

To: Prof. Sean Kealy  
From: Karissa Flynn  
Date: December 3, 2009  
Re: Legislative History of S. 1783/S. 2078

---

Senator O'Leary originally filed S. 1783, An Act Providing for the Uniform Prudent Management of Institutional Funds, on January 20, 2009, at the urging of Mass Audubon. I began my search for legislative history with Sen. O'Leary's office, where I spoke with Nate Mayo. Nate informed me that non-profits were pushing for UPMIFA to be passed and signed into law before the end of fiscal year 2008 in order for the new law to have the maximum benefit. Many non-profits were suffering from financial hardship. In particular, Brandeis was struggling after the Madoff scandal and SEA Semester at Sea Program in Woods Hole was faced with selling one of its sailboats by June 30, 2009, only to try to buy it back the next day. Nate explained that there was not as much of a push for the bill as there should have been and it was somewhat slowed down in the process. Nate also provided me with several documents explaining UPMIFA.

The bill was initially referred to the Joint Committee on the Judiciary and a hearing was scheduled for June 8, 2009. I obtained copies of testimony from the Judiciary Committee, as well as the bill summary distributed to the committee members. The bill was redrafted by the committee and reported out on June 8, 2009 as S. 2078. According to Nate Mayo in Sen. O'Leary's office, the provision that loosens restrictions on "small and old" endowment gifts was put forth as an option by the uniform law commission. Previous law required an organization to go to court to modify the restrictions on all endowments. S. 2078 allows the courts to establish a standard here rather than having those figures written in the law. Additionally, there was a change in the bills' treatment of spending into principal money of a fund. In section 3(D) of S.

1783 the 7% standard was intended to create a baseline to guide organizations: if with due consideration of the guidelines in the UPMIFA law, an organization goes 7% or less into a fund's principal, it will be generally considered a prudent action, and over 7% will be generally considered imprudent. This provision, § 3(D), was removed because it seemed too arbitrary and was not essential to the bill, although it would have provided clear guidance for non-profits.

The bill was then referred to the Senate Committee on Ways and Means. I spoke with Lisa Gentile, associate counsel for Senator Pangiotakos. She explained that the committee's review of the bill was fairly straightforward because it was a uniform bill submitted by the Uniform Law Commission. The only amendment submitted by the committee was a correction from the Uniform Law Commission, because the original bill referred to the incorrect federal statute.

The Senate amended the bill as recommended by the Ways and Means committee on June 10, 2009 and ordered it to a third reading on June 11, 2009. Sen. O'Leary made comments on the Senate floor on June 11 about the importance of this bill. His talking points are included in the legislative history. The Senate passed the bill to be engrossed on June 11, 2009 by a vote of 39 in favor and none opposed. (Senate Roll Call No. 82)

The bill was then sent to the House of Representatives, where it was read and referred to the House Committee on Ways and Means on June 15, 2009. The House Ways and Means Committee reviewed the bill and recommended that it ought to pass on June 25, 2009. There were no documents from the House Ways and Means Committee. The bill was subsequently referred to the House Committee on Steering, Policy and Scheduling, which reported on June 29, 2009 that the bill should be placed in the Orders of the Day for the next sitting for a second reading. The second reading in the House took place on June 30, 2009 and it was ordered to a

third reading. House rules were suspended and the bill read a third time. Representative Pedone moved to amend the bill by inserting an emergency preamble, for the same reasons outlined by Nate in Sen. O'Leary's office. The Amendment was adopted by the House and the bill was passed to be engrossed by a vote of 152 in favor and none opposed. The Senate suspended rules and concurred in the House amendment by a vote of 38 in favor and none opposed. After the Senate and the House adopted the emergency preamble and enacted the bill, it was sent to the Governor on June 30, 2009. The governor signed the bill on July 2, 2009.

In searching for legislative history, I went to both chairs of the Judiciary committee, the State House Library, the Senate Committee on Ways and Means, the Senate Clerk, Senator O'Leary's office, the House Committee on Ways and Means, and the House Committee on Steering, Policy, & Scheduling. I also used the legislature's website and State House News.