

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **First Extraordinary Session, 1992**  
4 **By: Senator Malone**

**Call Item 27**

# **A Bill**

**SENATE BILL 7**

## **For An Act To Be Entitled**

8 "AN ACT TO ESTABLISH GUIDELINES FOR THE MANAGEMENT AND USE  
9 OF INVESTMENTS HELD BY ELEEMOSYNARY INSTITUTIONS AND  
10 FUNDS; AND FOR OTHER PURPOSES."

11

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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14 SECTION 1. Short Title.

15 This act may be cited as the "Uniform Management of Institutional Funds  
16 Act."

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18 SECTION 2. Definitions.

19 As used in this act:

20 (1) "Institution" means an incorporated or unincorporated organization  
21 organized and operated exclusively for educational, religious, charitable, or  
22 other eleemosynary purposes, or a governmental organization, *including*,  
23 *without limitation, a public institution of higher education*, to the extent  
24 that it holds funds exclusively for any of these purposes;

25 (2) "Institutional fund" means a fund held by an institution for its  
26 exclusive use, benefit, or purposes, but does not include (i) a fund held for  
27 an institution by a trustee that is not an institution or (ii) a fund in which  
28 a beneficiary that is not an institution has an interest, other than possible  
29 rights that could arise upon violation or failure of the purposes of the fund;

30 (3) "Endowment fund" means an institutional fund, or any part thereof,  
31 not wholly expendable by the institution on a current basis under the terms of  
32 the applicable gift instrument;

33 (4) "Governing board" means the body responsible for the management of  
34 an institution or of an institutional fund;

35 (5) "Historic dollar value" means the aggregate fair value in dollars of

1 (i) an endowment fund at the time it became an endowment fund, (ii) each  
2 subsequent donation to the fund at the time it is made, and (iii) each  
3 accumulation made pursuant to a direction in the applicable gift instrument at  
4 the time the accumulation is added to the fund. The determination of historic  
5 dollar value made in good faith by the institution is conclusive.

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

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12 SECTION 3. Appropriation of Appreciation.

13 The governing board may appropriate for expenditure for the uses and  
14 purposes for which an endowment fund is established so much of the net  
15 appreciation, realized and unrealized, in the fair value of the assets of an  
16 endowment fund over the historic dollar value of the fund as is prudent under  
17 the standard established by Section 7 of this act. This section does not  
18 limit the authority of the governing board to expend funds as permitted under  
19 other law, the terms of the applicable gift instrument, or the charter of the  
20 institution.

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22 SECTION 4. Rule of Construction.

23 Section 3 of this act does not apply if the applicable gift instrument  
24 indicates the donor's intention that net appreciation shall not be expended.  
25 A restriction upon the expenditure of net appreciation may not be implied from  
26 a designation of a gift as an endowment, or from a direction or authorization  
27 in the applicable gift instrument to use only "income," "interest,"  
28 "dividends," or "rents, issues or profits," or "to preserve the principal  
29 intact," or a direction which contains other words of similar import. This  
30 rule of construction applies to gift instruments executed or in effect before  
31 or after the effective date of this act.

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33 SECTION 5. Investment Authority.

34 In addition to an investment otherwise authorized by law or by the  
35 applicable gift instrument, and without restriction to investments a fiduciary  
36 may make, the governing board, subject to any specific limitations set forth

1 in the applicable gift instrument or in the applicable law other than law  
2 relating to investments by a fiduciary, may:

3 (1) invest and reinvest an institutional fund in any real or personal  
4 property deemed advisable by the governing board, whether or not it produces a  
5 current return, including mortgages, stocks, bonds, debentures, and other  
6 securities of profit or nonprofit corporations, shares in or obligations of  
7 associations, partnerships, or individuals, or obligations of any government  
8 or subdivision or instrumentality thereof;

9 (2) retain property contributed by a donor to an institutional fund for  
10 as long as the governing board deems advisable;

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

13 (4) invest all or any part of an institutional fund in any other pooled  
14 or common fund available for investment, including shares or interests in  
15 regulated investment companies, mutual funds, common trust funds, investment  
16 partnerships, real estate investment trusts, or similar organizations in which  
17 funds are commingled and investment determinations are made by persons other  
18 than the governing board.

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20 SECTION 6. Delegation of Investment Management.

21 Except as otherwise provided by the applicable gift instrument or by  
22 applicable law relating to governmental institutions or funds, the governing  
23 board may (1) delegate to its committees, officers or employees of the  
24 institution or the fund, or agents, including investment counsel, the  
25 authority to act in place of the board in investment and reinvestment of  
26 institutional funds, (2) contract with independent investment advisors,  
27 investment counsel or managers, banks, or trust companies, so to act, and  
28 (3) authorize the payment of compensation for investment advisory or  
29 management services.

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31 SECTION 7. Standard of Conduct.

32 In the administration of the powers to appropriate appreciation, to make  
33 and retain investments, and to delegate investment management of institutional  
34 funds, members of a governing board shall exercise ordinary business care and  
35 prudence under the facts and circumstances prevailing at the time of the

1 action or decision. In so doing they shall consider long and short term needs  
2 of the institution in carrying out its educational, religious, charitable, or  
3 other eleemosynary purposes, its present and anticipated financial  
4 requirements, expected total return on its investments, price level trends,  
5 and general economic conditions.

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7 SECTION 8. Release of Restrictions on Use or Investment.

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

11 (b) If written consent of the donor cannot be obtained by reason of his  
12 death, disability, unavailability, or impossibility of identification, the  
13 governing board may apply in the name of the institution to the chancery court  
14 of the county where the institution is located or other court of appropriate  
15 jurisdiction for a release of a restriction imposed by the applicable gift  
16 instrument on the use or investment of an institutional fund. The Attorney  
17 General shall be notified of the application and shall be given an opportunity  
18 to be heard. If the court finds that the restriction is obsolete,  
19 inappropriate, or impracticable, it may by order release the restriction in  
20 whole or in part. A release under this subsection may not change an endowment  
21 fund to a fund that is not an endowment fund.

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

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

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28 SECTION 9. Uniformity of Application and Construction.

29 This act shall be so applied and construed as to effectuate its general  
30 purpose to make uniform the law with respect to the subject of this act among  
31 those states which enact it.

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33 SECTION 10. All provisions of this act of a general and permanent  
34 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
35 Code Revision Commission shall incorporate the same in the Code.

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SECTION 11. Severability.

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

SECTION 12. All laws and parts of laws in conflict with this act are

hereby repealed.

SECTION 13. EMERGENCY. It is hereby found and determined by the

General Assembly of the State of Arkansas that presently interest rates are extremely low; that because of these abnormally low interest rates the governing boards of institutions need additional discretion concerning investment of *endowment* funds of the institutions; that this act will allow such discretion. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

*/s/Sen. Malone*

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