funds Act.

23 \* **Sec. 2.** AS 14.40.280(c) is amended to read:

24 (c) Except as provided by (b) of this section, the monetary gifts, bequests, or  
25 endowments that are made to the University of Alaska shall be managed and invested  
26 by the Board of Regents. In carrying out its management and investment  
27 responsibilities under this subsection, the Board of Regents has the same **powers**  
28 [POWER] and [OBLIGATIONS TO CARRY OUT] duties with respect to the **gifts,**  
29 **bequests, and** endowments of the University of Alaska as are provided **or** [TO AND]  
30 required [OF THE ALASKA RETIREMENT MANAGEMENT BOARD] under  
31 **AS 37.10.071 and AS 13.70 (Uniform Prudent Management of Institutional**

1 Funds Act). Notwithstanding any other provision of law, AS 37.10.071 governs  
2 the management and investment responsibilities established under this subsection  
3 if

4 (1) both AS 37.10.071 and AS 13.70 apply to the management and  
5 investment responsibilities established under this subsection; and

6 (2) AS 37.10.071 conflicts with AS 13.70 [AS 37.10.220].

7 \* Sec. 3. AS 14.40.400(b) is amended to read:

8 (b) The Board of Regents is the fiduciary of the fund. The Board of Regents  
9 shall account for and invest the fund. In carrying out its investment responsibilities  
10 under this subsection, the Board of Regents has the same powers and duties with  
11 respect to the fund as are provided or [TO AND] required [OF THE ALASKA  
12 RETIREMENT MANAGEMENT BOARD] under AS 37.10.071 and AS 13.70  
13 (Uniform Prudent Management of Institutional Funds Act) Notwithstanding any  
14 other provision of law, AS 37.10.071 governs the investment responsibilities  
15 established under this subsection if

16 (1) both AS 37.10.071 and AS 13.70 apply to the investment  
17 responsibilities established under this subsection; and

18 (2) AS 37.10.071 conflicts with AS 13.70 [AS 37.10.220].

19 \* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to  
20 read:

21 APPLICABILITY. AS 13.70, enacted by sec. 1 of this Act, applies to an institutional  
22 fund held by an institution on or after the effective date of this Act and to decisions made or  
23 action taken by the institution relating to the institutional fund on or after the effective date of  
24 this Act. In this section, "institution" and "institutional fund" have the meanings given in  
25 AS 13.70.090, enacted by sec. 1 of this Act.

# **Why UPMIFA for Alaska ?**

## **(The Uniform Prudent Management of Institutional Funds Act)**

**February 13, 2009**

1. UPMIFA will bring Alaska's guidance and requirements for the administration of endowments and charitable funds up-to-date and consistent with national standards.
2. UPMIFA attempts to bring all of the various types of nonprofit organizations and governmental entities under the same requirements and standards for administration of endowments and charitable funds.
3. UPMIFA is "default legislation," which applies only in the absence of other more specific applicable requirements in law or governing instruments.
4. UPMIFA replaces obscure and obsolete rules and concepts for the investment and management of endowments and charitable funds with current industry best practice.
5. UPMIFA provides clear guidance on the standards of performance and prudent practices for the investment and management of endowments and charitable funds, which is consistent with the Uniform Prudent Investment Act adopted by Alaska in 1998.
6. UPMIFA defines specific factors to be considered in managing charitable funds, such as:
  - a. the accumulation of earnings, the expenditure of endowment funds, and the obligation to provide for future beneficiaries;
  - b. the investment of funds, including the obligation to manage to the overall objectives of the fund and portfolio, to consider the investment horizon, cost of management, diversification, rebalancing, verification of relevant facts, and the use of special skills or expertise that a fiduciary possess; and
  - c. the prudent delegation of investment and management functions.
7. UPMIFA minimizes the exposure of nonprofits and volunteer trustees to disputes and legal challenges over issues related to obscure and outdated administrative rules and practices by clarifying the specific requirements and the applicable performance standards.
8. UPMIFA incorporates a less onerous and less expensive process for the modification or release of donor restrictions on gifts that may have become wasteful, impracticable, unlawful or impossible to achieve.

# UPMIFA

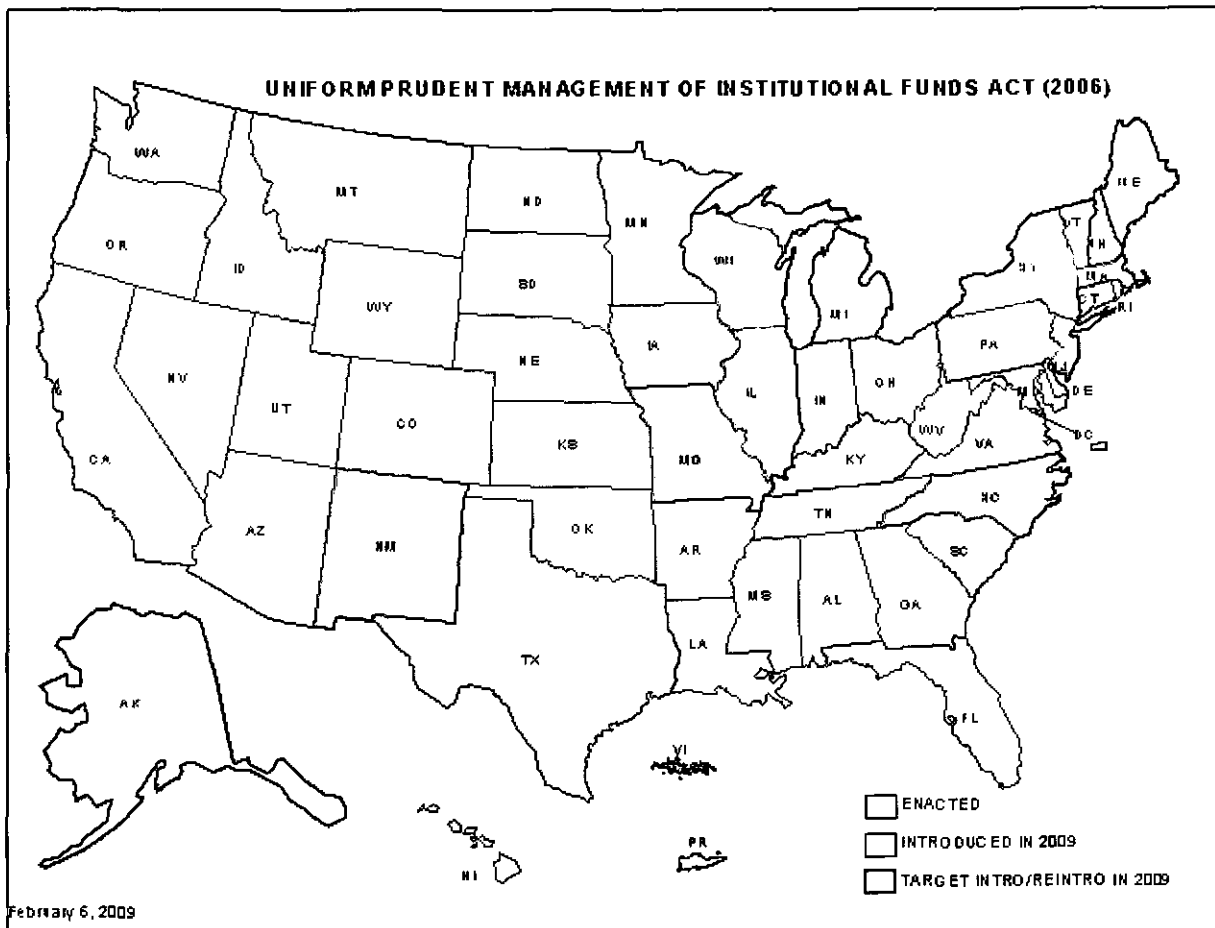
*uniform prudent management of institutional funds act*



Uniform Law Commission

<a href="#">Home</a>	<a href="#">The Act</a>	<a href="#">History</a>	<a href="#">State Law Comparisons</a>	<a href="#">Materials</a>	<a href="#">Enactment Status</a>	<a href="#">About the ULC</a>	<a href="#">Educational Partnership</a>
----------------------	-------------------------	-------------------------	---------------------------------------	---------------------------	----------------------------------	-------------------------------	---

## Enactment Status Map



### 2009 Introductions and Enactments

Arkansas: Introduced as SB 254 in 2009 - Senate Commerce  
 Hawaii: Introduced as HB 618/SB 121 in 2009 - House Finance  
 Maryland: Introduced as HB 200/SB 230 in 2009 - House Judiciary  
 Mississippi: Introduced as HB 419/SB 2335 in 2009 - House Judiciary  
 New Mexico: Introduced as HB 454 in 2009 - House Business  
 North Dakota: Introduced as HB 1074 in 2009 - Passed House  
 Ohio: Introduced as HB 522 in 2009 - ENACTED  
 Rhode Island: Introduced as HB 5244 in 2009 - House Corporations  
 Washington: Introduced as HB 1119 in 2009 - House Judiciary  
 Wyoming: Introduced as HB 118 in 2009 - Passed House

### 2008 Enactments

Alabama: Introduced as HB 8 in 2006-07 - ENACTED  
 Arizona: Introduced as SB 1228 in 2008 - ENACTED  
 California: Introduced as SB 1329 in 2008 - ENACTED  
 Colorado: Introduced as HB 1173 in 2007-08 - ENACTED  
 District of Columbia: Introduced as B17-145 in 2006-07 - ENACTED  
 Georgia: Introduced as HB 972 in 2007-08 - ENACTED  
 Iowa: Introduced as SF 2316 in 2008 - ENACTED  
 Kansas: Introduced as SB 433 in 2007-08 - ENACTED  
 Minnesota: Introduced as HF 1499/SF 1406 in 2006-07 - ENACTED  
 New Hampshire: Introduced as 1382 in 2007-08 - ENACTED  
 Ohio: Introduced as HB 522 in 2008 - ENACTED  
 South Carolina: Introduced as SB 1007 in 2007-08 - ENACTED  
 Virginia: Introduced as HB 951 in 2007-08 - ENACTED  
 West Virginia: Introduced as SB 144 in 2007-08 - ENACTED

### 2007 Enactments

Nebraska : Introduced as LB 136 in 2006-07 - ENACTED  
 Connecticut : Introduced as SB 1143 in 2006-07 - ENACTED  
 Idaho : Introduced as SB 1016 in 2006-07 - ENACTED  
 South Dakota : Introduced as SB 89 in 2006-07 - ENACTED  
 Indiana : Introduced as HB 1505 in 2006-07 - ENACTED  
 Oklahoma : Introduced as HB 1596 in 2006-07 - ENACTED  
 Texas : Introduced as HB 860 in 2006-07 - ENACTED  
 Utah : Introduced as SB 60 in 2006-07 - ENACTED  
 Montana : Introduced as SB 424 in 2006-07 - ENACTED  
 Nevada : Introduced as SB 70 in 2006-07 - ENACTED  
 Tennessee : Introduced as SB691 in 2006-07 - ENACTED  
 Oregon : Introduced as HB 2905 in 2006-07 - ENACTED  
 Delaware : Introduced as SB 139 in 2006-07 - ENACTED

©Uniform Prudent Management of Institutional Funds Act  
 111 N. Wabash Ave. Suite 1010  
 Chicago, Illinois 60602

tel. (312) 450-6600 | fax (312) 450-6601 | e-mail [upmifa@ncusa.org](mailto:upmifa@ncusa.org)

**UNIFORM PRUDENT MANAGEMENT OF  
INSTITUTIONAL FUNDS ACT**

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-FIFTEENTH YEAR  
HILTON HEAD, SOUTH CAROLINA

July 7-14, 2006

*WITH PREFATORY NOTE AND COMMENTS*

Copyright ©2006

By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

November 8, 2007

## ABOUT NCCUSL

The **National Conference of Commissioners on Uniform State Laws (NCCUSL)**, now in its 115<sup>th</sup> year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

Conference members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- NCCUSL strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- NCCUSL statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- NCCUSL keeps state law up-to-date by addressing important and timely legal issues.
- NCCUSL's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- NCCUSL's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- NCCUSL Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- NCCUSL's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- NCCUSL is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

**DRAFTING COMMITTEE ON UNIFORM PRUDENT MANAGEMENT OF  
INSTITUTIONAL FUNDS ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

BARRY C. HAWKINS, 300 Atlantic St., Stamford, CT 06901, *Chair*

JOHN P. BURTON, P.O. Box 1357, 315 Paseo de Peralta, Santa Fe, NM 87501

MARY JO HOWARD DIVELY, Carnegie Mellon University, 5000 Forbes Ave., Pittsburgh, PA 15213

L.S. JERRY KURTZ, JR., 1050 Beech Ln., Anchorage, AK 99501

SHELDON F. KURTZ, University of Iowa, College of Law, 446 BLB, Iowa City, IA 52242

JOHN H. LANGBEIN, Yale Law School, P.O. Box 208215, New Haven, CT 06520 -8215

JOHN J. MCAVOY, 3110 Brandywine St. NW, Washington, DC 20008

MATTHEW S. RAE, JR., 520 S. Grand Ave., 7th Floor, Los Angeles, CA 90071-2645

GLEE S. SMITH, P.O. Box 667, Lawrence, KS 66044

SUSAN N. GARY, University of Oregon, School of Law, 1515 Agate St., Eugene, OR 97403,

*Reporter*

**EX OFFICIO**

HOWARD J. SWIBEL, 120 S. Riverside Plaza, Suite 1200, Chicago, IL 60606, *President*

TOM BOLT, Corporate Place, 5600 Royal Dane Mall, St. Thomas, VI 00802-6410, *Division*

*Chair*

**AMERICAN BAR ASSOCIATION ADVISORS**

CAROL G. KROCH, Rodney Square North, 1100 Market St., Wilmington, DE 19890, *ABA*  
*Advisor*

JOHN K. NOTZ, JR., 191 N. Wacker Dr., Chicago, IL 60606-1698, *ABA Section Advisor*

CYNTHIA ROWLAND, One Ferry Building, Suite 200, San Francisco, CA 94111, *ABA Section*  
*Advisor*

**EXECUTIVE DIRECTOR**

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL 35487-0382, *Executive Director*

Copies of this Act may be obtained from:  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
211 E. Ontario Street, Suite 1300  
Chicago, Illinois 60611  
312/915-0195  
[www.nccusl.org](http://www.nccusl.org)

# UPMIFA

*uniform prudent management of institutional funds act*

Uniform Law Commission

<a href="#">Home</a>	<a href="#">The Act</a>	<a href="#">History</a>	<a href="#">State Law Comparisons</a>	<a href="#">Materials</a>	<a href="#">Enactment Status</a>	<a href="#">About the ULC</a>	<a href="#">Educational Partnership</a>
----------------------	-------------------------	-------------------------	---------------------------------------	---------------------------	----------------------------------	-------------------------------	---

## About Us

**The National Conference of Commissioners on Uniform State Laws (NCCUSL)**, also known as the Uniform Law Commission, is now in its 116th year. The organization comprises more than 300 lawyers, judges and law professors, appointed by the states as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands, to draft proposals for uniform and model laws on subjects where uniformity is desirable and practicable, and work toward their enactment in legislatures. The Conference's website may be found at [www.nccusl.org](http://www.nccusl.org).

### NCCUSL Staff Contacts

Name	Role	Email	Phone
John A. Sebert	Executive Director	<a href="mailto:john.sebert[at]nccusl.org">john.sebert[at]nccusl.org</a>	312/450-6603
Michael R. Kerr	Legislative Director/Legal Counsel	<a href="mailto:michael.kerr[at]nccusl.org">michael.kerr[at]nccusl.org</a>	312/450-6620
Elizabeth Cotton-Murphy	Chief Administrative Officer	<a href="mailto:elizabeth.cotton[at]nccusl.org">elizabeth.cotton[at]nccusl.org</a>	312/450-6608
Katie Robinson	Communications Officer	<a href="mailto:katie.robinson[at]nccusl.org">katie.robinson[at]nccusl.org</a>	312/450-6616
Melissa Walls	Development Director	<a href="mailto:melissa.walls[at]nccusl.org">melissa.walls[at]nccusl.org</a>	312/450-6622
Kieran P. Marion	Legislative Counsel	<a href="mailto:kieran.marion[at]nccusl.org">kieran.marion[at]nccusl.org</a>	312/450-6621
Eric M. Fish	Legislative Counsel	<a href="mailto:eric.fish[at]nccusl.org">eric.fish[at]nccusl.org</a>	312/450-6619
Nicole N. Julal	Legislative Counsel	<a href="mailto:nicole.julal[at]nccusl.org">nicole.julal[at]nccusl.org</a>	312/450-6618
Kristina Shidlauski	Publications	<a href="mailto:kristina.shidlauski[at]nccusl.org">kristina.shidlauski[at]nccusl.org</a>	312/450-6615
Liz Cunneen	Staff Accountant	<a href="mailto:liz.cunneen[at]nccusl.org">liz.cunneen[at]nccusl.org</a>	312/450-6607
Leang Sou	Membership & Meetings	<a href="mailto:leang.sou[at]nccusl.org">leang.sou[at]nccusl.org</a>	312/450-6606
Joan Hollick	Legislative Assistant	<a href="mailto:joan.hollick[at]nccusl.org">joan.hollick[at]nccusl.org</a>	312/450-6624
Karen Lancaster	Administrative Assistant	<a href="mailto:karen.lancaster[at]nccusl.org">karen.lancaster[at]nccusl.org</a>	312-450-6600

(Replace the "[at]" with an "@" sign -- this is an effort to reduce automated spam.)

### Account Login

Login:

Password:

 Remember Login

# UPMIFA

*uniform prudent management of institutional funds act*

## WHY STATES SHOULD ADOPT THE ACT

This 2006 Uniform Prudent Management of Institutional Funds Act replaces and updates the 1972 Uniform Management of Institutional Funds Act. Its rules govern investment of the funds of charitable organizations and total return expenditure of those funds. It establishes a prudent management investment regime derived from the Uniform Prudent Investor Act (which applies only to trusts) and a prudent total return expenditure based upon performance of the portfolio held by a charitable institution. It also provides for delegation of authority for investment to outside agents and reformation of donor restrictions (cy pres) on funds when these are so outdated that the original objective can no longer be honored.

States should adopt the Uniform Prudent Management of Institutional Funds Act:

1. To make sure that the best investment practices govern the actual investment of institutional funds.
2. To withdraw obsolete rules governing prudent total return expenditure and provide a modern rule of prudence consistent with the rules that govern investment.
3. To eliminate differences in investment and expenditure rules that apply to different types of nonprofit organizations. The same rules govern all under UPMIFA.
4. To encourage growth of institutional funds while eliminating investment risks that threaten principal.
5. To assure that there are adequate assets in any institutional fund to meet program needs.
6. To make the law governing institutional funds uniform in every state.



Uniform Law Commission

For Questions About UPMIFA Please Call Uniform Law Commission/NCCUSL 312.915.0195 | [www.nccusl.org](http://www.nccusl.org) | [www.upmifa.org](http://www.upmifa.org)

# UPMIFA

*uniform prudent management of institutional funds act*

---

## The UPMIFA Educational Partnership

The Uniform Law Commission promulgated the Uniform Prudent Management of Institutional Funds Act (UPMIFA) in August of 2006 after four years of drafting and study. UPMIFA represents a substantial revision to the law of nonprofit endowment investment governance and serves to modernize the current statute – the Uniform Management of Institutional Funds Act (UMIFA) – which dates back to 1972. Support for UPMIFA is growing, and it has already been adopted in over a dozen states.

Three organizations with a strong commitment to nonprofit governance – The Association of Governing Boards of Universities and Colleges (AGB), Commonfund, and the National Association of College and University Business Officers (NACUBO) – have funded the preparation of educational materials to help inform the public about the new law, and have enabled the Uniform Law Commission to provide educational outreach opportunities for UPMIFA. The success of the UPMIFA Educational Partnership is in large measure attributable to the generosity of these grantors:

- **Association of Governing Boards of Universities and Colleges (AGB)**  
The AGB is the single national association that serves the interest of academic governing boards, boards of institutionally related foundations, and senior level campus officials. Through its research and advocacy services AGB strengthens partnerships and protects the country's unique form of governance. While serving over 34,000 individuals AGB advances citizen trusteeship and ensures the quality and achievements of our nation's colleges and universities.
- **Commonfund**  
Commonfund is the leading investment management firm for the nonprofit sector. Founded in 1971, Commonfund now manages over \$42 billion in investments for more than 1,800 nonprofit clients. The Commonfund Institute, founded to house the firm's education and research activities, is dedicated to the advancement of investment knowledge and the promotion of best practices in financial management among nonprofit educational institutions, foundations, operating charities and healthcare organizations. The Institute's broad range of programs is designed to serve financial practitioners, fiduciaries and scholars.
- **National Association of College and University Business Officers (NACUBO)**  
Established in 1962, NACUBO now represents more than two-thirds of the colleges, universities, and higher education providers in the U.S. A combination of knowledge, professional development, and advocacy propels NACUBO to work toward excellence in higher education, business, and financial management.

Please contact the Uniform Law Commission at (312) 450-6600 for more information about the Uniform Prudent Management of Institutional Funds Act (UPMIFA) and our educational outreach efforts, or visit the UPMIFA website at [www.upmifa.org](http://www.upmifa.org).

---

The Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws (NCCUSL)) has worked for the uniformity of state laws since 1892. It is a non-profit unincorporated association, comprising state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

# UPMIFA

*uniform prudent management of institutional funds act*



Uniform Law Commission

Home	The Act	History	State Law Comparisons	Materials	Enactment Status	About the ULC	Educational Partnership
------	---------	---------	-----------------------	-----------	------------------	---------------	-------------------------

## History of UPMIFA and UMIFA

At its annual meeting in July 2006, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Prudent Management of Institutional Funds Act (UPMIFA) and recommended it for enactment by the legislatures of the various states. UPMIFA is designed to replace the existing Uniform Management of Institutional Funds Act (UMIFA), which was approved by NCCUSL in 1972 and has since been enacted in 47 states. UMIFA was a pioneering statute, providing uniform and fundamental rules for the investment of funds held by charitable institutions and the expenditure of funds donated as "endowments" to those institutions. Those rules supported two general principles: 1) that assets would be invested prudently in diversified investments that sought growth as well as income, and 2) that appreciation of assets could prudently be spent for the purposes of any endowment fund held by a charitable institution. These two principles have been the twin lodestars of asset management for endowments since UMIFA became the law of the land in nearly all U.S. jurisdictions.

UPMIFA continues these fundamental principles as a needed upgrade of UMIFA. Both investment in assets and expenditure for charitable purposes have grown exponentially in the 35 years since UMIFA was drafted; asset management theory and practice have also advanced. UPMIFA, as an up-date and successor to UMIFA, establishes an even sounder and more unified basis for charitable fund management than UMIFA has done.

### INVESTMENT

In 1972, UMIFA represented a revolutionary advance over prevailing practices which imposed upon endowments the limited investment opportunities available for managing trust assets – even endowments not organized as trusts. By stating the first prudent investor rule in statutory law, UMIFA allowed endowments to invest in any kind of assets, to pool endowment funds for investment purposes, and to delegate investment management to other persons (e.g., professional investment advisors), as long as the governing board of the charitable institution exercised ordinary business care and prudence in making these decisions. A range of factors guided the exercise of prudence.

UPMIFA incorporates the experience gained in the last 35 years under UMIFA by providing even stronger guidance for investment management and enumerating a more exact set of rules for investing in a prudent manner. It requires investment "in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances." It requires prudence in incurring investment costs, authorizing "only costs that are appropriate and reasonable." Factors to be considered in investing are expanded to include, for example, the effects of inflation. UPMIFA emphasizes that investment decisions must be made in relation to the overall resources of the institution and its charitable purposes. No investment decision may be made in isolation, but must be made in light of the fund's entire portfolio, and as a part of an investment strategy "having risk and return

objectives reasonably suited to the fund and to the institution." A charitable institution must diversify assets as an affirmative obligation unless "special circumstances" dictate otherwise. Assets must be reviewed within a reasonable time after they come into the possession of the institution in order to conform them to the investment strategy and objectives of the fund. Investment experts, whether in-house or hired for the purpose, are held to a standard of care consistent with that expertise.

UMIFA initiated the era of modern portfolio management for charitable institutions. UPMIFA provides the standards and guidelines that subsequent experience tells us are the most appropriate for the purpose. Charitable institutions will have more precise standards to guide them. Courts will have more precise standards with which to measure prudence in the event of a challenge. The result should be more money for programs supported by charitable funds, including endowments.

### **EXPENDITURE**

UMIFA initiated the concept of total return expenditure of endowment assets for charitable program purposes, expressly permitting prudent expenditure of both appreciation and income and replacing the old trust law concept that only income (e.g., interest and dividends) could be spent. Thus, asset growth and income could be appropriated for program purposes, subject to the rule that a fund could not be spent below "historic dollar value."

UPMIFA builds upon UMIFA's rule on appreciation, but it eliminates the concept of "historic dollar value." UPMIFA, instead, provides better guidance on prudence and makes the need for a floor on spending unnecessary. UPMIFA states that the institution "may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines to be prudent for the uses, benefits, purposes and duration for which the endowment fund is established." Seven criteria guide the institution in its yearly expenditure decisions: "1) duration and preservation of the endowment fund; 2) the purposes of the institution and the endowment fund; 3) general economic conditions; 4) effect of inflation or deflation; 5) the expected total return from income and the appreciation of investments; 6) other resources of the institution; and, 7) the investment policy of the institution." These standards mirror the standards that apply to investment decision-making, thus unifying both investment and expenditure decisions more concretely.

UPMIFA includes an optional provision that allows states to enact another kind of safeguard against excessive expenditure. If a state does not want to rely solely upon the rule of prudence provided in UPMIFA, the state may adopt a provision that creates a rebuttable presumption of imprudence if an institution expends an amount greater than seven percent of fair market value of a fund, calculated in an averaging formula over three years. While the seven percent rule is likely not to be necessary, it is available for those states that may be uncomfortable with the general standards.

### **RELEASE OR MODIFICATION OF RESTRICTIONS**

UPMIFA recognizes and protects donor intent more broadly than UMIFA did, in part by providing a more comprehensive treatment of the modification of restrictions on charitable funds. Sometimes a restriction imposed by a donor becomes impracticable or wasteful or may impair the management of a fund. The donor may consent to release the restriction, if the donor is still alive and able to do so, but if the donor is not available the charity can ask

for court approval of a modification of the restriction. The trust law doctrines of cy pres (modifying a purpose restriction) and deviation (modifying a management restriction) probably already apply to charitable funds held by nonprofit corporations. UPMIFA makes this clear. Under UMIFA, the only option with respect to a restriction was release of the restriction. UPMIFA instead authorizes a modification that a court determines to be in accordance with the donor's probable intention. If the charity asks for court approval of a modification, the charity must notify the state's chief charitable regulator and the regulator may participate in the proceeding.

UPMIFA adds a new provision that allows a charity to modify a restriction on a small (less than \$25,000) and old (over 20 years old) fund without going to court. If a restriction has become impracticable or wasteful, the charity may notify the state charitable regulator, wait 60 days, and then, unless the regulator objects, modify the restriction in a manner consistent with the charitable purposes expressed in any documents that were part of the original gift.

## CONCLUSION

UPMIFA reflects and incorporates the 35 years of experience that has accumulated under the original UMIFA. Rather than changing institutional investment or expenditure practices, it brings them up to date and unifies them across a broad range of charitable funds. The better charitable institutions manage investments and prudently control expenditures, the more money they should have for program purposes.

©Uniform Prudent Management of Institutional Funds Act  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602

tel: (312) 450-6600 | fax: (312) 450-6601 | e-mail: [upmifa@nccusl.org](mailto:upmifa@nccusl.org)

# UPMIFA

*uniform prudent management of institutional funds act*

## **UMIFA Becomes UPMIFA**<sup>1</sup>

**By Susan Gary**<sup>2</sup>

The Uniform Management of Institutional Funds Act (UMIFA) guides charities on the management and investment of funds, provides rules on spending from endowment funds, and permits the release of restrictions on the use and management of charitable funds. The Act has been adopted in 47 states and the District of Columbia. It has been successful, but portions of it are out-of-date, and the National Conference of Commissioners on Uniform State Laws (the Uniform Law Commission) at its annual meeting on July 13, 2006, approved a revised version: the Uniform Prudent Management of Institutional Funds Act (UPMIFA).

In 1972, when the Uniform Law Commission promulgated UMIFA, a great deal of uncertainty existed about the standards that governed directors of charities operating as nonprofit corporations. Trust law provided guidance, but trust law at that time restricted investment decision making in a number of ways. Trustees analyzed risk on an asset-by-asset basis, rather than across the portfolio. Trust law did not permit delegation of investment authority, so involving investment advisors caused concern. Trust accounting rules defined income and principal in a way that affected both spending and investing. If a charity could spend only "income" under trust law rules, the trust law definition of income limited investment options. UMIFA created a new set of rules that made total-return investing possible for charities organized as nonprofit corporations.

In the period since 1972, trust law has caught up with UMIFA in many respects. The Uniform Prudent Investor Act (UPIA), a trust law statute now adopted in 44 states, provides modern guidance for the prudence standard fiduciaries should follow in making investment decisions. Although the comments to UPIA suggest that the standards articulated in that statute also apply to charities organized as nonprofit corporations, making the standard explicitly applicable to all charities makes sense. With this and other changes in mind, the Uniform Law Commission decided to update UMIFA.

Four years in the making, UPMIFA updates the prudence standard that applies to the management and investment of charitable funds. UPMIFA also modernizes the rules governing expenditures from endowment funds, both to provide better guidance on spending from

---

<sup>1</sup> This article reprinted with permission from the American Bar Association. It was originally published in the *ABA Property & Probate Journal*, January/February 2007. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

<sup>2</sup> Susan N. Gary is a professor at the University of Oregon School of Law, Eugene, the reporter for UPMIFA, and co-chair of the Uniform Acts for Probate and Trust Law Committee.



Uniform Law Commission

For Questions About UPMIFA Please Call Uniform Law Commission/NCCUSL 312.450.6600 | [www.nccusl.org](http://www.nccusl.org) | [www.upmifa.org](http://www.upmifa.org)

# UPMIFA

*uniform prudent management of institutional funds act*

endowment funds and to give institutions the ability to cope more easily with fluctuations in the value of the endowment. Finally, UPMIFA adopts provisions governing the release and modification of restrictions on charitable funds to permit more efficient management of these funds. UPMIFA applies, as did UMIFA, to charities organized as nonprofit corporations and to charities organized as trusts, but only to those trusts that have a charity as a trustee.

## **Prudent Investing**

The standard for investing and managing charitable funds is one of prudence. Although the law applicable to private trusts and to business corporations may hold trustees and directors to different standards of care, the standard of care for those managing a charity should be the same for all charities, regardless of the organizational form.

UPMIFA's articulation of the prudence standard reflects the merging of the trust and corporate standards when applied to managers of charitable funds. The statute takes language from both the Revised Model Nonprofit Corporation Act (RMNCA) and UPIA. The RMNCA states that a manager must act "in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances." This language derives from the business standard, but "similar circumstances" refers to the fact that the funds are managed for charitable purposes and not business purposes. UPMIFA uses language from the RMNCA and then follows this general direction with specific factors that a manager should consider. These factors derive from UPIA and are consistent with good practice under current law.

The prudence standard in UPMIFA requires managers to meet their fiduciary duty of care, the duty to minimize costs, and the duty to investigate with respect to investment decision making. In addition, UPMIFA directs managers of charities to consider general economic conditions, to make decisions on a portfolio basis, to allocate risk and return across the portfolio, and to consider the needs of the charity both to make distributions and to preserve capital. A charity can pool funds for purposes of management and investment, and in some situations doing so can yield better investment results. Managers are reminded that donor intent controls, so a charity must follow any specific donor directions for investment and management of assets. Of course, this emphasis on donor intent does not mean that a donor should control the management of a charity.

Prudence is a standard that evolves over time, and UPMIFA is simply updating the statutory language to provide good direction about the role of prudence in investment and management. The guidance should be helpful to charities and comports with current best practices.

## **Endowment Spending**

The big change UPMIFA brings comes in the rules on spending from endowment funds, defined as funds that cannot be wholly expended on a current basis. These rules apply to donor-restricted funds and not to board-restricted funds. Money set aside by a board of directors as an "endowment" is a board-restricted fund; money contributed by a donor with the intent that the money be held as an endowment is a donor-restricted fund. If a charity raises money for its



Uniform Law Commission

For Questions About UPMIFA Please Call Uniform Law Commission/NCCUSL 312.450.6600 | [www.nccusl.org](http://www.nccusl.org) | [www.upmifa.org](http://www.upmifa.org)

# UPMIFA

*uniform prudent management of institutional funds act*

endowment, and donors contribute with the understanding that the charity will hold their contributions in the endowment, then these rules apply to that fund. Donor intent in this regard will depend on the applicable "gift instrument," the documents that define the terms of the gift. The gift instrument may be a letter from the donor accompanying the gift, a solicitation from the charity to which the donor responds, or a gift agreement entered into by the donor and the charity.

UMIFA's spending rule has been critically important to the successful functioning of the investment guidance the statute provides. Endowments are typically described as funds that maintain principal and distribute income. The difficulty lies in determining what constitutes principal and income. Before UMIFA arrived on the scene, charities organized as nonprofit corporations assumed that trust accounting rules applied to them. Those rules defined income to exclude capital gains. Thus, a direction to "spend only income" meant that a charity might skew its investment decisions to produce more trust accounting income, to the detriment of the long-term health of a fund.

Rather than trying to define income and principal, the drafters of UMIFA devised a spending rule that seemed a better fit for charities. UMIFA uses the term historic dollar value (HDV) to mean the value of contributions made to an endowment fund, without increases or decreases because of investment results, inflation, or anything else. Under UMIFA, a charity can spend from an endowment fund the amount of appreciation above HDV the charity deems prudent, after considering the charity's purposes, but can never spend below HDV. The prudence standard in UMIFA limits spending above HDV because a charity can spend only the amounts the directors determine to be prudent. The statute provides minimal guidance, however, and focuses on the needs of the charity rather than on the purpose of the particular fund. Fortunately, despite the limited statutory guidance, most charities have developed spending rules that comply with UMIFA and also limit spending in ways that preserve the purchasing power of the endowment funds they manage.

UPMIFA no longer uses the term "historic dollar value" and no longer restricts spending to amounts above HDV. Under UPMIFA, a charity can spend the amount the charity deems prudent after considering the donor's intent that the endowment fund continue permanently, the purposes of the fund (and not just of the charity as under UMIFA), and relevant economic factors. The intention of the change is not to permit unrestricted spending from an endowment fund. UPMIFA applies a more carefully articulated prudence standard than that used in UMIFA to guide the process of making decisions about spending. UPMIFA emphasizes the perpetuation of the purchasing power of the fund, not just of the original dollars contributed to the fund. Although the Act does not require that a specified amount be set aside as principal, the Act assumes that a charity will preserve "principal" by maintaining the purchasing power of amounts contributed and will spend "income" by making a distribution each year using a reasonable spending rate. UPMIFA encourages charities to establish a spending policy that will be responsive to short-term fluctuations in the value of the fund.



Uniform Law Commission

For Questions About UPMIFA Please Call Uniform Law Commission/NCCUSL 312.450.6600 | [www.nccusl.org](http://www.nccusl.org) | [www.upmifa.org](http://www.upmifa.org)

# UPMIFA

*uniform prudent management of institutional funds act*

Any donor restrictions agreed to by a charity will control the management of an endowment fund. If a donor wants to create an endowment fund that can spend only 4% each year, and if the charity agrees to the restriction, the restriction will govern spending from the fund. If, however, the donor restricts the fund by indicating that the charity should "pay only income" or "hold the fund as an endowment," then a rule of construction in UPMIFA will treat the fund as an endowment fund subject to the UPMIFA rules on spending. The Act assumes that a donor who gives to an endowment fund wants the charity to use modern investment strategies to generate enough funds to distribute while maintaining the long-term viability of the fund. UPMIFA gives effect to the presumed intent of the donor.

UPMIFA will apply to charitable funds created both before and after enactment. Some people have expressed concern that the change in the endowment spending rules will affect donor intent. The rule of construction in UPMIFA gives meaning to a donor's direction to "pay only the income" from an endowment. A constructional rule resolves an ambiguity, in this case because the words used by a donor do not convey a specific meaning. Changing a statutory constructional rule does not change the underlying intent and, instead, changes the way an ambiguity is resolved. The change should better effectuate the intent of the donors. The committee that drafted UPMIFA concluded that the new rules provide better protection for donors and for charities. The committee also noted that unless UPMIFA applies retroactively, charities will face unwieldy and costly administrative burdens. Without retroactive application, a charity would have to maintain two sets of records for every endowment fund created before enactment that receives contributions after enactment.

Because of concerns expressed by some constituencies about the removal of HDV as a floor for spending, the committee agreed to draft two optional provisions for legislatures to consider. The Act should function well without these optional provisions, but some states may prefer to include one or both of them. The first optional provision appears in brackets in the text of the Act. The provision, section 4(d), creates a rebuttable presumption of imprudence for spending more than 7% of the value of an endowment fund in one year. The value of the fund is determined based on a three-year rolling average. Seven percent is a high number and is not intended as a safe harbor. The number was made high enough to allow some fluctuation in a year when a charity needs to spend more and to allow for some changes in economic conditions.

Those in favor of the presumption argue that the presumption provides a useful guideline for charities and for those who supervise charities. The presumption may also curb a charity's temptation to spend its endowment funds too quickly. Those opposed to including the presumption express concern that a charity may interpret the provision to mean that spending below 7% is presumed to be prudent, even though the statute provides otherwise. Other arguments against the presumption focus on the difficulty of identifying a percentage that can be appropriate for the range of charities and purposes covered by UPMIFA.

The second optional provision appears in the comments following section 4. This provision targets charities with limited initial investment and spending experience that could benefit from



Uniform Law Commission

For Questions About UPMIFA Please Call Uniform Law Commission/NCCUSL 312.450.6600 | [www.nccusl.org](http://www.nccusl.org) | [www.upmifa.org](http://www.upmifa.org)

# UPMIFA

*uniform prudent management of restricted funds*

additional scrutiny by the attorney general. This optional provision states that if a charity with endowment funds valued, in the aggregate, at less than \$2 million, plans to authorize spending that will take the total value of all endowment funds held by the charity below total HDV for those funds, then the charity must notify the attorney general in that state before proceeding. The optional provision gives the attorney general 60 days to take action before the charity spends below HDV but does not require approval from the attorney general. If the attorney general's office gets notice of proposed spending, someone in the office can review the decision, talk with the charity, and provide advice on prudent spending before the charity spends the money.

## **Release or Modification of Restrictions**

A charity can continue indefinitely. Over time, changing circumstances may necessitate changes in the way the charity carries out its purposes or changes in the purposes themselves. UPMIFA provides rules for modification that clarify the ways in which nonprofit corporations can change restrictions.

UPMIFA, like UMIFA, permits a donor to release a restriction the donor imposed on a charitable gift. The donor cannot direct the use of the property after the release, but a charity would likely work with the donor to decide on the appropriate changes.

Under UMIFA, if the charity could not obtain the donor's consent, perhaps because the donor was dead, the charity could ask a court to release a restriction. The problem with this approach is that the statute gives the court authority to release the restriction but appears to give the charity control over the use of the assets after the release, without the application of cy pres principles. Section 7(d) of UMIFA then cryptically notes that the release provision "does not limit the application of the doctrine of cy pres."

Rather than permitting release by a court, with no restrictions on future use, UPMIFA adopts the doctrines of cy pres and deviation from trust law, taking language from the Uniform Trust Code. Deviation, in UPMIFA 5 6(b), allows a charity to ask the court to release or modify a restriction that has become impracticable or wasteful or one that impairs the management or investment of the fund. The same section permits a request to modify a restriction if, because of circumstances not anticipated by the donor, the modification will further the purposes of the fund. Any change must be consistent with the donor's probable intention. Cy pres allows a charity to ask a court to approve a change because a restriction has become unlawful, impracticable, impossible to achieve, or wasteful. Under the application of cy pres, a change must be consistent with the charitable purposes expressed in the document that created the gift.

UPMIFA adds a new provision that should be of help to charities. Section 6(d) provides that if a fund is both old (20 years) and small (\$25,000), then a charity can apply cy pres to the fund to change a restriction, after first giving notice to the attorney general but without obtaining court approval. The charity must wait 60 days before modifying the restriction, to give the attorney general time to take action if the attorney general finds a problem with the proposed modification. This provision addresses the problem that occurs when a restriction on a fund no



Uniform Law Commission

For Questions About UPMIFA Please Call Uniform Law Commission/NCCUSL 312.450.6600 | [www.nccusl.org](http://www.nccusl.org) | [www.upmifa.org](http://www.upmifa.org)

# UPMIFA

*uniform prudent management of institutional funds act*

longer makes sense, but the fund is too small to justify the costs of a court proceeding to request deviation or cy pres.

In keeping with the approach taken under trust law for modification using cy pres or deviation, the Act does not require notification of donors. Of course, a charity's self-interest in maintaining good donor relations will encourage contacting any known donors about any need to release or modify a restriction. UPMIFA does not change the general rule that donors do not have standing to bring a court challenge to a charity's actions. UPMIFA maintains the attorney general's traditional role in protecting donor intent and the public's interest in charitable assets.

## **Enactment**

Now that the Uniform Law Commission has approved UPMIFA, legislatures will begin considering enactment. A copy of UPMIFA, including comments that provide additional information, can be found at [www.nccusl.org](http://www.nccusl.org) or obtained by contacting Susan Gary at [sgary@law.uoregon.edu](mailto:sgary@law.uoregon.edu). Prof. Gary is happy to answer questions, hear comments, and help with legislative efforts in connection with UPMIFA.



Uniform Law Commission

For Questions About UPMIFA Please Call Uniform Law Commission/NCCUSL 312.450.6600 | [www.nccusl.org](http://www.nccusl.org) | [www.upmifa.org](http://www.upmifa.org)

# UPMIFA

*uniform prudent management of institutional funds act*

## HIGHLIGHTS

- **Investment freedom.** Portfolio managers are not limited in the kinds of assets that may be sought for the portfolio. (Broader than UMIFA)
- **Costs.** Costs must be managed prudently in relationship to the assets, the purposes of the institution and the skills available to the institution. (Not addressed in UMIFA)
- **Expenditure of funds.** Total return expenditure is expressly authorized under comprehensive prudent standards relating to the whole economic situation of the charitable institution. (UMIFA does not address this standard)
- **Historic dollar value abolished.** UPMIFA abolishes the historic dollar value limitation on expenditure in UMIFA.
- **Seven percent rule.** States may adopt an optional rule that presumes expenditure exceeding 7% of total return is imprudent.
- **Release of restrictions for small institutional funds.** UPMIFA provides new procedures for releasing restrictions on small institutional funds (less than \$25,000) held for a long period of time (20 years), requiring only notice to the Attorney General 60 days in advance of the release. (Not addressed in UMIFA)
- **Application.** UPMIFA applies to funds held in any form, including nonprofit corporate form, except charitable trusts, with a commercial or individual trustee. (UMIFA applies only to endowments held by a charitable institution for its own account.)



Uniform Law Commission

For Questions About UPMIFA Please Call Uniform Law Commission/NCCUSL 312.915.0195 | [www.nccusl.org](http://www.nccusl.org) | [www.upmifa.org](http://www.upmifa.org)

## **Commonfund Commentary**

---

### **Uniform Prudent Management Act proposes major changes in investment standards for nonprofits**

Nonprofit investors are familiar with the Uniform Management of Institutional Funds Act (UMIFA), the landmark statute that, on its passage in 1972, established standards for the management, investment and expenditure of the endowment funds of nonprofit institutions. Now, the National Conference of Commissioners on Uniform State Laws (NCCUSL) has approved a comprehensively revised version of UMIFA, called the Uniform Prudent Management of Institutional Funds Act, or UPMIFA. This new law, if adopted by the various state and territorial legislatures, is anticipated to have widespread implications for nonprofit organizations, including:

- Elimination of the historic dollar value limitation on spending (the so-called "underwater funds" rule).
- Broadening the scope covered by the statute, which is intended to apply to trusts, governmental agencies, and any other type of entity dedicated to charitable purposes, as well as nonprofit organizations.
- Comprehensive incorporation of modern portfolio investment standards by providing for diversification of assets, pooling of assets, total return investment and whole portfolio management.
- An endorsement of the concept of intergenerational equity via an optional provision that allows states to find that an organization spending more than 7 percent of its endowment in one year is acting imprudently.

UPMIFA was approved by 300 state law commissioners on July 13, 2006 at NCCUSL's annual meeting. The act will now go to the American Bar Association for approval; after that, it will be introduced into the legislature of each jurisdiction. If signed into law, UPMIFA will replace UMIFA, which has been the standard in 48 states for the past three and one-half decades.

Over the last four years Commonfund personnel have followed the deliberations of the drafting committee, providing advice and input when asked. Now that a bill has been proposed, Commonfund intends to publish educational materials for those in the nonprofit community who seek a better understanding of its proposed provisions.

John S. Griswold, Jr., Executive Director of the Commonfund Institute, noted that "Commonfund and UMIFA were conceived from the same body of thought leadership. As such, UMIFA and Commonfund have been inextricably linked for over 30 years. Commonfund was founded in 1971 through a grant from the Ford Foundation. UMIFA was approved the very next year, partly as the result of a series of studies commissioned by the Ford Foundation that recognized nonprofit organizations were being hampered by outdated state laws that discouraged modern total return investing."

## **UMIFA broke new ground**

Before the approval of UMIFA, there was no consistent body of law to guide nonprofit decision-making concerning investment authority and the use of appreciation for endowed funds. Overly conservative and restrictive trust and investment laws in the various states caused institutional funds to be invested largely in low yielding bonds and fixed income instruments that delivered reasonably safe and dependable income but whose market value was constantly eroded by inflation. With great success, UMIFA significantly broadened the list of permissible investments for nonprofits, allowed boards to delegate investment authority to outside managers within a general fiduciary standard of prudence, and enabled institutions to pursue total return investing. Now, UPMIFA fully incorporates the concepts of modern portfolio theory from the Uniform Prudent Investor Act and the Uniform Principal and Income Act, both of which have been widely adopted, for the more efficient management of nonprofits' endowed funds.

UPMIFA is the product of four years of drafting efforts and extensive coordination among donors, managers and nonprofit organizations. NCCUSL, a nonprofit association of lawyers, has been working for uniformity in state laws since 1892, filling the gap between national legislation enacted by Congress and individual state laws. NCCUSL is perhaps best known for its drafting of the Uniform Commercial Code, which exists in every U.S. jurisdiction and provides the uniform legal framework governing commerce.

While UPMIFA adds only one word to UMIFA's title, the underlying change in the law is major in both structure and significance. UMIFA had gone unchanged over its entire 34-year existence. If adopted, UPMIFA will likely reshape the landscape of nonprofit fund management and investment.

### **Four major areas of change**

- As its name suggests, UPMIFA adopts the prudence standard for investment decision-making. The act directs those responsible for managing and investing the funds of an institution to act as a prudent investor would, using a portfolio approach in making investments and considering a variety of factors, including the purpose and risk and return objectives of the fund.
- Under UPMIFA, the rules governing expenditures from endowment funds have been modified to give a governing board more flexibility in making investment and expenditure decisions within the general standard of prudence, so that the board can cope with fluctuations in the value of the endowment. It does this primarily by providing investment freedom (portfolio managers are not limited in the kinds of assets that may be sought for the portfolio), and by providing updated rules on the expenditure of funds (total return expenditure is expressly authorized under comprehensive prudent standards relating to the whole economic situation of the nonprofit institution).
- In this regard, an important change in the new act is the elimination of the "historic dollar value" rule governing "underwater funds" (those funds whose value, owing to stock market contractions of the type brought on by the 2000 - 2002 bear market, is below the value of the gifts at the time they were given by donors). Under UMIFA, institutions were

not allowed to spend from a fund if its asset value was below its historic dollar value. UPMIFA replaces the use of historic dollar value with a more flexible spending rule, pursuant to which trustees may spend or accumulate as much of an endowment fund – including principal or income, realized or unrealized appreciation – as they deem prudent, taking into account the intended duration of the fund, the fund’s purposes, economic conditions, expected inflation, investment returns, other resources of the institution and its investment policy.

- In an endorsement of the concept of intergenerational equity, the proposed text of UPMIFA includes an optional limitation available for those jurisdictions desiring to place limits on spending. This option is a “7 percent rule” that provides a rebuttable presumption that expenditures exceeding 7 percent of a fund’s total return over a rolling three-year period are imprudent. Enactment of the 7 percent rule is left to the discretion of individual state legislatures. Spending more than 7 percent will not automatically mean an organization is in violation of UPMIFA, but its board may have to make the case to state regulators that their spending policy was, in fact, prudent under the circumstances.

UPMIFA applies to all types of nonprofit organizations – whether nonprofit corporations, trusts, unincorporated associations, governmental subdivisions or agencies, or any form of entity that is organized exclusively for charitable purposes. This reflects the fact that standards for investing and managing institutional funds are and should be the same regardless of the legal form of the organization.

Eric Wohlforth, Trustee  
University of Alaska Foundation  
Phone: (907) 450-8030  
Fax: (907) 450-8023



UNIVERSITY  
*of* ALASKA

*Many Traditions One Alaska*

Butrovich Building  
910 Yukon Drive, Suite 207  
PO Box 755080  
Fairbanks, AK 99775-5080  
EWohlforth@akatty.com

March 10, 2009

The Honorable Joe Paskvan  
Alaska State Capitol  
Juneau, Alaska 99801-1182

RE: Uniform Prudent Management of Institutional Funds Act (UPMIFA) Legislation

Dear Senator Paskvan:

On behalf of the University of Alaska Foundation, as chairman of its Investment Committee, I urge favorable consideration and passage of SB 134, relating to the Uniform Prudent Management of Institutional Funds.

Eric Wohlforth,

Trustee and Investment Committee Chair  
University of Alaska Foundation

# the foraker group

Standing Beside Alaska's Nonprofits

161 Klevin Street, Suite 101

Anchorage, AK 99508

Phone: (907) 743-1200 Fax: (907) 276-5014

## Foraker Group Governance Board

Bill Allen, Chair

Will Anderson

Jim Bowles

Sherril Burretta

George Capriolos

Valerie Davidson

Dan Fauske

Mike Felix

Glen Gardner

Jo Heckman

Kevin Hostler

Jeff Jessee

Bernice Joseph

Diane Kaplan

Janie Leask

Steve Marshall

John Minge

Vic Molozzi

Wendy Redman

Doug Suttles

Bernie Washington

Kathie Wasserman

Ed Rasmuson,

Emeritus

## Foraker Group Operations Board

Stephanie Allen

Trudy Anderson

Carla Beam

Marie Berg

Carrie Brown

Michele Brown

Jim Caldarola

Jerry Drake

Charlotte Fox

Stephanie Garrard

Sven Haakanson, Jr.

Randy Hagerstein

Nick Hardigg

Tina Marie Harford

Branda Hewitt

Mark John

Jim Maley

Joan O'Keefe

Ira Perman

Sammye Pokryfik

Jake Poole, Chair

Elizabeth Ripley

Jane Rogers

Jeclyn Sallee

Carol Simonetti

Ivy Spohnholz

Wayne Stevens

Joy Steward

Sarahyn

Tabachnick

Deborah Vo

March 17, 2009

The Honorable Senator Joe Paskvan  
Alaska State Capitol, Room # 7  
Juneau, AK 99801

Dear Senator Paskvan:

Thank you for your sponsorship of Senate Bill 134. It is a timely piece of legislation which replaces obsolete rules, and in doing so brings Alaska trust law into this century. But the real value The Foraker Group sees in this legislation is the ability to provide solid options and realistic opportunities for Alaska nonprofit institutions and the University of Alaska in pursuing long-term sustainability.

The Foraker Group is a statewide Management Support Organization established in 2000, with a straightforward mission: Assuring the success of Alaska's nonprofit organizations by helping them build their own sustainability. Foraker does this by providing high-quality, efficient, and cost-effective assistance to staff and boards of directors in three broad areas: shared/professional services, education and training, and organizational development. And more and more, we are also speaking out on behalf of Alaska's nonprofit sector – this is what leads us to submit a letter of support for SB 134.

We support Senate Bill 134 because the legislation can have positive impacts on Alaska nonprofits, as well as the University of Alaska. Simply stated, developing an Alaska version of the Uniform Prudent Management of Institutional Funds Act (UPMIFA) provides solid guidance to managers and investors of charitable funds and endowments. As they respond to the nation's economic crisis and build their sustainability, this kind of "best practice" is essential to nonprofit organizations of all kinds.

The best possible response to economic uncertainty is rooted in long-term sustainability. Alaska organizations of all shapes and sizes are responding to threats to sustainability in many ways, all in pursuit of important missions in their communities. Building a sustainable income stream and ensuring financial resilience is essential in Alaska's nonprofit sector – sustainable organizations are better positioned to meet their important missions, are more effective, more efficient and above all more self-reliant. They form the foundation of a strong Alaska economy, and healthy, productive Alaska communities.

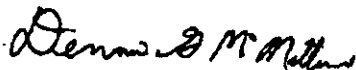
The current economic crisis is proving to be especially troublesome for organizations that manage or rely on charitable funds and endowments. But it would be a mistake to portray the passage of SB 134 as a response to economic uncertainty. The "fixes" in SB 134 are not made in response to economic turmoil – the changes are warranted now, regardless of economic circumstances. It is all about being "good stewards" of the donated or endowed dollars of others – a task that becomes harder and harder in the face of growing economic turmoil.

Prudent stewardship is all the more difficult in a demanding digital age using antiquated and inadequate analog tools. The proposed legislation can provide the tools to meet that donor intent while at the same time help develop long-term sustainability.

We know the economy is in turmoil, and that turmoil is hitting all Alaska organizations – government, corporate entities, education, tribal, private foundations, the nonprofit sector, and the University of Alaska. The economic situation makes this legislation timely, but it is change that should come regardless.

Please feel free to contact Foraker Vice President Dr. Michael Walsh with any questions you might have. He can be reached via email at [mwalsh@forakergroup.org](mailto:mwalsh@forakergroup.org)

Sincerely,



Dennis McMillian, President  
The Foraker Group