

Testimony of David P. Magnani, Executive Director,
Massachusetts nonprofit Network – June 2, 2009
Joint Committee on the Judiciary

**Uniform Prudent Management of Institutional Funds Act
SB1783 filed by Senator O'Leary**

Thank the committee, Senator O'Leary for his leadership

This legislation has very broad support in the nonprofit community

**Employs 14% of the MA workforce, many of whom are with nonprofits
funded by their endowments**

**Nonprofits are playing an even more vital role as they step in during these
difficult financial times. Given the extreme squeeze they are suffering
resulting from an increased demand for their services while experiencing
a severe drop in giving and reductions in government support, Isn't it
great that we can do something positive to minimize the damage being
done to our nonprofits and the work they do in the community, without
adding to the states financial burden**

If passed before their next fiscal year, beginning July 1, jobs will be saved

**Passed in 34 states and Washington, DC since the model bill was finalized
by the Uniform Law Commission in 2006 – will pass in Massachusetts at
some point soon, but if it happens quickly it will have a positive effect on
our economy**

**I ask on behalf of the nonprofit sector that you please report the bill
quickly and help it through both chambers to the Governor's desk by June
30. Thank you.**



Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON, MA 02133-1020

MICHAEL J. RODRIGUES
REPRESENTATIVE
8TH BRISTOL DISTRICT

Rep.MichaelRodrigues@hou.state.ma.us

Vice-Chairman
Committee on Public Service
Member
Committee on Ways and Means
Committee on Housing

ROOM 167
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June 2, 2009

The Honorable Eugene L. O'Flaherty, House Chair
The Honorable Cynthia Stone Creem, Senate Chair
Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

RE: S. 1783 Uniform Prudent Management of Institutional Funds


Dear Chairman O'Flaherty, Chairwoman Creem and Members of the Committee,

I write to you in support of a bill currently before your committee, Senate Bill 1783, the Uniform Prudent Management of Institutional Funds Act (UPMIFA), legislation which is critical to many non-profit institutions in the Commonwealth who have experienced significant losses to their financial assets.

There is a real sense of urgency for many non-profits. The flexibility that this bill provides would allow non-profits better access to their assets and endowments. UPMIFA will preserve significant jobs and revenue to the Commonwealth, and I think 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.

The bill strengthens management of endowments and allows for spending levels that are more responsive to fiscal climate, both in allowing for growth and expenditure, and in carrying out the intent of the donor. UPMIFA has been enacted in 34 jurisdictions since the model bill was finalized in 2006. Legislation is pending in 15 states. The model bill is endorsed by the American Bar Association.

Therefore, I respectfully request that you release Senate Bill 1783 from your committee with a favorable recommendation. Thank you for your time and careful consideration. If you would like to speak further, please do not hesitate to contact me.


State Representative
Michael J. Rodrigues



The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

FRANK I. SMIZIK
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The Honorable Cynthia Stone Creem
Chairwoman
Joint Committee on the Judiciary
State House, Room 416B
Boston, MA 02133

The Honorable Eugene L. O'Flaherty
Chairman
Joint Committee on the Judiciary
State House, Room 136
Boston, MA 0213

June 2, 2009

Dear Chairwoman Creem, Chairman O'Flaherty and Honorable Members of the Committee,

I write today to express my support for Senate Bill 1783, *the Uniform Prudent Management of Institutional Funds Act* (UPMIFA), and ask the committee to report the bill out favorably. This legislation modernizes Massachusetts' charitable organization law and provides needed relief to the state's struggling non-profit sector, which employs 13% of Massachusetts' workforce.

This legislation strengthens management of endowments and allows for spending levels that are in line with modern investment practice and responsive to the current fiscal climate, both in allowing for growth and expenditure, and in carrying out the intent of the donor. The effects of the legislation are threefold: UPMIFA facilitates the effective diversification of assets, takes into account the changing character of assets available for investment, and allows for the evaluation of overall performance of the endowment assets, rather than on the performance of specific assets.

There is a tangible sense of urgency here. I have heard from many of our local environmental non-profits that they are facing the real possibility of cutting jobs or reducing services to cope with the fundraising challenges and shrinking endowments brought on by the current fiscal crisis. The flexibility that the Act provides would allow non-profits to access portions of their endowments that they currently cannot. This doesn't solve all of the economic challenges non-profits currently face, but it is effective in lessening the burden facing many non-profits.

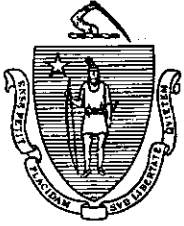
I appreciate your consideration of this important issue and look forward to working with you on the legislation.

Sincerely,

A handwritten signature in black ink that reads "Frank I. Smizik".

Frank I. Smizik





COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133-1053

To Keith

SENATOR ROBERT A. O'LEARY
CAPE AND ISLAND DISTRICT
STATE HOUSE, ROOM 511B
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EDUCATION (CHAIR)
STATE ADMINISTRATION & REGULATORY OVERSIGHT (VICE CHAIR)
LABOR & WORKFORCE DEVELOPMENT
ENVIRONMENT, NATURAL RESOURCES & AGRICULTURE
COMMUNITY DEVELOPMENT & SMALL BUSINESS
MENTAL HEALTH & SUBSTANCE ABUSE

June 2, 2009

Cynthia Stone Creem, Senate Chair
Joint Committee on the Judiciary
State House, Room 416-B
Boston, MA 02133

Eugene L. O'Flaherty, House Chair
Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

Dear Committee Members:

I would like to thank you for the opportunity to testify on behalf of Senate Bill 1783, The Uniform Prudent Management of Institutional Funds Act, commonly known as UPMIFA. I hope the committee will discharge it favorably and promptly, as our non-profit institutions need this relief as soon as possible, with many facing decimating cuts July 1 or earlier.

Non-profits employ 13% of the Massachusetts workforce. This sector includes our healthcare, higher education, arts and research institutions, as well as a range of advocacy, conservation and other groups. 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.

The financial crisis has strained most of these organizations, both through capital losses on endowments and decreases in donor giving. Most non-profits rely on private donations to help maintain their bottom line, but they currently operate under an antiquated set of rules around management of their endowments. They are unduly restricted – they have resources they cannot spend, and cannot plan their finances properly to invest for the benefit of the whole institution

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. For example, non-profits are not allowed to spend down endowed funds below the "historic dollar value", or the principal of the fund. An endowment that is "under water", having dipped below its original value is currently frozen and inaccessible. This is most common among newer non-profits – a group could be sitting on many millions of dollars, but still be forced to downsize significantly, and would have to liquidate in hopes of reconstituting itself when the economy picks up. This exchange can be far more costly and damaging to the institution, and it is important that we provide non-profits with a set of guidelines that allows them to make financial decisions that best preserve those organizations

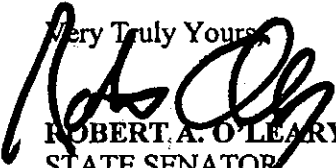
In response to this crisis, 35 states have enacted similar or identical legislation, which was originally drafted by the Uniform Law Commission. UPMIFA provides guidance and authority to charitable organizations on the management of their funds, and imposes additional duties to those managing charitable funds, providing additional protections for charities and protect the interests of donors who want to see their contributions used wisely. The legislation 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. Specifically, the bill allows modification of impracticable restrictions on old (20+ years) and small (<\$25,000) endowment gifts after 60 days notice to the Attorney General. Institutions will also be able to spend down endowments by 7% per year after prudence considerations are made, including donor intent, economic conditions and the financial health of the organization

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

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, but several organizations, including Sea Education Association (SEA) in Falmouth are suffering now, and for whom 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.

I thank the committee for their prompt action on this bill and hope that the members of the Judiciary will be allies in moving this bill forward as soon as possible.

Very Truly Yours,

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

May 5, 2009

The Honorable Cynthia S. Creem
Chair, Joint Committee on the Judiciary
State House, Room 416-B
Boston, MA 02133

The Honorable Eugene O'Flaherty
Chair, Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

Re: Nonprofit sustainability – *The Uniform Prudent Management of Institutional Funds Act (SB 1783)*

Dear Chairwoman Creem and Chairman O'Flaherty;

As you know, all sectors of the economy face an extremely challenging fiscal climate. In Massachusetts, nonprofits are a vital component of the economy, comprising 13% of the workforce. The undersigned nonprofit organizations from across the Commonwealth, representing the arts, education, and environment are writing to request your support in swift passage of *The Uniform Prudent Management of Institutional Funds Act*, or UPMIFA, filed by Senator Robert O'Leary (SB 1783), which is currently before the Joint Committee on The Judiciary. We respectfully request an early hearing be scheduled for SB 1783 and that it be reported out of committee as quickly as possible. Our hope is to have it signed into law by the beginning of our fiscal year, July 1, 2009. Quick adoption of the legislation will help us avoid staff and program reductions.

The Act strengthens management of endowments and allows for spending levels that are more responsive to fiscal climate, both in allowing for growth and in expenditure, and in carrying out the intent of the donor. The model bill was drafted by the national Uniform Law Commission in 2006, has passed in 31 states over the past two years, and is pending in 18 states this year.

Again, we ask for your support in swift passage of this bill by scheduling an early hearing and favorable report. It will truly help organizations such as ours weather the economic storm, preserving jobs and programs. For more information, please contact Mass Audubon's Legislative Director, Jennifer Ryan 617.759.0227, or any of the organizations below.

Thank you for your kind attention to this important matter.

Sincerely,

Association of Independent
Colleges and Universities in
Massachusetts (AICUM)

Massachusetts Nonprofit
Network

Massachusetts Advocates for the
Arts, Sciences and Humanities
(MAASH)

Mass Audubon

Indian Hill Music

Quebec-Labrador Foundation

Appalachian Mountain Club

Manomet Center for
Conservation Sciences

Woods Hole Oceanographic
Institution

Cape Cod Foundation

Old Sturbridge Village

Worcester Cultural Coalition

Greater Worcester Community
Foundation

Sea Education Association (SEA)

cc: The Honorable Therese Murray, President of the Senate
The Honorable Robert A. DeLeo, Speaker of the House of Representatives
The Honorable Robert A. O'Leary
The Honorable Steven C. Panagiotakos, Chair, Senate Committee on Ways and Means
The Honorable Charles A. Murphy, Chair, House Committee on Ways and Means
Members of the Joint Committee on the Judiciary



May 20, 2009

The Honorable Cynthia Stone Creem
Chairwoman
Joint Committee on the Judiciary
State House, Room 416B
Boston, MA 02133

The Honorable Eugene L. O'Flaherty
Chairman
Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

Re: **Senate Bill 1783, the Uniform Prudent Management of Institutional Funds Act** (Senator Robert O'Leary)

Dear Chairwoman Creem and Chairman O'Flaherty;

Mass Audubon thanks you for scheduling an early hearing for *The Uniform Prudent Management of Institutional Funds Act* (UPMIFA), legislation which is of great importance to our organization. The current law that governs endowment management, which was drafted by the Uniform Law Commission, was signed into law in the early 1970's. At this point it is outdated. UPMIFA, also drafted by the Uniform Law Commission, updates and modernizes this law. The *Act* strengthens management of endowments and allows for spending levels that are more responsive to fiscal climate, both in allowing for growth and in expenditure, and in carrying out the intent of the donor. It has been enacted in 34 jurisdictions since the model bill was finalized in 2006. Legislation is pending in 15 states. The model bill is endorsed by the American Bar Association.

As you know, the nonprofit sector is an important part of the Massachusetts economy. The Boston Foundation reports that we comprise 13% of the Massachusetts work force. Mass Audubon employs over 200 full time staff and many hundred more seasonal summer employees. 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 local, state, and federal levels.

There is a real sense of urgency. The flexibility that the *Act* provides would allow us to access a small portion of our endowment that we currently cannot. Although not a significant part, it translates to a number of staff positions and important educational programs which we provide for free.

I urge you to give an immediate favorable report to the *Act*, and hope that you will help move this important legislation through your respective chambers as quickly as possible. If signed into law by the beginning of our next fiscal year starting July 1, 2009, we hope to avoid coming staff and program reductions.

Thank you for your time and consideration.

Sincerely,

Laura Johnson
President

cc: The Honorable Therese Murray, President of the Senate
The Honorable Robert A. DeLeo, Speaker of the House of Representatives
The Honorable Steven C. Panagiotakos, Chair, Senate Committee on Ways and Means
The Honorable Robert A. O'Leary
The Honorable Charles A. Murphy, Chair, House Committee on Ways and Means
Members of the Joint Committee on the Judiciary



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.



May 5, 2009

The Honorable Cynthia S. Creem
Chair, Joint Committee on the Judiciary
State House, Room 416-B
Boston, MA 02133

The Honorable Eugene O'Flaherty
Chair, Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

Re: Nonprofit sustainability – *The Uniform Prudent Management of Institutional Funds Act (SB 1783)*

Dear Chairwoman Creem and Chairman O'Flaherty;

As you know, all sectors of the economy face an extremely challenging fiscal climate. In Massachusetts, nonprofits are a vital component of the economy, comprising 13% of the workforce. The undersigned nonprofit organizations from across the Commonwealth, representing the arts, education, and environment are writing to request your support in swift passage of *The Uniform Prudent Management of Institutional Funds Act*, or UPMIFA, filed by Senator Robert O'Leary (SB 1783), which is currently before the Joint Committee on The Judiciary. We respectfully request an early hearing be scheduled for SB 1783 and that it be reported out of committee as quickly as possible. Our hope is to have it signed into law by the beginning of our fiscal year, July 1, 2009. Quick adoption of the legislation will help us avoid staff and program reductions.

The Act strengthens management of endowments and allows for spending levels that are more responsive to fiscal climate, both in allowing for growth and in expenditure, and in carrying out the intent of the donor. The model bill was drafted by the national Uniform Law Commission in 2006, has passed in 31 states over the past two years, and is pending in 18 states this year.

Again, we ask for your support in swift passage of this bill by scheduling an early hearing and favorable report. It will truly help organizations such as ours weather the economic storm, preserving jobs and programs. For more information, please contact Mass Audubon's Legislative Director, Jennifer Ryan 617.759.0227, or any of the organizations below.

Thank you for your kind attention to this important matter.

Sincerely,

Association of Independent
Colleges and Universities in
Massachusetts (AICUM)

Mass Audubon

Appalachian Mountain Club

Cape Cod Foundation

Greater Worcester Community
Foundation

Massachusetts Nonprofit
Network

Indian Hill Music

Manomet Center for
Conservation Sciences

Old Sturbridge Village

Sea Education Association (SEA)

Massachusetts Advocates for the
Arts, Sciences and Humanities
(MAASH)

Quebec-Labrador Foundation

Woods Hole Oceanographic
Institution

Worcester Cultural Coalition

cc: The Honorable Therese Murray, President of the Senate
The Honorable Robert A. DeLeo, Speaker of the House of Representatives
The Honorable Robert A. O'Leary
The Honorable Steven C. Panagiotakos, Chair, Senate Committee on Ways and Means
The Honorable Charles A. Murphy, Chair, House Committee on Ways and Means
Members of the Joint Committee on the Judiciary



The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

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June 5, 2009

Honorable Eugene L. O'Flaherty, House Chair
Joint Committee on the Judiciary
State House, Room 136

Dear Representative O'Flaherty:

I am writing to urge the committee to act favorably and timely on Senate Bill 1783, *An Act Providing for the Uniform Management of Institutional Funds Act* (UPMIFA). This legislation is endorsed by the American Bar Association and has been enacted in 34 jurisdictions with legislation pending in 15 states. This model legislation was drafted in 2006 to meet the needs of organizations utilizing endowments. It is critically important that this legislation be enacted by the General Court by June 30 as it will facilitate the continued operations of the Sea Education Administration (SEA) operating out of Woods Hole.

SEA is a nonprofit educational institution experiencing the difficult economic climate and taking significant measures to reduce costs, however it is critical to their continued operations that this legislation be enacted enabling them to utilize some of their endowment that they presently cannot.

I urge the committee to give immediate favorable report to the Act. It is critically important to pass this legislation expeditiously so as not to jeopardize the SEA program. Thank you for your cooperation in this manner.

Sincerely,

A handwritten signature in black ink that reads "Robert M. Koczera".

Robert M. Koczera
State Representative
Eleventh Bristol District



testimony

SB1783

An Act Providing for the Uniform Prudent Management of Institutional Funds

Joint Committee on the Judiciary

June 2, 2009

The Massachusetts Hospital Association (MHA), on behalf of its member hospitals and health systems, appreciates this opportunity to offer comments in support of SB1783, "An Act Providing for the Uniform Prudent Management of Institutional Funds" (UPMIFA). This legislation makes important updates to current law related to the use of endowments and gifts made to non-profit institutions. SB1783 will strengthen management of endowments and allow for spending levels that are more responsive to the fiscal climate and to the intent of donors. It establishes a fair and reasonable review process that will allow non-profit institutions to make better use of existing funds. Importantly, this bill would provide non-profit institutions with another tool to assist navigation through the current economic downturn.

SB1783 would replace and update the Uniform Management of Institutional Funds Act, which the Commonwealth adopted in 1975. The updated UPMIFA law, as put forward by the Uniform Law Commission, has been enacted in 27 states over the past two years. UPMIFA clarifies previously existing standards for the investment and expenditure of all types of charitable endowment funds. It strengthens the concept of prudent investing, refining it further by means of specific guidelines for fiduciaries. It also applies the rule of prudence to charitable spending, eliminating outmoded concepts, such as historic dollar value, while additionally providing an optional section to restrain levels of spending that are deemed imprudently high. Finally, it facilitates the release or modification of restrictions on a fund, consistent with the recognition and protection of donor intent. Taken as a whole, UPMIFA establishes a more unified legal framework for governing charitable fund management.

UPMIFA reflects and incorporates the 34 years of experience that Massachusetts has accumulated under the original law. Rather than changing institutional investment or expenditure practices, it brings them up to date and unifies them across a broad range of charitable funds. Through the enhanced fund management provisions set forth by this legislation, non-profit hospitals will be better able to manage their investments and prudently control their expenditures. This will enhance and support the charitable mission of all non-profit hospitals in the Commonwealth and help preserve their continued ability to provide safe and efficient care for the patients of every community.

Thank you for the opportunity to present testimony on this important matter. If you have any questions regarding this testimony, or require further information, please contact Michael Sroczynski, MHA's Senior Director for Government Advocacy at (781) 262-6055.



Joint Committee on the Judiciary
State House – Room A-2
June 2, 2009

Senate Bill No. 1783
Uniform Prudent Management of Institutional Funds

Robert McCarron

My name is Robert McCarron. I am vice president for government relations and general counsel for the Association of Independent Colleges and Universities in Massachusetts (AICUM), a non-profit association that represents the public policy interest of sixty colleges and universities throughout the Commonwealth, the 250,000 students who attend those institutions and the over 93,000 employees who work at those institutions. Our members include large nationally renowned research universities, smaller, highly regarded liberal arts colleges, religiously affiliated institutions, and colleges with special missions focused on allied health services, business or music, just to name a few. These colleges and universities represent one of the most important sectors of the economy and culture of Massachusetts.

I am here to testify in support of Senate Bill No. 1783, *An Act Providing for the Uniform Prudent Management of Institutional Funds* (UPMIFA), which has been filed by Senator Robert O'Leary. UPMIFA will update statutes governing a non-profit organizations management and investment of certain endowment funds, and more significantly, provide a critical economic stimulus to the non-profit sector at no cost to the Commonwealth. Fully thirteen percent (13%) of the jobs in Massachusetts can be found in the non-profit sector, and S.1873 provides some much needed flexibility to non-profits in managing their assets so they can carry out a donor's intent while also helping these institutions preserve jobs and important research and educational programs.

Under current Massachusetts law (MGL c. 180A), which was based on the model act UMIFA and enacted in 1975, donor gifts and endowment funds that sink below their "historical dollar value" – the value of the gift or fund at its creation – cannot be spent. Only current income can be used in furtherance of a donor's wishes and the long-term investment strategies of non-profit institutions typically generate rates of return that make it impracticable to effectuate the donor's intent. Moreover, many donations come with strings attached that restrict how a fund can be spent. Consequently, any hiring done to create and operate a program funded through such a donation or fund is curtailed or eliminated when the fund is "under water" or below its historical value. The bottom line is that non-profits are unable to spend or invest funds that would benefit the entire institution. This is exactly the situation confronting many colleges and universities and other non-profit institutions in Massachusetts as they endeavor to deal with the ongoing economic crisis.

The following example illustrates the predicament facing many non-profits. Assume that last year a generous donor gave \$1 million to fund scholarships for needy and deserving students in perpetuity, and that fund paid out \$50,000 (5%) to support students. If that same fund is worth only \$800,000 today, only 10 months later, the spending may be limited to only 2.5% (limited to income only) of the \$800,000 or \$20,000. The result is that the college must reduce spending on scholarships by the difference of \$30,000. Under UPMIFA, at least 5% of the fund now valued at \$800,000 can be withdrawn so that the spending is reduced by only \$10,000, which has a significant impact on the spending resources available to the non-profit.

UPMIFA strengthens and modernizes a non-profit's investment and management of donor-restricted endowment funds, and it would allow increased flexibility to institutions to carry out the intent of donors. UPMIFA imposes the "ordinarily prudent person" standard on all investment decisions, establishes a well-articulated prudence standard, requires prudence in incurring investment costs, and emphasizes that investment decisions must be made in relation to the overall resources of a non-profit institution and its charitable purpose.

UPMIFA also would allow increased flexibility to non-profit institutions in instances where a restriction contained in a gift instrument has made it unlawful, impracticable, or wasteful to carry out the donor's intent. But UPMIFA incorporates many safeguards in this process. In such circumstances, UPMIFA requires an institution to obtain court approval and notify the Attorney General's office, and "any modification must be made in accordance with the donor's probable intention" and in furtherance of the charitable purpose of the institution.

An optional UPMIFA provision, which AICUM does not support, would create a 7% "bright-line" test of an institution's use of its endowment funds. Of the 34 states that have adopted UPMIFA to date, nearly 75% have elected to exclude this additional 7% test. This "bright-line" test would create a *rebuttable presumption* – applicable to each fund separately – that the institution had acted imprudently in the use of its endowment if it expended more than 7%. First, using a 7% threshold is completely arbitrary and inconsistent with longer-term investment goals of spending 5% of an endowment. This arbitrary figure encourages or even pressures decision makers to spend up to the percentage when it would not be prudent to do so. Second, applying it separately to each fund is administratively burdensome and restricts investment alternatives because a typical college endowment is comprised of hundreds, and even thousands, of separate funds. For those reasons, AICUM would request that the 7% provision be removed from S.1783.

The National Conference of Commissioners on Uniform State Law recognized that one of the biggest problems with the 7% provision is the difficulty of picking a number that is appropriate given the wide range of non-profit institutions and charitable purposes and the fact that economic conditions change over time. One only need consider the economic events of the last year to see that an arbitrary spending rate of 7% may be too high for some funds and too low for others. Whether an investment decision is "prudent" should instead depend on a variety of relevant factors, including the particular purposes of the fund, the donor's intent, changing economic factors, and the current climate for additional donations.

If this Committee is inclined to keep the "7% provision", however, AICUM would respectfully request that S.1783 be amended so that the provision applies only to those non-profit institutions whose endowment funds have a total aggregate value of \$2 million or less. Implementing a \$2M threshold would ensure that smaller non-profits are not tempted to spend endowment assets too rapidly without unduly restricting larger, presumably more financially sophisticated organizations with access to comprehensive investment advice. For your convenience, we have attached to our written testimony proposed language to effectuate the \$2M threshold.

UPMIFA reflects and incorporates the 35 years of experience that has accumulated under the original UMIFA. It brings institutional investment and expenditure practices up to date and unifies them across a broad range of charitable funds. To date, thirty-four states have enacted UPMIFA and legislation similar to S.1783 is pending in 9 other states. If charitable institutions are better able to manage investments and control expenditures prudently, they will be better able to continue funding critical programs and, in effect, bail themselves out of this economic turmoil. More importantly, UPMIFA protects donors – because a donor does not intend to give money that an institution is unable to use – and reinforces that comprehensive prudent standards are the overarching safeguards in handling institutional funds.

I would be happy to answer any questions or provide any additional materials that you, the Committee members, or the Committee staff may require regarding UPMIFA. Thank you.



Senate Bill No. 1873

An Act Providing for the Uniform Management of Institutional Funds

Proposed amendment:

AICUM would respectfully request that S.1873 be amended in paragraph (D) of Section 3 by adding at the end thereof sub-paragraph (3) so that Section (D) would read as follows:

D) The appropriation for expenditure in any year of an amount greater than seven percent of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure is made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

- (1) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument; or**
- (2) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to seven percent of the fair market value of the endowment fund; or**
- (3) apply to an institution whose endowment funds have a total aggregate value of more than \$2,000,000.**