



## NEWS RELEASE

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FOR IMMEDIATE RELEASE

### NEW LAW BOLSTERS NONPROFITS

July 2, 2009 (BOSTON, Mass.) – The Massachusetts House and Senate voted unanimously on June 30 in support of Senate Bill 2078, the Uniform Prudent Management of Institutional Funds Act (UPMIFA), and today Governor Patrick signed the bill into law. Charitable organizations in Massachusetts have been pressing for passage of UPMIFA by the end of the fiscal year on June 30, so that they may access its benefits and avoid unnecessary layoffs and liquidation of assets. 40 states have passed similar legislation, which raises the threshold of responsibility for non-profits in managing their assets, while providing greater flexibility to these organizations in managing and expending from their endowments.

“This legislation provides critical support for our non-profits during this tough recession which has brought on severe reductions in program funding and private donations,” Senate President Therese Murray said. “It makes long-overdue updates to endowment management laws, resulting in unprecedented flexibility and efficiencies that will allow charitable organizations to save jobs and sustain critical services for the people of the Commonwealth.”

“I’m proud that the House and Senate and Administration have worked together to help our partners in the non-profit sector of Massachusetts,” House Speaker Robert A. DeLeo said. “The many nonprofit organizations in Massachusetts serve the needs of our communities and help our state in ways that government cannot. This bill will provide our nonprofits with the flexibility they need in these tough fiscal times so that they may continue to enrich the lives of so many.”

The bill, filed by Senator Robert O’Leary (D-Barnstable), allows a charitable organization to focus more on the preservation of their organization and not on solely preserving their endowments, as current law states. It modernizes the rules governing expenditures from endowment funds, both to provide stricter guidelines on spending from endowment funds and to give institutions the ability to cope more easily with fluctuations in the value of the endowment. It also updates the provisions governing the release and modification of restrictions on charitable funds to permit more efficient management of these funds.

“The non-profit sector is a major employer in this state and they are hurting financially right now, just like everybody else,” said Senator O’Leary. “Allowing our non-profits better access to money they already have, while maintaining appropriate state oversight of spending, is the best thing we can do to help our non-profits help themselves. I’m thrilled to see that we were able to get this bill done in time for the next fiscal year.”

“The passage of this important legislation will allow many non-profit organizations – from environmental groups to arts and cultural organizations – to have greater flexibility in responsibly managing their finances while continuing to provide services during these challenging economic times” said Representative Stephen Kulik (D-Worthington).

13% of Massachusetts workers are employed in the non-profit sector, which includes arts institutions, foundations, colleges and universities, charities, conservation groups and others. The financial crisis has hit these organizations in the Commonwealth and across the nation through capital losses on endowments and decreases in charitable donations. Most non-profits rely on private donations to help maintain their bottom line, but during tough economic times some of those

funds go "underwater", meaning the donation is worth less today than it was yesterday. When that happens, none of those funds can be spent, leaving non-profits unable to support the programs their donors endowed. UPMIFA would allow a small portion of those funds to be spent, consistent with donor intent, and only if expenditure is low enough to not compromise the permanent nature of the fund.

"This will help Mass Audubon and other nonprofits in Massachusetts weather the storm" said Laura Johnson, President of Mass Audubon. "The Senate, House and Patrick Administration recognized the importance of this bill during a difficult time on Beacon Hill, made it a priority, and worked together to meet the needs of the nonprofit sector. Without their leadership, and without the tenacity of Senator Robert O'Leary, we wouldn't be making this important step forward for nonprofits today."

"AICUM is very appreciative of Mass Audubon's leadership on this issue, and the Legislature's timely action on this bill," said Rich Doherty, president of the Association of Independent Colleges and Universities in Massachusetts. "This legislation will give not for profit, educational institutions critical flexibility in the prudent management of endowment funds."

"On behalf of the statewide cultural community, MAASH thanks Senate President Therese Murray, Speaker Robert DeLeo and Governor Deval Patrick for their leadership in seeking innovative ways to support cultural jobs," said Dan Hunter, executive director of the Massachusetts Advocates for the Arts, Sciences and Humanities (MAASH), "UPMIFA allows cultural organization valuable flexibility in managing this recession" said Dan Hunter, Executive Director of Massachusetts Advocates for the Arts, Sciences and Humanities.

"At this critical time when nonprofits face the perfect storm of revenue drops, rising demands, and low reserves, this bill provides important flexibility, without placing demands on government" said David Magnani, Executive Director of the Massachusetts Nonprofit Network. "This is a particularly critical time for this legislation and we thank the legislature for passing it and the Governor for signing it."

"With the passage of UPMIFA, Sea Education Association can again focus our efforts on teaching students about the oceans. Like other non-profits, we have taken a real beating in this economy. Thanks to the legislature and the Governor for their quick action, we can now manage our endowments in service to our mission. The next generation of ocean scientists and policy makers that SEA helps to turn out owe a debt of thanks for the passage of this bill" said John Bullard, President of the Sea Education program at Woods Hole Oceanographic Institution.

UPMIFA requires non-profits to diversify their portfolios and invest wisely, always with donor intent in mind, and provides guidance and authority to charitable organizations on the management of their funds. It will also impose additional duties to those managing charitable funds, providing additional protections for charities and protecting the interests of donors who want to see their contributions used wisely. The model bill was drafted by the Uniform Law Commission, endorsed by the American Bar Association, and was finalized in 2007. Since then it has become law in 38 states, updating existing law. It is expected to be signed into law in 44 states by the end of the year. It modernizes the rules governing expenditures from endowment funds, both to provide stricter guidelines on spending from endowment funds and to give institutions greater ability to adjust with fluctuations in the value of the endowment.

States are adopting UPMIFA for the following reasons:

- To make sure that the best investment practices govern the actual investment of institutional funds.
- To withdraw obsolete rules governing prudent total return expenditure and provide a modern rule of prudence consistent with the rules that govern investment.
- To encourage growth of institutional funds while eliminating investment risks that threaten principal.
- To assure that there are adequate assets in any institutional fund to meet program needs.
- To make the law governing institutional funds uniform in every state.

For more details, visit [www.upmifa.org](http://www.upmifa.org).

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Mass Audubon works to protect the nature of Massachusetts for people and wildlife. Together with more than 100,000 members, we care for 33,000 acres of conservation land, provide educational programs for 200,000 children and adults annually, and advocate for sound environmental policies at the local, state, and federal levels. Mass Audubon's mission and actions have expanded since our beginning in 1896 when our founders set out to stop the slaughter of birds for use on women's fashions. Today we are the largest conservation organization in New England. Our statewide network of 45 wildlife sanctuaries welcomes visitors of all ages and serves as the base for our conservation, education, and advocacy work. To support these important efforts, call 800-AUDUBON (283-8266) or visit [www.massaudubon.org](http://www.massaudubon.org).

TALKING POINTS: Uniform Prudent Management of Institutional Funds Act

- I'd like to thank the body for promptly considering this urgent legislation, the **Uniform Prudent Management of Institutional Funds Act, or UPMIFA**
- This is an important step that the Senate is taking today – fully 13% of MA workers are in the non-profit sector. This includes our healthcare, higher education, arts and research institutions, as well as a range of advocacy, conservation and other groups.
- Decreases in donor giving and losses on investments have put many of these jobs at risk, and threatened the essential services that those institutions provide.
- While on a state and national level there has been a great deal of focus on bailing out other employment sectors, we have not yet addressed relief for our non-profits. UPMIFA will allow non-profits to bail themselves out.
- This legislation would raise the threshold of responsibility for non-profits in managing their assets, while providing greater flexibility to these organizations in managing and spending from their endowments.
- Current state law is outdated regarding responsible management and spending of endowment funds.
  - charitable organization law requires organizations to consider the preservation of each individual endowment, rather than a consideration of donor intent and the long-term preservation of the organization as a whole.
  - non-profits are not allowed to spend down endowed funds below the “historic dollar value”, or the principal of the fund. Thus an endowment

that is "under water", having dipped below its original value is currently frozen and inaccessible.

- The recent financial crisis has effectively frozen many endowments , leaving non-profits in MA with few options to pay operating costs and make payroll
  - Institutions small and large have been faced with cutting services staff considerably, while sitting on large, inaccessible funds that would be better used to spend on the short term
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- In response to this crisis, 35 states have enacted UPMIFA over the last two years. which was originally drafted by the Uniform Law Commission
  - UPMIFA provides guidance and authority to charitable organizations on the management of their funds, and imposes additional duties to those managing charitable funds, providing additional protections for charities and protecting the interests of donors who want to see their contributions used wisely.
  - UPMIFA modernizes the rules governing expenditures from endowment funds, both to provide stricter guidelines on spending from endowment funds and to give institutions greater ability to adjust with fluctuations in the value of the endowment.
  - UPMIFA updates the provisions governing the release and modification of restrictions on charitable funds to permit more efficient management of these funds.
  - The bill directs the SJC to come up with guidelines on when it is appropriate to modify impracticable restrictions on old and small endowment gifts

- Many small endowments have antiquated restrictions and for these funds, the expense of a trip to court will often be prohibitive.
- By permitting a charity to make an appropriate modification, money is saved for the charitable purposes of the charity
- UPMIFA raises the bar of financial responsibility by requiring endowment fund managers to make the following considerations before spending institutional funds:
  - Give primary consideration to donor intent as expressed in a gift instrument,
  - Act in good faith, with the care an ordinarily prudent person would exercise,
  - Incur only reasonable costs in investing and managing charitable funds,
  - Make a reasonable effort to verify relevant facts,
  - Make decisions about each asset in the context of the portfolio of investments, as part of an overall investment strategy,
  - Diversify investments unless due to special circumstances, the purposes of the fund are better served without diversification,
  - Dispose of unsuitable assets, and
  - In general, develop an investment strategy appropriate for the fund and the charity.

- To be clear about the urgency of the situation, there are a handful of organizations that need the abilities offered under UPMIFA by June 30 so that they may use it at the end of FY09, and all organizations need this legislation by the beginning of FY10 so that they may begin the year with its benefits. It is a very aggressive timeline for legislation to become law.
- several organizations, including Sea Education Association (SEA) on Cape Cod are suffering now, and for them June 30 is looming, after which they will have to undergo decimating layoffs and perhaps some significant liquidation of other assets – **The legislature has an opportunity to help out SEA and others if we act quickly**
- Many non-profits have already undertaken difficult measures to cut costs, and I don't suggest that we can save our non-profits from any of the harm that the economic downturn has brought.
- But we can do something, by allowing them to help themselves weather the storm.
- If we do not act soon some institutions will face unnecessary liquidation of permanent assets, and may have to shut down altogether

# 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.





MEMORANDUM

To: Interested Parties

From: Kieran Marion, Uniform Law Commission – for more information, contact Jennifer Ryan at Mass Audubon, 617.759.0227, and visit [www.upmifa.org](http://www.upmifa.org).

Date: March 5, 2009

RE: Massachusetts Senate Bill No. 1783 – UPMIFA

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The Uniform Prudent Management of Institutional Funds Act (“UPMIFA”) was promulgated by the Uniform Law Commission in 2006 to update and replace the older 1972 Uniform Management of Institutional Funds Act (“UMIFA”). Although UMIFA has provided useful guidance, prudence norms have evolved over the past 37 years, and UPMIFA provides a modern articulation of prudence standards for the management and investment of charitable funds and the expenditure of endowment funds. UPMIFA draws upon the Revised Model Nonprofit Corporation Act (“RMNCA”), as well as the 1994 Uniform Prudent Investor Act (“UPIA”) and its updated rules for investment decisions, duties, and protections related to trusts (including charitable trusts), and harmonizes the application of these standards for charitable organizations, whether organized as a trust (unless the trustees are non-charitable, in which case trust law governs), nonprofit corporation, or other entity. Finally, the act updates provisions governing the release and modification of restrictions on institutional funds for more efficient management while preserving the historic authority of states’ Attorneys General.

UMIFA had been adopted in 48 jurisdictions, including Illinois, and 28 jurisdictions have adopted UPMIFA over the past two years. Accordingly, Senate Docket No. 973 would repeal Massachusetts’ version of UMIFA and replace it with the new UPMIFA (M.G.L. ch. 180A).

Key highlights of the legislation, section-by-section, include:

**Section 1: Definitions.** Section 1 sets the operating definitions for the act. The definition of “Institutional fund” is expanded to mean a fund held by an institution exclusively for charitable purposes or a fund held by trustee for a charitable community trust.

**Section 2: Standard of Conduct In Managing And Investing An Institutional Fund.** Section 2 adopts the “prudence standard” for investment decision making. UPMIFA’s prudence standard is consistent with the “business judgment rule” as applied to charitable institutions, and derived from the RMNCA and UPIA. By drawing in both sources, the new law clarifies that commonly accepted standards of prudent investment apply to all charitable organizations.

Section 2 outlines the duties expected in conducting and managing investment activity, including the overarching duty to comply with donor intent and the terms of the gift instrument. Section 2 also expressly includes the duty of loyalty and care (as would be exercised by an ordinarily prudent person in a like position under similar circumstances), the duty to minimize costs, and the duty to investigate the

accuracy of information used for investment decisions. The section also allows for pooling of funds for investment and management purposes.

Finally, section 2 outlines factors that must be considered in the prudent management and investing of funds, and gives direction to diversify and make decisions in context of the portfolio and overall investment strategy.

The prudence factors for management and investment of institutional funds are: general economic conditions; possible effects of inflation or deflation; expected tax consequences (if any) of investment decisions or strategies; the role of each investment or course of action in the overall investment portfolio of the fund; expected total return from income and the appreciation of investments; other institutional resources; needs of the institution and fund to make distributions and preserve capital; and an asset's special relationship or value to the charitable purposes of the institution.

**Section 3: Appropriation For Expenditure Or Accumulation – Rules Of Construction.** UMIFA permitted the expenditure of appreciation of an endowment fund to the extent that it had appreciated above the fund's historic dollar value ("HDV") (meaning the aggregate fair value of a fund when created, subsequent donations, and accumulations made at the direction of a gift instrument). UPMIFA replaces the concept of HDV with a more carefully articulated prudence standard for the process of making decisions about expenditures. The seven prudence factors outlined in section 3 provide greater ability and flexibility to meet and effectuate donor intent than an arbitrary number fixed in time, and the factors continue to focus on and protect the purpose and duration of the endowment fund in question in accordance with the intent of the donor. UPMIFA's prudence factors encourage spending policies that will be responsive to fluctuations in fund values, maintain appropriate expenditures and accumulations during economic downturns and strengths, and guard against inappropriate depletion of endowment funds while still meeting the core "mission" of the funds. (Also, other safeguards for funds still exist, from donor restrictions to fiduciary duties of decision makers.)

The seven prudence factors for expenditure decisions are: the duration and preservation of the endowment fund; the purposes of the institution and the endowment fund; general economic conditions; possible effects of inflation and deflation; expected total return from income and the appreciation of investments; other resources of the institution; and the investment policy of the institution.

As filed, the legislation also contains an optional provision from the uniform act creating a rebuttable presumption of imprudence if an institution appropriates an amount for expenditure in any year that is greater than 7% of the fair market value of the endowment fund, and provides the formula for calculating the fair market value of the fund. This optional subsection does not apply to appropriations for expenditure permitted under other law or by the gift instrument.

**Section 4: Management and Investment Functions.** Section 4 permits institutions' decision makers to delegate management and investment functions to external agents, so long as the decision makers use reasonable skill, care, and caution in selecting the external agent, defining the scope of the delegation, and reviewing agent performance. The agent owes a duty of reasonable care to the institution in

complying with the scope and terms of the delegation, and is subject to court jurisdiction in Massachusetts for issues arising from the delegation or performance. Decisions regarding expenditures cannot be delegated.

**New Section 5: Release Or Modification of Restrictions On Management, Investment, Or Purpose.**

Section 5 governs the release or modification of restrictions in a gift instrument on the management, investment, or overall purpose of an institutional fund. Under section 5, a donor may consent to a release or modification of restrictions, but funds must still be used for the charitable purposes of the institution. Courts may modify restrictions if they are impracticable or wasteful, impair the management or investment of a fund, or if the modification will further the purposes of the fund in a manner unanticipated by the donor. Modifications must be made in accordance with the donor's likely intentions in mind. The court may also modify the purpose of a fund if it has become unlawful, wasteful, or impossible. Notice and opportunity to be heard must be given to the Attorney General in either court action.

If the institution itself finds that it has a qualified fund with restrictions that are impracticable, wasteful, or impossible, then the institution can modify that restriction without court action by giving 60-days notice to the Attorney General. This provision is only applicable to smaller and older funds, defined as 20 years or older and under \$25,000.00, and the property must still be used consistently with the charitable purposes expressed in the gift.

**Section 6: Compliance-Determination.** Section 6 states that compliance with the act is judged on the facts and circumstances at hand when a particular decision is made, and hindsight is not applicable.

**Section 7: Application To Existing Institutional Funds.** Section 7 states that the new act will apply to institutional funds existing on or created after July 1, 2010. For those funds existing on July 1, 2010, it applies only to decisions or actions made or taken on or after that date.

**Section 8: Relation To ESIGN.** Section 8 is standard boilerplate in most uniform acts following passage by the U.S. Congress of the federal Electronic Signatures in Global and National Commerce Act (ESIGN). ESIGN expressly allows state electronic transactions law to control in many circumstances, and this represents the agreed upon language within the ULC to invoke this for uniform acts that may contemplate electronic transactions or records.

**Section 9: Uniformity In Construction.** Section 9 requires consideration of the need for uniformity among the states when applying or construing this act in Massachusetts.

April 14, 2009

Senator Karen E. Spilka, Senate Chair  
Joint Committee on Economic Development and Emerging Technologies  
Room 511C  
State House  
Boston, MA 02133

Representative Brian S. Dempsey, House Chair  
Joint Committee on Economic Development and Emerging Technologies  
Room 42  
State House  
Boston, MA 02133

**Re: H. 2019 - An Act Mobilizing Economic Recovery in Massachusetts**

Dear Chairwoman Spilka and Chairman Dempsey:

We come to you with an urgent request from the non-profit institutions in the Commonwealth, that you include Senate Bill 1783, *Uniform Prudent Management of Institutional Funds Act* (UPMIFA) in House Bill 2019 "An Act Mobilizing Economic Recovery in Massachusetts". H. 2019 was filed by Governor Patrick on March 20<sup>th</sup>, and the bill was referred to the Committee on Economic Development and Emerging Technologies on March 23<sup>rd</sup>. UPMIFA will help our many non-profit institutions in the Commonwealth who have seen significant losses to their financial assets.

Massachusetts has always been a bastion of institutions of higher learning, conservation and advocacy organizations, and research and arts institutions large and small. Fully 13% of Massachusetts workers are employed in the non-profit sector. The financial crisis has hit these organizations in the Commonwealth and across the nation through capital losses on endowments and a decrease in charitable donations. If our non-profits are not given better access to their assets and endowments through UPMIFA, most of these institutions in which we take so much pride will be decimated financially, and will have to considerably cut their workforce, services and charitable efforts. Some institutions will face liquidation of permanent assets, and may have to shut down altogether.

This session I filed UPMIFA as a standalone piece of legislation, Senate Bill 1783, which is currently before the Committee on the Judiciary. Originally authored by the Uniform Law Commission and passed by 27 states, this legislation would raise the threshold of responsibility for non-profits in managing their assets, while providing greater flexibility to these organizations

in managing and spending from their endowments. I have attached a copy of the legislative language, as well as articles and background information describing and supporting UPMIFA.

The stand-alone legislation remains awaits an exhaustive legislative process. Meanwhile our non-profits are begging for better and immediate access to their assets, well before the fiscal year begins on July 1 of this year. UPMIFA will preserve significant jobs and revenue to the Commonwealth, and we owe it to our many non-profits from our Universities to our research organizations and local conservation groups to see that they obtain this flexibility. I ask that you make every effort to include this language in House Bill 2019.

Thank you for your consideration of this important initiative. Should you need any more information, please contact my Legislative Director, Nathaniel Mayo, or me.

Very Truly Yours,

**ROBERT A. O'LEARY**  
STATE SENATOR  
Cape & Islands District

**ANTHONY D. GALLUCIO**  
STATE SENATOR  
Middlesex, Suffolk and Essex District

**STEPHEN M. BREWER**  
STATE SENATOR  
Worcester, Hampden, Hampshire and  
Franklin District

**MARC R. PACHECO**  
STATE SENATOR  
1<sup>st</sup> Plymouth and Bristol District

**THOMAS J. CALTER**  
STATE REPRESENTATIVE  
12<sup>th</sup> Plymouth District

**SUSAN C. TUCKER**  
STATE SENATOR  
2<sup>nd</sup> Essex and Middlesex District

**HARRIETTE L. CHANDLER**  
STATE SENATOR  
1<sup>st</sup> Worcester District

**JAMES ARCIERO**  
STATE REPRESENTATIVE  
2<sup>nd</sup> Middlesex

**KENNETH J. DONNELLY**  
STATE SENATOR  
4<sup>th</sup> Middlesex District

**JENNIFER E. BENSON**  
STATE REPRESENTATIVE  
37<sup>th</sup> Middlesex District

**BENJAMIN B. DOWNING**  
STATE SENATOR  
Berkshire, Hampshire and Franklin District

**WILLIAM N. BROWNSBERGER**  
STATE REPRESENTATIVE  
24<sup>th</sup> Middlesex District

**JAMES B. ELDRIDGE**  
STATE SENATOR  
Middlesex and Worcester District

**STEPHEN L. DiNATALE**  
STATE REPRESENTATIVE  
3<sup>rd</sup> Worcester District

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STATE REPRESENTATIVE  
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4<sup>th</sup> Barnstable District

**PAM RICHARDSON**  
STATE REPRESENTATIVE  
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**MICHAEL J. RODRIGUES**  
STATE REPRESENTATIVE  
8<sup>th</sup> Bristol District

**FRANK ISRAEL SMIZIK**  
STATE REPRESENTATIVE  
15<sup>th</sup> Norfolk District

**WILLIAM M. STRAUS**  
STATE REPRESENTATIVE  
5<sup>th</sup> Bristol District

**WALTER F. TIMILTY**  
STATE REPRESENTATIVE  
7<sup>th</sup> Norfolk District

**CLEON H. TURNER**  
STATE REPRESENTATIVE  
1<sup>st</sup> Barnstable District

Cc: Governor Patrick  
Secretary Kirwan  
Secretary Bialecki  
Senate President Therese Murray  
Speaker Robert A. DeLeo  
Chairman Steven C. Panagiotakos  
Chairman Charles A. Murphy

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

**Provides Investment Guidance** UPMIFA modifies the prudence standard of the Uniform Management of Institutional Funds Act to require that investments be made in good faith and with the care of an ordinary prudent person. It would provide guiding criteria for nonprofits who manage endowment and institutional funds to ensure that investment decisions can account not only for donor restrictions on use of the funds, but also the preservation of the fund, as well as the overall investment strategy and charitable purpose of the organization.

**Increases Flexibility By Allowing Limited Expenditure of the Original Gift** UPMIFA would also eliminate UMIFA's concept of "historic dollar value" which sets a floor on the expenditure of endowment funds based on their value at the time they were established. The value of endowments may fluctuate over time as inflation could erode the fund's overall purchasing power or an economic downturn could bring the fund below historic dollar value. *This is capped at 7% of the total value.*

**Preserves Donor Restrictions** While donor restrictions would still govern the fund, this would allow organizations more flexibility to adjust their spending for fluctuations in the value of the fund due to economic circumstances. UPMIFA would also make changes to the law governing donor restrictions placed on endowments. Currently, if a donor restriction becomes impracticable or wasteful, a charity may either modify the restriction with the donor's consent or it may remove the restriction through court proceedings if obtaining donor consent is not possible.

UMIFA allows the court to apply the legal standards of cy pres--allowing a release if the restriction is unlawful, impracticable, or wasteful--to ensure that a release of restrictions furthers the purposes of the fund. **UPMIFA would require application of this principle by law to ensure that any release of restrictions is pursuant to the charitable purposes of the gift.**

### **KEY POINTS**

Eliminates the "historic dollar value" standard which fixes a floor on spending of endowment funds regardless of economic circumstances.

Provides criteria to guide endowment expenditures based on the resources of the fund, economic circumstances, the purpose of the organization, appreciation and return on investment and purchasing power, and the organization's investment policies.

Preserves restrictions place by donors on institutional funds.

Clarifies authority of the courts to modify restrictions on donations consistent with the donor's probable intention if the donor is unable to personally authorize this change.

Clarifies that cy pres principles, which ensure that a change furthers the charitable purpose of the fund, must be applied even after restrictions are released.

Allows modification of funds of less than \$100,000 and more than twenty years old without a court order if the chief regulator agrees. This saves on court costs for small funds.

Passed in 27 states, pending in 13. Language drafted by the Uniform Law Commission.

### **WHY ATTACH UPMIFA TO THE STIMULUS PACKAGE?**

The private, government, and nonprofit sectors are all hurting from the economic downturn. 13% of the Massachusetts workforce is nonprofit. Without costing the Commonwealth a dime, UPMIFA will help nonprofits weather the storm while updating the law that governs endowment management with a model that is working in 27 states and was drafted by the Uniform Law Commission.

For more information, please contact Mass Audubon's Legislative Director, Jennifer Ryan 617.759.0227 or visit [www.upmifa.org](http://www.upmifa.org).  
February 2009