

PROPERTY CODE
CHAPTER 163. MANAGEMENT, INVESTMENT, AND EXPENDITURE OF
INSTITUTIONAL FUNDS

Sec. 163.001. SHORT TITLE. This chapter may be cited as the Uniform Management of Institutional Funds Act.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.

Sec. 163.002. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) publicly and 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 the organizations has in many instances precluded obtaining the highest available return on endowment funds; and

(3) the organizations, their officers, directors, and trustees, and the citizens of this state will benefit from 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 this chapter is to provide guidelines for the management, investment, and expenditure of endowment funds of publicly and privately supported educational, religious, and charitable organizations in order to eliminate the uncertainty regarding legal restrictions on the management, investment, and expenditure of the funds and to enable the organizations to maximize their resources.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.

Amended by Acts 1993, 73rd Leg., ch. 240, Sec. 1, eff. May 22, 1993.

Sec. 163.003. DEFINITIONS. In this chapter:

(1) "Endowment fund" means an institutional fund, or any part of such a fund, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(2) "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.

(3) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(4) "Historic dollar value" means the aggregate fair market value in dollars of:

(A) an endowment fund at the time it became an 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 at the time the accumulation is added to the fund.

(5) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, or charitable purposes, an institution of higher education, or a foundation chartered for the benefit of an institution of higher education. The term does not include a private foundation as defined by Section 509(a) of the Internal Revenue Code of 1986.

(6) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, except a fund held for an institution by a trustee that is not an institution or a fund in which a beneficiary that is not an institution has an interest other than possible rights that could arise on violation or failure of the purposes of the fund.

(7) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.

Amended by Acts 1993, 73rd Leg., ch. 240, Sec. 2, eff. May 22, 1993.

Sec. 163.004. EXPENDITURES. (a) A governing board may appropriate for expenditure, for the uses and purposes for which the fund is established, the net appreciation, realized and unrealized, in the fair market value of the assets of an endowment fund over the historic dollar value of the fund to the extent prudent under the standard provided by Section 163.007.

(b) A determination of the historic dollar value made in good faith by the governing board is conclusive.

(c) Subsection (a) does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter or articles of incorporation of the institution.

(d) Subsection (a) does not apply if the applicable gift instrument indicates the donor's intention that the net appreciation not be expended. A restriction on 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." This rule of construction applies to gift instruments executed or in effect before, on, or after the effective date of this chapter.

(e) Repealed by Acts 2001, 77th Leg., ch. 1158, Sec. 89, eff. June 15, 2001.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989. Amended by Acts 1993, 73rd Leg., ch. 240, Sec. 3, eff. May 22, 1993; Acts 2001, 77th Leg., ch. 1158, Sec. 88, 89, eff. June 15, 2001.

Sec. 163.005. INVESTMENT AUTHORITY. In addition to an investment authorized by other law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations in the applicable gift instrument or the applicable law other than law relating to investments by a fiduciary, may:

(1) invest an institutional fund in any real or personal property, 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 governmental entity, whether or not the property produces a current return;

(2) retain property contributed by a donor to an institutional fund;

(3) include all or any portion of an institutional fund in a pooled or common fund maintained by the institution; and

(4) invest all or any portion of an institutional fund in a pooled or common fund, 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.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.

Sec. 163.006. DELEGATION OF INVESTMENT MANAGEMENT. Except as provided by the applicable gift instrument, the governing board may:

(1) delegate to its committees, officers, or employees of the institution or the fund, and other agents, including investment counsel, the authority to act for the board in investment of institutional funds;

(2) contract with independent investment advisors, investment counsel, investment managers, banks, or trust companies to act for the board in investment of institutional funds; and

(3) authorize payment of compensation for investment advisory or management services.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.

Sec. 163.007. STANDARD OF CONDUCT. In the administration of the powers to appropriate appreciation, to make and retain investments, to develop and apply investment and spending policies, 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. The members shall consider both the long-term and short-term needs of the institution in carrying out its educational, religious, or charitable purposes, its present and anticipated financial requirements, the expected return on its investments, price level trends, and general economic conditions.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.

Sec. 163.008. 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 because of the donor's death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the district court for release of a restriction imposed by a gift instrument on the use or investment of

an institutional fund. The attorney general must be notified of the application and given an opportunity to intervene in the same manner as provided by Chapter 123 for a proceeding involving a charitable trust. 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 another type of fund.

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

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

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.

Sec. 163.009. APPLICABILITY OF OTHER PARTS OF CODE. Subtitle B, Title 9 (the Texas Trust Code), does not apply to any institutional fund subject to this chapter.

Added by Acts 1989, 71st Leg., ch. 213, Sec. 1, eff. May 26, 1989.