

ACT 46

H.B. NO. 775

A Bill for an Act Relating to Endowment Funds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT  
PART I. GENERAL PROVISIONS**

§ **-1 Short title.** This chapter may be cited as the “Uniform Management of Institutional Funds Act”.

§ **-2 Purpose.** (a) The legislature finds that:

- (1) Privately supported educational, religious, and charitable organizations perform essential and needed services in the State of Hawaii;
- (2) Uncertainty regarding legal restrictions on the management, investment, and expenditure of endowment funds of these organizations may preclude obtaining the highest available return on endowment funds; and
- (3) These organizations, their officers, directors, governors and trustees, and the citizens of the State of Hawaii will benefit from removal of this uncertainty and by permitting endowment funds to be invested for the long-term goals of achieving growth and maintaining purchasing power without adversely affecting the availability of funds for current expenditure.

(b) The purpose of this chapter is to provide guidelines for the management, investment, and expenditure of endowment funds of educational, religious, and charitable organizations in order to eliminate the uncertainty regarding legal restrictions on the management, investment, and expenditure of these funds and thus enable these organizations to maximize their resources for the benefit of the citizens of the State of Hawaii and the State’s charitable needs.

§ **-3 Definitions.** As used in this chapter:

“Community foundation” means a community foundation or community trust recognized as exempt from federal income tax and referred to in section 170(c) of the Internal Revenue Code of 1986, as amended, and which meets the single entity requirements of United States Treasury Regulations sections 1.170A-9(e)(10-14) adopted thereunder.

“Endowment fund” means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

“Gift instrument” means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

“Governing board” means the body responsible for the management of an institution or of an institutional fund.

“Historic dollar value” means the aggregate fair value in dollars of:

- (1) An endowment fund at the time it became an endowment fund;
- (2) Each subsequent donation to the fund at the time it is made; and
- (3) Each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

The determination of historic dollar value made in good faith by the institution shall be conclusive.

“Institution” means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

“Institutional fund” means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include:

- (1) A fund held for an institution by a trustee that is not an institution, unless the fund is held exclusively for the benefit of a community foundation; or
- (2) A fund in which a beneficiary that is not an institution has an interest other than possible rights that could arise upon violation or failure of the purposes of the fund.

#### § -4 Appropriation of appreciation; accumulation of income. (a)

The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by section -8.

(b) The governing board may accumulate so much of the annual net income of an endowment fund as is prudent under the standard established by section -8, and may hold any or all of the accumulated income in an income reserve for subsequent expenditure for the uses and purposes for which the endowment fund is established or may add any or all of the accumulated income to the principal of the endowment fund, as is prudent under this standard.

(c) This section does not limit the authority of the governing board to expend funds or accumulate net income and add the same to principal as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

#### § -5 Rule of construction. Section

-4 does not apply if the applicable gift instrument indicates the donor’s intention that net appreciation shall not be expended or that income shall not be accumulated and added to principal of an endowment fund. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or

authorization in the applicable gift instrument to use only “income”, “interest”, “dividends”, or “rents, issues or profits”, or “to preserve the principal intact” of a direction which contains other words of similar import. A restriction upon the accumulation of income or addition to principal of income may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to apply to the uses and purposes of the fund the “income”, “interest”, “dividends”, “currently expendable income”, or “rent, issues, or profits” or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of this chapter.

§ **-6 Investment authority.** In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may:

- (1) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or subdivision or instrumentality thereof;
- (2) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;
- (3) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and
- (4) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

§ **-7 Delegation of investment management.** Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

- (1) Delegate to its committees, officers, or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;
- (2) Contract with independent investment advisors, investment counsel or managers, banks, or trust companies, to act in place of the board in investment and reinvestment of institutional funds; and
- (3) Authorize the payment of compensation for investment advisory or management services.

§ **-8 Standard of conduct.** In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

§ -9 **Release of restrictions on use or investment.** (a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, the governing board may petition in the name of the institution to the circuit court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. Unless the gift instrument specifically requires notice to other persons, only the attorney general shall be notified of the petition and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of the doctrine of cy pres.

§ -10 **Severability.** If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable.

§ -11 **Uniformity of application and construction.** This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it."

SECTION 2. This Act shall take effect upon its approval.

(Approved April 25, 1995.)