STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2403 BY: JOHNSON (Glen) of the HOUSE

and

TAYLOR of the SENATE

AS INTRODUCED

AN ACT RELATING TO PROPERTY; CREATING THE UNIFORM MANAGEMENT OF INSTITUTIONAL ENDOWMENT FUNDS ACT; PROVIDING SHORT TITLE; STATING LEGISLATIVE FINDINGS AND PURPOSE; DEFINING TERMS; PROVIDING FOR THE ACCUMULATION AND APPROPRIATION OF APPRECIATION; STATING RULE OF CONSTRUCTION; IDENTIFYING INVESTMENT AUTHORITY; PROVIDING FOR THE DELEGATION OF INVESTMENT MANAGEMENT; PROVIDING FOR A STANDARD OF CONDUCT; PROVIDING FOR MEANS TO RELEASE RESTRICTIONS ON USE OR INVESTMENT; CLARIFYING THE STATUS, DUTIES, AND LIABILITIES OF GOVERNING BOARDS; PROVIDING FOR THE APPLICABILITY OF OTHER LAW; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 300.1 of Title 60, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Uniform Management of Institutional Endowment Funds Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 300.2 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The Legislature finds that:

1. Privately supported educational, religious, and charitable organizations perform essential and needed services in the state;

2. Uncertainty regarding legal restrictions on the management, investment, and expenditure of endowment funds of educational, religious, and charitable organizations has in many instances precluded obtaining the highest available return on endowment funds; and

3. The educational, religious, and charitable organizations, their officers, directors, and trustees, and the citizens of this state will benefit by removal of the uncertainty and by permitting endowment funds to be invested for the long term goals of achieving growth and maintaining purchasing power without adversely affecting availability of funds for current expenditure.

B. The purpose of the Uniform Management of Institutional Endowment Funds Act is to provide guidelines for the management, investment, and expenditure of endowment funds of privately supported educational, religious, and charitable organizations in order to eliminate uncertainty regarding legal restrictions on the management, investment, and expenditure of the funds and to enable the organizations to maximize their resources.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 300.3 of Title 60, unless there is created a duplication in numbering, reads as follows:

As used in the Uniform Management of Institutional Endowment Funds Act:

1. "Gift instrument" means:

a. a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document under which property is transferred by a donor to an institution as an institutional endowment fund, or

b. an oral statement or condition expressed by the donor at the time of transfer of property to an institution, which oral statement or condition is memorialized in writing by the institution at the time of the gift, that the institution is to hold the gift as an institutional endowment fund.

The gift instrument shall also include the terms of any institutional solicitations from which an institutional endowment fund resulted;

2. "Governing board" means the body responsible for the management of an institution or of an institutional endowment fund;

3. "Historic dollar value" means the aggregate fair value in dollars of:

a. an institutional endowment fund at the time it became an institutional endowment fund,

b. each subsequent donation to the fund at the time it is made, and

c. each accumulation made pursuant to a direction in the applicable gift instrument or of the governing board at the time the accumulation is added to the fund.

The determination of historic dollar value made in good faith by the governing board of the institution or the institutional trustee is conclusive;

4. "Institution" means an incorporated or unincorporated organization which is recognized under Section 501(c)(3) of the

Internal Revenue Code of 1986 as being organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes. The term does not include:

a. any public common school and public institution of higher education, or a foundation chartered for the benefit of such public common school or public institution of higher education, or for the benefit of a component of such school or institution of higher education,

b. any governmental entity or a foundation chartered for the benefit of a governmental entity or for the benefit of a component of such governmental entity, or

c. a private foundation as defined by Section 509(a)k of the Internal Revenue Code of 1986;

5. "Institutional endowment fund" means:

a. a fund held by an institution for its exclusive use, benefit or purposes, and which is not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument, or

b. a fund which is held in trust by an institution as trustee for another institution under the terms of the applicable gift instrument.

The term does not include:

a. a fund held for an institution in trust by a trustee that is not an institution, or

b. 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; and

6. "Institutional trustee" means an institution acting as trustee of an institutional endowment fund which under the terms of

the applicable gift instrument is held in trust for the benefit of one or more institutions.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 300.4 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Unless otherwise limited by the applicable gift instrument, the governing board of the institution or institutional trustee may accumulate so much of the annual net income of an institutional endowment fund as is prudent under the standard established by Section 7 of this act and may hold any or all of such accumulated income in an income reserve for subsequent expenditure for the uses and purposes for which such institutional endowment fund is established or may add any or all of such accumulated income to the principal of such institutional endowment fund as is prudent under such standard.

B. Unless otherwise limited by the applicable gift instrument, the governing board of the institution or institutional trustee may appropriate for expenditure for the uses and purposes for which an institutional endowment fund is established so much of the net appreciation, whether realized or unrealized, in the fair value of the assets of an institutional endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 7 of this act.

C. The provisions of this section shall not be construed to limit the authority of the governing board to accumulate income or to add such income to the principal of an institutional endowment fund or to expend funds as permitted under other law or the terms of the applicable gift instrument.

D. Subsection B of this section does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. 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 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 act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 300.5 of Title 60, unless there is created a duplication in numbering, reads as follows:

In addition to an investment otherwise authorized by law or by the applicable gift instrument, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law may:

1. Invest and reinvest an institutional endowment 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 endowment fund for as long as the governing board deems advisable;

3. Include all or any portion of an institutional endowment fund in a pooled or common fund maintained by the institution or institutional trustee; and

4. Include all or any part of an institutional endowment 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.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 300.6 of Title 60, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided by the applicable gift instrument, 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 governing board in investment and reinvestment of institutional endowment funds;

2. Contract with independent investment advisors, investment council or managers, banks, or trust companies, so to act for the governing board in investment of institutional endowment funds; and

3. Authorize the payment of compensation for investment advisory or management services.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 300.7 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise set forth in the gift instrument, when investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property, appropriating appreciation, developing and applying investment and spending policies, accumulating income, and delegating investment management for the benefit of an institution, the members of the governing board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the institution receiving the benefit of the institutional endowment fund.

B. In exercising judgment under this section, the governing board shall consider the long and short term needs of the institution or the institution which is the beneficiary in carrying out its educational, religious, charitable, or other eleemosynary

purposes, its present and anticipated financial requirements, expected return on its investments, price level trends, and general economic conditions.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 300.8 of Title 60, unless there is created a duplication in numbering, reads as follows:

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 endowment fund.

B. If written consent of the donor cannot be obtained by reason of his death, disability, incapacity, unavailability, or impossibility of identification, or if the gift instrument does not give to the institutional trustee the right to exercise the power of cy pres, the governing board may apply in the name of the institution or institutional trustee to the district court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional endowment fund. The Attorney General shall be notified of the application 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 institutional endowment fund to a fund that is not an institutional endowment fund.

C. A release under this section may not allow an institutional endowment 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.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 300.9 of Title 60, unless there is created a duplication in numbering, reads as follows:

Nothing in the Uniform Management of Institutional Endowment Funds Act alters the status of governing boards, or the duties and liabilities of the directors of such boards under other laws of this state.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 300.10 of Title 60, unless there is created a duplication in numbering, reads as follows:

All matters not specifically governed by the Uniform Management of Institutional Endowment Funds Act shall be subject to the provisions governing trusts. If the provisions of the Uniform Management of Institutional Endowment Funds Act conflict with the provisions governing trusts, the provisions of the Uniform Management of Institutional Endowment Funds Act shall govern.

SECTION 11. This act shall become effective September 1, 1992.

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