

Memorandum 89-54

Subject: Study L-3012 - Uniform Management of Institutional Funds Act  
(Comments on Tentative Recommendation)

In February, we distributed the *Tentative Recommendation Relating to the Uniform Management of Institutional Funds Act* for comment. (An annotated copy of the recommendation is attached to this memorandum.) We have received comments from five persons. (See the letters attached as exhibits to this memorandum.) Reaction was generally favorable, although one writer seems to be opposed to the philosophy of UMIFA. The specific points raised by these letters are discussed in notes following the section to which they relate in the attached annotated copy of the recommendation.

To refresh your memory on the background and need for UMIFA, a copy of the Prefatory Note to UMIFA is also attached. (See Exhibit 6, at exhibits pp. 11-14.)

Respectfully submitted,

Stan G. Ulrich  
Staff Counsel

03/06/89

John C. Hoag  
Vice President and  
Senior Associate Title Counsel

Re: Revision of The Uniform Management of  
Institutional Funds Act  
#L-3012

Dear Mr. Ulrich:

Thank you for the tentative recommendation referred to  
above. My few comments are in red on the recommendation  
itself.

Best regards,  
John Hoag

the gift instrument becomes effective after the Uniform Management of Institutional Funds Act became applicable to the institution.

(c) The effective dates of the Uniform Management of Institutional Funds Act are the following:

(1) January 1, 1974, with respect to a private incorporated or unincorporated organization organized and operated exclusively for educational purposes and accredited by the Association of Western Colleges and Universities.

(2) January 1, 1990, with respect to an institution not described in paragraph (1).

Comment. Subdivisions (a) of Section 18503 continues former Education Code Section 94603(a) without change. Subdivisions (b) and (c)(1) restate former Education Code Section 94603(b) without substantive change. Subdivision (c)(2) applies a consistent rule of construction to institutions (as defined in Section 18501(e)) that were not covered by the former law. See the Comment to Section 18501.

#### § 18504. Investment authority

18504. 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, may do any or all of the following:

Does this include: (a) Invest and reinvest an institutional fund in any real or

1. sell & > convey real property?  
2. include other forms of hypothecation, e.g., deed of trust ??

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 or partnerships, and obligations of any government or subdivision or instrumentality thereof.

(b) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.

(c) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution.

(d) 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.

Comment. Section 18504 continues former Education Code Section 94604 without change, except that an unnecessary comma following the word "associations" in subdivision (a) has been omitted. See the Comment to Section 18500.

§ 18505. Delegation of authority

18505. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may do the following:

(a) 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.

(b) Contract with independent investment advisers, investment counsel or managers, banks, or trust companies, so to act.

(c) Authorize the payment of compensation for investment advisory or management services.

Comment. Section 18505 continues former Education Code Section 94605 without change.

§ 18506. Standard of care

*investing*  
18506. (a) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property, appropriating appreciation, 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. In the course of administering the fund pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(b) In exercising judgment under this section, the members of the governing board shall consider the 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, general economic conditions, the appropriateness of a reasonable proportion of

EXHIBIT 2

AW REV. COMM'N

MAR 09 1989

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March 8, 1989

California Law Revision Commission  
Suite D-2  
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Palo Alto, California 94303-4739Re: Tentative Recommendation Relating to  
Revision of the Uniform Management of  
Institutional Funds Act (Study Number L-3012)

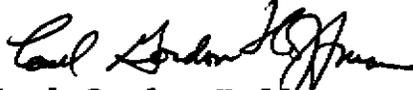
Ladies and Gentlemen:

I believe the proposal should be modified in two respects:

1. It should be clarified that this provision only applies to investment funds, and does not apply to property directly used in connection with the carrying out of the charitable purpose. For example, where a painting is given to a museum on the condition that it be exhibited, nothing contained in this act should be construed so as to permit the property to be sold and the appreciation utilized for operating expenses.

2. The utilization of a portion of realized appreciation for current operating expenses may be appropriate where the appreciation exceeds the increase in the cost of living. However, it seems inappropriate to allow the economic value of endowment funds to be gutted through turning inflationary gains into funds available to meet current operating expenses. The standard of care set forth in Section 18506 is insufficient to protect against this possibility.

Very truly yours,

  
Paul Gordon HoffmanPGH:ej  
PGH21

CA LAW REV. COMM'N

EXHIBIT 3

MAR 17 1989

HENRY ANGERBAUER, CPA  
4401 WILLOW GLEN CT.  
CONCORD, CA 94521

3/15/89

California Law Revision Commission  
Regarding the Revision of the Uniform  
Management of Institutional Funds Act,  
I have no comment to make on your  
tentative recommendation as my knowledge  
of this subject is limited. Thanks for  
letting me make you know.  
nevertheless

Sincerely  
HA



EXHIBIT 4

CA LAW REV. COMM'N

**MAR 31 1989**

R E C E I V E D

OUR FILE NUMBER

Attorneys at Law

March 30, 1989

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UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

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Dear Mr. DeMouilly:

JAMES R. BANCROFT  
OF COUNSEL

I am writing to support the Commission's Tentative Recommendation to expand the scope of the California version of the Uniform Management of Institutional Funds Act to be consistent with the official Uniform Act.

JAMES H. McALISTER  
LUTHER J. AVERY  
ALAN D. BONAPART  
NORMAN A. ZILBER  
EDMOND G. THIEDE  
ROBERT L. DUNN  
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HELEN OLIVE MILOWE

There is a need for clarification of the applicability of the law, particularly as it relates to operators of nonprofit corporations and religious corporations. It is a common basis for operations to have a religious body with many volunteer groups with annual financial operations and funded or endowed operations. A good example will be found in the Religious Institute Financial Management and Accounting Manual (1981) discussion of operations of religious schools and community support programs. Another study of the problem is in the Council of Jewish Federations, Handbook on Supporting Foundations Described in 509(a)(3).

In my opinion, the language to effectuate the needed policy changes by amendment of the Corporations Code and the Probate Code is appropriate and consistent with the Uniform Act.

It is not clear under the Uniform Act and the proposed statutory amendments whether if a religious, charitable, or other eleemosynary institution has been functioning prior to January 1, 1990 utilizing the principles of the Uniform Act there is any misconduct. For example, if an institution has been using the endowment principles of the UMIFA and an attorney is asked for an opinion on the propriety of the conduct of the directors prior to 1990, how does one respond? Moreover, it is not clear in the proposed language how

John DeMouilly, Esq.  
March 30, 1989 - Page 2

the institution is to deal with the situation more appropriately governed by the Uniform Principal and Income Act (Probate Code 16300, et seq.). Will the institution be authorized to utilize either uniform act at the institution's discretion? Can the institution given funds to distribute "income" only by the terms of the gift instrument accumulate income or distribute asset appreciation? What if such acts occurred prior to 1990? Is a subsequent director liable for the acts of the pre-1990 directors?

It is common in discussion of asset allocations to see discussions of investments in currencies of other countries or in precious metals or a hedge against inflation. In my opinion, Probate Code Section 18504 (proposed) should include reference to those items as authorized investments.

In Probate Code Section 18504, there is reference to "any pooled or common fund" but those terms are nowhere defined in the Uniform Act. Moreover, the methods of accounting for income and expense to be allocated among the participants in the pooled or common fund is ignored. If there is to be use of common funds or pooled funds, in my opinion those funds need guidance or restrictions not unlike the controls on banks by the U.S. Controller of the Currency.

In Probate Code Section 10504, there is reference to "mutual funds" and "common trust funds" but there is no definition and no cross-reference to regulations of such funds. Do those terms include private funds or trusts or only ones that are registered with and regulated by the S.E.C.?

I recommend adding to Probate Code Section 18504 (proposed) a paragraph (d) as follows:

"(d) The institution may rely on the written or oral representations of any representative of any institutional fund reasonably believed to be authorized to direct the actions of the governing board."

Yours sincerely,

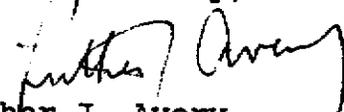
  
Luther J. Avery

EXHIBIT 5

ASSOCIATION OF  
**INDEPENDENT**  
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 COLLEGES AND  
 UNIVERSITIES

CA LAW REV. COMM'N  
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 College of Notre Dame  
 Dominican College of San Rafael  
 Fresno Pacific College  
 Golden Gate University  
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 Holy Names College  
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 West Coast University  
 Whittier College  
 Woodbury University  
 World College West

March 23, 1989

John H. DeMouilly  
 Executive Secretary  
 California Law Revision Commission  
 4000 Middlefield Rd., Suite D-2  
 Palo Alto, CA 94303-1335

Dear John,

We are responding to the Commission's draft recommendation dated February, 1989. As I have stated in previous correspondence (January 17) we are generally supportive of an extension of the Uniform Management of Institutional Funds Act to all charitable institutions in the state, including those governmental entities which receive charitable donations. Based on our experience since the enactment of the original proposal in the Education Code we are sure that extension will aid other charities in the state with prudent funds management. However, we believe that the original proposal in the model statute, relating to the use of unrealized appreciation, remains appropriate.

Before I discuss our comments on the final proposal I would like to commend the excellent staff work on this issue. We appreciated the work of your staff on this issue. The command of the nuances of the issues surrounding this very technical issue which your staff counsel, Stan Ulrich brought to the background papers, was very much appreciated.

As stated in our letter of January 17, the two provisions in the current California statute which were added in conflict with the model statute relate to additional complications which have little basis in experience. The current California statute eliminates the possibility of including unrealized appreciation in the calculation for expenditure. To our knowledge, only the Kansas statute is similarly restrictive. In addition, the California includes a basing requirement, which allows expenditure based on a rolling average of value, which the Commission's draft proposal would also continue. As pointed out in your analysis, the rolling average requirement is common to many other statutes.

The restriction from expenditure for unrealized appreciation is both unnecessary and troubling, especially in conjunction with the rolling average. The purpose of UMIFA, as it was originally suggested, was to offer charitable institutions greater flexibility in their management of funds, with the ultimate goal of broadening the horizon from which those entities build their investment policies. The restriction from using unrealized appreciation has two defects. First, it most assuredly increases transaction costs. In order to expend appreciation, the entity in question must realize any gain. Second, it tends to reduce the possibility that non-profits will be able to optimize their portfolios. That would be especially true in smaller endowments where the number of assets is usually smaller. By limiting expenditure policies to realized appreciation an entity is forced to prune the asset in order to benefit from it. The choices become absurd when one has an asset which

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has grown in value substantially but has the potential for additional growth. Both provisions are presumed to have the effect of limiting the possibility that an institution will waste endowment assets. The elimination of unrealized appreciation may have also be originally included with the concern that the only way to value assets is to convert them to cash equivalents. We believe that assumption to be an outdated one.

If the peril of wasting a charities' assets is real, and we believe that it is not, the Commission should take comfort in both the rolling average limitation and in the clear statements in the standard of care. Both tend to protect against the possibility of imprudent management of assets.

If the work of the Commission is limited to the most narrow technical review of statutes, then the current proposal, which does not extend the current statute to unrealized assets is appropriate. We believe, however, that the Commission should look to the underlying principles inherent in the Uniform Management of Funds Act. As your excellent policy papers leading up to the draft proposal suggested the inclusion of unrealized appreciation is in most other state statutes. We believe it should be in the California statute. Thank you again for the opportunity to comment.

Sincerely,



Jonathan Brown  
Vice President



## PREFATORY NOTE

Over the past several years the governing boards of eleemosynary institutions, particularly colleges and universities, have sought to make more effective use of endowment and other investment funds. They and their counsel have wrestled with questions as to permissible investments, delegation of investment authority, and use of the total return concept in investing endowment funds. Studies of the legal authority and responsibility for the management of the funds of an institution have pointed up the uncertain state of the law in most jurisdictions. There is virtually no statutory law regarding trustees or governing boards of eleemosynary institutions, and case law is sparse. In the late 1960's the Ford Foundation commissioned Professor William L. Cary and Craig B. Bright, Esq., to examine the legal restrictions on the powers of trustees and managers of colleges and universities to invest endowment funds to achieve growth, to maintain purchasing power, and to expend a prudent portion of appreciation in endowment funds. They concluded that there was little developed law but that legal impediments which have been thought to deprive managers of their freedom of action appear on analysis to be more legendary than real. Cary and Bright, *The Law and The Lore of Endowment Funds*, 66 (1969).

Nonetheless it appears that counsel for some colleges and universities have advised to the contrary, basing such advice upon analogy to the law of private trusts. Not all counsel, of course, suggest that private trust laws control the governing boards of eleemosynary institutions.

There is, however, substantial concern about the potential liability of the managers of the institutional funds even though cases of actual liability are virtually nil. As deliberations of the Special Committee, the Advisory Committee and the Reporters responsible for the preparation of this Act have progressed, it became clear that the problems were not unique to educational institutions but were faced by any charitable, religious or any other eleemosynary institution which owned a fund to be invested.

One further problem regularly intruded upon the discussion of efforts to free trustees and managers from the alleged limitations on their powers to invest for growth and meet the financial needs of their institutions. Some gifts and grants contained restrictions on use of funds or selection of investments which imperiled the effective management of the fund. An expeditious means to modify obsolete restrictions seemed necessary.

The Uniform Act offers a rational solution to these problems by providing:

- (1) a standard of prudent use of appreciation in invested funds;
- (2) specific investment authority;
- (3) authority to delegate investment decisions;
- (4) a standard of business care and prudence to guide governing boards in the exercise of their duties under the Act; and
- (5) a method of releasing restrictions on use of funds or selection of investments by donor acquiescence or court action.

## Use of Appreciation

The argument for allowing prudent use of appreciation of endowment funds has been stated in Cary and Bright, *The Law and The Lore of Endowment Funds* 5-6 (1969):

[T]oo often the desperate need of some institutions for funds to meet current operating expenses has led their managers, contrary to their best long-term judgment, to forego investments with favorable growth prospects if they have a low current yield.

[I]t would be far wiser to take capital gains as well as dividends and interest into account in investing for the highest overall return consistent with the safety and preservation of the funds invested. If the current return is insufficient for the institution's needs, the difference between that return and what it would have been under a more restrictive policy can be made up by the use of a prudent portion of capital gains.

The Uniform Act authorizes expenditure of appreciation subject to a standard of business care and prudence. It seems unwise to fix more exact standards in a statute. To impose a greater construction would hamper adaptation by different institutions to their particular needs.

The standard of care is that of a reasonable and prudent director of a nonprofit corporation—similar to that of a director of a business corporation—which seems more appropriate than the traditional Prudent Man Rule applicable to private trustees. The approach has been used elsewhere. A New York statute allows inclusion in income of "so much of the realized appreciation as the board may deem prudent." New York [McKinney's] Not-for-Profit Corporation Law § 513(d) (1970). Recent enactments in New Jersey, California, and Rhode Island follow the same pattern. N.J.S.A. § 15:18-8; West's Anno. Corp.Code § 10251(c) (Calif.); Gen.Laws of R.I. § 18-2-2.

The Act authorizes the appropriation of net appreciation. "Realization" of gains and losses is an artificial, meaningless concept in the context of a nontaxable eleemosynary institution. If gains and losses had to be realized before being taken into account, a major objective of the Act, to avoid distortion of sound investment policies, would be frustrated. If only realized capital gains could be taken into account, trustees or managers might be forced to sell their best assets, appreciated property, in order to produce spendable gains and conceivably might spend realized gains even when, because of unrealized losses, the fund has no net appreciation.

The Act excludes interests held for private beneficiaries, even though a charity is the ultimate beneficiary, e.g., an individual life interest followed by a charitable remainder. Also excluded is any trust managed by a professional trustee even though a charitable organization is the sole beneficiary.

The Uniform Act has been drafted to meet the objection that there will be a decline in gifts to charity because donors cannot rely on their wishes being enforced if appreciation can be expended. The drafters were convinced that donors seldom give any indication of how they want the growth in their gifts to be treated. If, however, a donor does

indicate that he wishes to limit expenditures to ordinary yield, under the Act his wishes will be respected.

A statute such as this can be constitutionally applied to gifts received prior to its enactment. There is no substantial authority to be found in law or reason for denying retroactive application.

When the Uniform Principal and Income Act was adopted it changed the apportionment of some items of revenue between principal and income. It was argued that the retroactive application of the statute to existing trusts would deprive either the income beneficiaries or the remaindermen of their property without due process of law. Professor Scott spoke for the overwhelming majority of commentators when he said:

[T]here should be no constitutional objection to making the Act retroactive. The rules as to allocation should not be treated as absolute rules of property law, but rather as rules as to the administration of the trust. The purpose is to make allocations which are fair and impartial as between the successive beneficiaries. Scott, *Principal or Income?*, 100 *Trusts & Est.* 180, 251 (1961).

Professor Bogert reached the same conclusion. Bogert, *The Law of Trusts and Trustees* § 847, pp. 505-6 (2d ed. 1962). The courts which considered the matter reached the same conclusion.

There is even less reason to deny retroactive application to an apportionment statute which deals only with the endowment funds of eleemosynary institutions, because the statute does not deprive any beneficiary of vested property rights. In a broad sense, the public is the real beneficiary of an endowment fund. The only argument which can be made against retroactivity is that it might violate the intent of the donor. Such an argument was also made in respect of the Uniform Principal and Income Act, but it was uniformly rejected by the courts. The language of a Minnesota case is typical:

[I]t is doubtful whether testatrix had any clear intention in mind at the time the will was executed. It is equally plausible that if she had thought about it at all she would have desired to have the dividends to go where the law required them to go at the time they were received by the trustee. . . . *In re Gardner's Trust*, 266 Minn. 127, 132, 123 N.W.2d 69, 73 (1963).

In any event, the Act does not raise a problem of retroactive application because the rule of construction of Section 3 is declaratory of existing law in that it interprets the presumed intent of the donor in the absence of a clear statement of the donor's intention.

Other similar acts follow the same pattern. The New York [McKinney's] Not-for-Profit Corporation Law Section 513(e) (1970) authorizing the expenditure of appreciation applies to assets "held at the time when this chapter takes effect" as well as to "assets hereafter received." Similar language appears in the New Jersey, California, and Rhode Island acts authorizing expenditure of appreciation by eleemosynary institutions.

#### Specific Investment Authority

It seems reasonably clear that investment managers of endowment funds are not limited to investments authorized to trustees. The broad

grant of investment authority contained in Section 4 of the Act expressly so provides.

#### Authority to Delegate

In the absence of clear law relating to the powers of governing boards of eleemosynary institutions, some boards have been advised that they are subject to the nondelegation strictures of professional private trustees. The board of an eleemosynary institution should be able to delegate day-to-day investment management to committees or employees and to purchase investment advisory or management services. The Act so provides.

#### Standard of Care

Fear of liability of a private trustee may have a debilitating effect upon members of a governing board, who are often uncompensated public-spirited citizens. They are managers of nonprofit corporations, guiding a unique and perhaps very large institution. The proper standard of responsibility is more analogous to that of a director of a business corporation than that of a professional private trustee. The Act establishes a standard of business care and prudence in the context of the operation of a nonprofit institution.

#### Release of Restrictions

It is established law that the donor may place restrictions on his largesse which the donee institution must honor. Too often, the restrictions on use or investment become outmoded or wasteful or unworkable. There is a need for review of obsolete restrictions and a way of modifying or adjusting them. The Act authorizes the governing board to obtain the acquiescence of the donor to a release of restrictions and, in the absence of the donor, to petition the appropriate court for relief in appropriate cases.

#### Conclusion

Over a decade ago, Professor Kenneth Karst in an article in the Harvard Law Review stated the need for the Uniform Act:

[T]he managers of corporate charity are still, at this late date, without adequate guides for conduct. The development of these standards is of some urgency. The Efficiency of the Charitable Dollar: An Unfilled State Responsibility, 73 Harv.L.Rev. 433, 435 (1960).

STATE OF CALIFORNIA

California Law Revision Commission

Staff Draft

RECOMMENDATION

*relating to*

THE UNIFORM MANAGEMENT OF  
INSTITUTIONAL FUNDS ACT

July 1989

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

06/13/89

LETTER OF TRANSMITTAL

This recommendation proposes to expand the scope of the California version of the Uniform Management of Institutional Funds Act to be consistent with the official uniform act. The existing statute applies only to private educational institutions accredited by the Association of Western Colleges and Universities. (See Educ. Code §§ 94600-94610.) Under this proposal, the act would apply to any incorporated or unincorporated educational, religious, charitable, or other eleemosynary institution and to any governmental organization holding funds for such purposes. The proposal would also make other minor and technical changes.

A comment follows each section of the proposed legislation. The comment gives the source of the section and indicates the nature of the changes the section would make in existing law.

#L-3012

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06/12/89

RECOMMENDATION

*relating to*

THE UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

California enacted the Uniform Management of Institutional Funds Act in 1973 as a pilot study, subject to a five-year sunset provision and restricted to certain accredited private colleges and universities.<sup>1</sup> The official text of the Uniform Management of Institutional Funds Act has a much broader scope, applying to private educational, religious, charitable, and eleemosynary institutions and to governmental organizations holding funds for such purposes.<sup>2</sup> Apparently, the pilot study was successful, since the sunset provision was repealed in 1978.<sup>3</sup> However, the restricted scope of the act was retained and the authority to use unrealized, as opposed to realized, appreciation was deleted from the statute.<sup>4</sup>

The Commission recommends that the California version of the Uniform Management of Institutional Funds Act be applied to the same organizations covered by the original uniform act. No persuasive reasons have been given for continuing the restrictions that applied under the original pilot study. None of the other 29 jurisdictions that have enacted the uniform act has so drastically restricted its scope.<sup>5</sup> The problems faced by charitable organizations that are

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1. See 1973 Cal. Stat. ch. 950, § 1 (enacting Civil Code §§ 2290.1-2290.12). The California version of the act applies only to private incorporated or unincorporated educational institutions accredited by the Association of Western Colleges and Universities. The sunset clause was enacted by 1973 Cal. Stat. ch. 950, § 3. The act was moved to Education Code Sections 94600-94610 when the Civil Code trust provisions were generally repealed in connection with enactment of the new Trust Law. See 1986 Cal. Stat. ch. 820, §§ 7, 24.

2. See Unif. Management Inst. Funds Act § 1(1) (1972).

3. 1973 Cal. Stat. ch. 806, § 1.

4. 1978 Cal. Stat. ch. 806, § 2.

5. See annotations at 7A U.L.A. 714-27 (1985) & Supp. at 143-44 (1988).

treated by the uniform act are not unique to private colleges and universities.<sup>6</sup> The effect of this recommendation would be to extend the benefits of the uniform act to all educational, religious, charitable, or eleemosynary institutions. Specifically, these institutions would be able (1) to use realized appreciation of endowment funds, subject to a fiduciary duty of care, (2) to delegate day-to-day investment management to committees and employees and hire investment advisory or management services, and (3) to release illegal, impossible, or impracticable restrictions on the use of endowment funds with the donor's consent or on petition to a court and notice to the Attorney General.<sup>7</sup> Extending the act's application would also provide guidance as to a board's power to invest and manage property and the standard of care governing the exercise of a board's powers<sup>8</sup> where the board is not governed by some other statute.<sup>9</sup>

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6. In addition, the Commission recommends that the act be moved to the Probate Code. The Education Code is not an ideal location if the act's coverage is expanded beyond private colleges and universities. It is appropriate to place the expanded act with the Trust Law, since the Trust Law also applies to charitable trusts. See Prob. Code § 15004.

7. For the existing provisions that would apply under a broadened statute, see Educ. Code §§ 94602 (use of appreciation), 94605 (delegation of authority), 94607 (release of restrictions). See generally Prefatory Note, Unif. Management Inst. Funds Act (1972), 7A U.L.A. 706-09 (1985).

8. For the existing provisions that would apply under a broadened statute, see Educ. Code §§ 94604 (investment authority), 94606 (standard of care).

9. The proposed law would provide that UMIFA does not alter the duties and liabilities of governing boards under other laws. See, e.g., Corp. Code §§ 5231-5231.5 (directors of nonprofit public benefit corporations), 7231-7231.5 (directors of nonprofit mutual benefit corporations), 9240-9241 (directors of nonprofit religious corporations). Similarly, the proposed law would not displace any limitations on the expenditure of public funds by governmental organizations.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 5240 of the Corporations Code, to add Part 7 (commencing with Section 18500) to Division 9 of the Probate Code, and to repeal Chapter 6 (commencing with Section 94600) of Part 59 of Division 10 of Title 3 of the Education Code, relating to the Uniform Management of Institutional Funds Act.

*The people of the State of California do enact as follows:*

**Corporations Code § 5240 (amended). Investments under Nonprofit Public Benefit Corporations Law**

SECTION 1. Section 5240 of the Corporations Code is amended to read:

5240. (a) This section applies to all assets held by the corporation for investment. Assets which are directly related to the corporation's public or charitable programs are not subject to this section.

(b) Except as provided in subdivision (c), in investing, reinvesting, purchasing, acquiring, exchanging, selling and managing the corporation's investment, the board shall do the following:

(1) Avoid speculation, looking instead to the permanent disposition of the funds, considering the probable income, as well as the probable safety of the corporation's capital.

(2) Comply with additional standards, if any, imposed by the articles, bylaws or express terms of an instrument or agreement pursuant to which the assets were contributed to the corporation.

(c) No investment violates this section where it conforms to provisions authorizing such investment contained in an instrument or agreement pursuant to which the assets were contributed to the corporation. No investment violates this section or Section 5231 where it conforms to provisions requiring such investment contained in an instrument or agreement pursuant to which the assets were contributed to the corporation.

(d) In carrying out duties under this section, each director shall act as required by subdivision (a) of Section 5231, may rely upon

others as permitted by subdivision (b) of Section 5231, and shall have the benefit of subdivision (c) of Section 5231, and the board may delegate its investment powers as permitted by Section 5210.

(e) Nothing in this section shall be construed to preclude the application of the Uniform Management of Institutional Funds Act, ~~Chapter 3 Part 7~~ (commencing with Section ~~2290-1~~ 18500) of ~~Title 8 of Part 4 of~~ Division 3 9 of the Civil Probate Code, if that act would otherwise be applicable, but nothing in the Uniform Management of Institutional Funds Act alters the status of governing boards, or the duties and liabilities of directors, under this part.

Comment. Subdivision (e) of Section 5240 is revised to correct a cross-reference and to add language consistent with Probate Code Section 18508.

Education Code §§ 94600-94610 (repealed). Uniform Management of Institutional Funds Act

SEC 2. Chapter 6 (commencing with Section 94600) of Part 59 of Division 10 of Title 3 of the Education Code is repealed.

Note. Comments to repealed sections are set out at the end of this recommendation.

Probate Code §§ 18500-18509 (added). Uniform Management of Institutional Funds Act

SEC. 3. Part 7 (commencing with Section 18500) is added to Division 9 of the Probate Code, to read:

**PART 7. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT**

**§ 18500. Short title**

18500. This part may be cited as the Uniform Management of Institutional Funds Act.

Comment. Section 18500 continues Education Code Section 94600 without change. The Uniform Management of Institutional Funds Act has been relocated from the Education Code, where it applied only to certain private institutions of higher education. See Section 18501(e) and the Comment thereto. See also Sections 2(b) (interpretation of uniform acts), 11 (severability).

§ 18501. Definitions

18501. As used in this part:

(a) "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.

(b) "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.

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

(d) "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 endowment 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 endowment fund.

(e) "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.

(f) "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 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.

Comment. Section 18501 restates former Education Code Section 94601 without substantive change, except that the definition of "institution" has been substantially expanded. As revised, the definition of "institution" is the same as that provided in Section 1(1) of the Uniform Management of Institutional Funds Act (1972). Former Education Code Section 94601(a) defined "institution" as a "private incorporated or unincorporated organization organized and operated exclusively for educational purposes and accredited by the Association of Western Colleges and Universities to the extent that it holds funds exclusively for any of such purposes."

Section 18501 lists the definitions in alphabetical order, unlike former Education Code Section 94601. The definition of "historic

dollar value" in subdivision (d) has been revised by adding "endowment" preceding "fund" in the second and third clauses.

Section 18501 is the same in substance as Section 1 of the Uniform Management of Institutional Funds Act (1972), except for the omission of the provision in Section 2(5) of the uniform act making conclusive a good faith determination of historic dollar value. As to the construction of provisions drawn from uniform acts, see Section 2.

Note. Paul Gordon Hoffman (Exhibit 2, at exhibits p. 4) makes the following objection:

*It should be clarified that this provision only applies to investment funds, and does not apply to property directly used in connection with the carrying out of the charitable purpose. For example, where a painting is given to a museum on the condition that it be exhibited, nothing contained in this act should be construed so as to permit the property to be sold and the appreciation utilized for operating expenses.*

*The staff would not make this change. UMIFA is clear enough as it stands. It applies to appreciation in an institutional "fund"; the term is not defined, but it would not seem to include paintings.*

**§ 18502. Expenditure of asset net appreciation for current use**

18502. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the realized net appreciation 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 18506. This section 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 of the institution.

Comment. The first sentence of Section 18502 restates the first sentence of former Education Code Section 94602 without substantive change. This section is the same as Section 2 of the Uniform Management of Institutional Funds Act (1972), except that the authority to appropriate unrealized appreciation is omitted. As to the construction of provisions drawn from uniform acts, see Section 2. The phrase "net appreciation, realized in the fair value" in the former section has been revised for clarity to read "realized net appreciation in the fair value." See the Comment to Section 18500.

The second sentence of Section 18502 continues the third sentence of former Education Code Section 94602 without change. The second sentence of former Education Code Section 94602, providing a rolling five-year averaging rule, has been omitted as obsolete since the elimination of authority to appropriate unrealized net appreciation by amendment in 1978. See 1978 Cal. Stat. ch. 806, § 2, amending former Civil Code § 2290.2, the predecessor to former Educ. Code § 94602.

Note. Paul Gordon Hoffman (Exhibit 2, at exhibits p. 4) makes the following objection:

The utilization of a portion of realized appreciation for current operating expenses may be appropriate where the appreciation exceeds the increase in the cost of living. However, it seems inappropriate to allow the economic value of endowment funds to be gutted through turning inflationary gains into funds available to meet current operating expenses. The standard of care set forth in Section 18506 is insufficient to protect against this possibility.

UMIFA is intended to provide a degree of flexibility to governing boards of charitable institutions. While it is important to take inflation into account, the drafters of UMIFA did not want a rigid definition of historic dollar value that would require changes in the cost of living to be calculated. The rule suggested by Mr. Hoffman would make it unnecessarily difficult to determine with accuracy the amount of appreciation actually represented in their endowment funds. See generally W. Cary & C. Bright, *The Developing Law of Endowment Funds: "The Law and the Lore" Revisited* (A Report to the Ford Foundation) 13-14 (1974). UMIFA relies on the exercise of prudence by the governing board in determining the amount of appreciation that may be appropriated. See draft Sections 18502, 18506.

Jonathan Brown, Vice President of the Association of Independent California Colleges and Universities (which have been operating under the limited UMIFA enacted in California), urges the Commission to restore the ability of governing boards of institutions under UMIFA to use unrealized appreciation. (See Exhibit 5, at exhibits p. 8.) Mr. Brown writes:

The restriction from expenditure for unrealized appreciation is both unnecessary and troubling . . . . The purpose of UMIFA, as it was originally suggested, was to offer charitable institutions greater flexibility in their management of funds, with the ultimate goal of broadening the horizon from which those entities build their investment policies. The restriction from using unrealized appreciation has two defects. First, it most assuredly increases transaction costs. In order to expend appreciation, the entity in question must realize any gain. Second, it tends to reduce the possibility that non-profits will be able to optimize their portfolios. That would be especially true in smaller endowments where the number of assets is usually smaller. By limiting expenditure policies to realized appreciation an entity is forced to prune the asset in order to benefit from it. The choices become absurd when one has an asset which has grown in value substantially but has the potential for additional growth. . . . The elimination of unrealized appreciation may have also [been] originally included with the concern that the only way to value assets is to convert them to cash equivalents. We believe that assumption to be an outdated one.

The staff concurs with Mr. Brown and recommends that the Commission adopt the principle of the Uniform Act permitting appropriation of both realized and unrealized appreciation. Only Kansas and California, of the 29 states that have enacted UMIFA, appear to have the restriction to realized gains. We have not been cited to any concrete experience in the other 27 states or in California that supports the need to continue this restriction. In response to the concern that this power would permit charities to squander their birthrights, we would suggest restoring the five-year rolling average provision that was included in UMIFA as it was originally enacted in California. ("Appropriations shall be based upon an average fair value covering a period of up to the five preceding fiscal years of the institution and shall be set at any reasonable date prior to each fiscal year.") This protection evens out the effects of market fluctuation in determining the present value of institutional funds and represents a good compromise between flexibility and caution.

William L. Cary and Craig B. Bright, the movers behind the promulgation of UMIFA, argue strenuously for the "total return" concept in managing endowments of nonprofit institutions:

If colleges and universities are in fact legally free to treat capital gains as expendable income, it may logically be asked whether such expenditure must be limited to realized appreciation, or can it be extended to unrealized appreciation as well? To most economists the "realization" of gains and losses is an artificial, almost meaningless concept. Assume that an educational institution holds two securities, each of which is now worth \$100. Security "A" originally cost \$150, while security "B" cost \$50. In terms of economic power the institution is exactly where it was when it purchased the two; it still holds securities worth an aggregate of \$200. But depending upon which security it chooses to sell, it will be said to have "realized" a gain or a loss of \$50 -- even if it immediately repurchases the security it sold. . . .

[T]he "realization" of gains and losses is an artificial, almost meaningless concept, particularly for an institution that is not subject to taxation on its income. Gains can be "realized" when the total dollar value of an endowment is considerably less than it was at its inception, just as losses can be "realized" even though the entire portfolio has appreciated substantially in value. The requirement that appreciation be realized prior to its appropriation as income will of necessity impose artificial strictures on investment managers in the selection of portfolio securities for retention or liquidation. Instead of a selection based solely on the investment worth of the securities at the time of the selection, the extraneous happenstance of their individual appreciation or decline from original cost may dictate a completely different decision.

W. Cary & C. Bright, *The Developing Law of Endowment Funds: "The Law and the Lore" Revisited* (A Report to the Ford Foundation) 3, 15 (1974) [Footnotes omitted].

*The Prefatory Note to UMIFA also emphasizes this point:*

*If only realized capital gains could be taken into account, trustees or managers might be forced to sell their best assets, appreciated property, in order to produce spendable gains and conceivably might spend realized gains even when, because of unrealized losses, the fund has no net appreciation.*

**§ 18503. Construction of gift instrument**

18503. (a) Section 18502 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended.

(b) If the gift instrument includes a designation of the gift as an endowment or a direction or authorization to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or a direction or authorization that contains other words of similar meaning:

(1) A restriction on the expenditure of net appreciation need not be implied solely from the designation, direction, or authorization, if the gift instrument became effective before the Uniform Management of Institutional Funds Act became applicable to the institution.

(2) A restriction on the expenditure of net appreciation may not be implied solely from the designation, direction, or authorization, if the gift instrument becomes effective after the Uniform Management of Institutional Funds Act became applicable to the institution.

(c) The effective dates of the Uniform Management of Institutional Funds Act are the following:

(1) January 1, 1974, with respect to a private incorporated or unincorporated organization organized and operated exclusively for educational purposes and accredited by the Association of Western Colleges and Universities.

(2) January 1, 1991, with respect to an institution not described in paragraph (1).

**Comment.** Subdivision (a) of Section 18503 continues former Education Code Section 94603(a) without change. Subdivisions (b) and (c)(1) restate former Education Code Section 94603(b) without substantive change. Subdivision (c)(2) applies a consistent rule of construction to institutions (as defined in Section 18501(e)) that were not covered by the former law. See the Comment to Section 18501.

Subdivisions (a) and (b) are the same in substance as the first two sentences of Section 3 of the Uniform Management of Institutional

Funds Act (1972). As to the construction of provisions drawn from uniform acts, see Section 2.

§ 18504. Investment authority

18504. 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 do any or all of the following:

(a) 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, deeds of trust, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations or partnerships, and obligations of any government or subdivision or instrumentality thereof.

(b) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.

(c) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution.

(d) 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.

Comment. Section 18504 continues former Education Code Section 94604 without change, except that (1) language has been added to the introductory clause to make it consistent with Section 4 of the Uniform Management of Institutional Funds Act (1972) and (2) in subdivision (a) a reference to deeds of trust has been added and an unnecessary comma following the word "associations" has been omitted. See the Comment to Section 18500. As to the construction of provisions drawn from uniform acts, see Section 2.

Note. John C. Hoag, *Ticor Title Insurance*, asks whether the authority to invest and reinvest in real property under subdivision (a) includes selling and conveying real property and asks whether the reference to "mortgages" includes other forms of hypothecation, such as deeds of trust. (See Exhibit 1, at exhibits p. 2.) The staff assumes

that the language would be read broadly and that it would include selling and conveying real property acquired with institutional funds. The reference to mortgages is not a limitation. For the sake of clarity, we have added a reference to deeds of trust.

Luther J. Avery (Exhibit 4, at exhibit p. 7.) raises a series of questions about this section:

(1) Mr. Avery suggests that Section 18504 should refer to investments in foreign currencies and precious metals as authorized investments. The staff would not want to include this variant language without further study. It is not clear why specific authority for such investments is needed. The better course would be to restore the language from the uniform act set out in brackets in the introductory clause of Section 18504 above, which was omitted from the California version of UMIFA. If the language suggested by Mr. Avery is needed here, then what of all the other provisions, such as in the Trust Law and the Guardianship-Conservatorship Law, that could be similarly revised? Why would foreign currencies and precious metals be mentioned only in UMIFA?

(2) Mr. Avery suggests that the terms "pooled or common fund" be defined and that the statute provide the method of accounting for income and expense to be allocated among the participants. He believes that these types of funds "need guidance or restrictions not unlike the controls on banks by the U.S. Controller of the Currency." The relevant language in Section 18504 is the same as the language of the uniform act and the California version of UMIFA. We are not sure how Mr. Avery's suggestion would be implemented. The staff is not in a position to provide accounting rules and regulatory restrictions. What does the Commission wish to do?

(3) Mr. Avery notes that there is no definition for terms such as "mutual funds" and "common trust funds" and asks whether they include private funds or trusts or only ones that are registered with and regulated by the S.E.C. The statute is worded to pick up any form of investment that is available for investment by such institutions. The purpose of subdivision (d) is to make clear that investments may be made in funds that may involve some delegation of investment decisions. This provision is the same as the language of the uniform act and the California version of UMIFA. In other sections of the Probate Code, mutual funds have been restricted to money market mutual funds registered under the Investment Company Act of 1940 and references to common trust funds refer to Financial Code Section 1564. (See Prob. Code §§ 2574, 2580, 9730, 10533, 16224; but cf. Prob. Code §§ 82, 2459.) However, we think the uniform language, which has been in force in California for over 15 years, should be retained as it is.

(4) Mr. Avery would add a new subdivision to Section 18504, reading as follows:

(e) The institution may rely on the written or oral representations of any representative of any institutional fund reasonably believed to be authorized to direct the actions of the governing board.

The staff would not add this language. We do not see the need for a special rule here, nor is the need to depart from uniform language demonstrated.

§ 18505. Delegation of investment management

18505. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may do the following:

(a) 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.

(b) Contract with independent investment advisers, investment counsel or managers, banks, or trust companies, so to act.

(c) Authorize the payment of compensation for investment advisory or management services.

Comment. Section 18505 continues former Education Code Section 94605 without change. This section is the same in substance as Section 5 of the Uniform Management of Institutional Funds Act (1972). As to the construction of provisions drawn from uniform acts, see Section 2.

§ 18506. Standard of care

18506. (a) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property, appropriating appreciation, 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. In the course of administering the fund pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(b) In exercising judgment under this section, the members of the governing board shall consider the 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, general economic conditions, the appropriateness of a reasonable proportion of higher risk investment with respect to institutional funds as a whole, income, growth, and long-term net appreciation, as well as the probable safety of funds.

**Comment.** Section 18506 restates former Education Code Section 94606 without substantive change. See the Comment to Section 18500. The standard of care in subdivision (a) is consistent with the general standard of care provided by Section 16040.

**Note.** John C. Hoag, Ticor Title Insurance, suggests adding the word "conveying" following "selling" in the second line of this section. (See Exhibit 1, at exhibits p. 3.) The staff is not clear on the need for this language. The language in question is the same as that in the Trust Law and should not be changed only here.

**§ 18507. Release of restriction in gift instruments**

18507. (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 apply in the name of the institution to the superior court of the county in which the principal activities of the institution are conducted, or other court of competent jurisdiction, for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. No court has jurisdiction to release a restriction on an institutional fund under this part unless the Attorney General is a party to the proceedings. If the court finds that the restriction is illegal, impossible to fulfill, or impracticable, it may by order release the restriction in whole or in part. A release under this subdivision 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.

**Comment.** Section 18507 restates former Education Code Section 94607 without substantive change, except that the standard for releasing restrictions under subdivision (b) has been revised to refer to restrictions that are "illegal, impossible to fulfill, or impracticable" rather than "obsolete or impracticable." This revision is intended to conform this provision with the cy pres doctrine. See,

e.g., Estate of Loring, 29 Cal. 2d 423, 436, 175 P.2d 524 (1946); Estate of Mabury, 54 Cal. App. 3d 969, 984-85, 127 Cal. Rptr. 233 (1976); Society of California Pioneers v. McElroy, 63 Cal. App. 2d 332, 337-38, 146 P.2d 962 (1944); Restatement (Second) of Trusts § 399 (1957).

In the second sentence of subdivision (b), the phrase "release a restriction on" has been substituted for the phrase "modify any use of" in former Education Code Section 94607(b).

Section 18507 is the same in substance as Section 7 of the Uniform Management of Institutional Funds Act (1972), except for some variations in subdivision (b). As to the construction of provisions drawn from uniform acts, see Section 2.

#### § 18508. Status of governing boards

18508. Nothing in this part alters the status of governing boards, or the duties and liabilities of directors, under other laws of this state.

Comment. Section 18508 continues former Education Code Section 94610 without change, except for the language relating to duties and liabilities of directors which is new. The purpose of this new provision is to make clear that the duties and liabilities of directors of incorporated institutions are governed by the relevant statute and not by this part. See, e.g., Corp. Code §§ 5231-5231.5 (directors of nonprofit public benefit corporations), 7231-7231.5 (directors of nonprofit mutual benefit corporations), 9240-9241 (directors of nonprofit religious corporations).

Note. Luther J. Avery approves of the clarification of the relationship between the Corporations Code and UMIFA. (See Exhibit 4, at exhibits p. 6.) However, he is concerned about possible liability of directors for actions taken before the operative date:

*For example, if an institution has been using the endowment principles of the UMIFA and an attorney is asked for an opinion on the propriety of the conduct of the directors prior to 1990, how does one respond? Moreover, it is not clear in the proposed language how the institution is to deal with the situation more appropriately governed by the Uniform Principal and Income Act (Probate Code 16300, et seq.). Will the institution be authorized to utilize either uniform act at the institution's discretion? Can the institution given funds to distribute "income" only by the terms of the gift instrument accumulate income or distribute asset appreciation? What if such acts occurred prior to 1990? Is a subsequent director liable for the acts of the pre-1990 directors?*

*The staff is not convinced that this recommendation should attempt to deal with the issue raised by Mr. Avery concerning liability of directors for actions taken before extension of UMIFA. In this connection, note that Section 3(f) of the Probate Code provides that no*

person is liable for "an action taken before the operative date that was proper at the time the action was taken, even though the action would be improper if taken on or after the operative date, and such a person has no duty, as a result of the enactment of the new law, to take any step to alter the course of action or its consequences." The staff is not sure that we would not want to go any further than this. Nor does UMIFA have anything to do with the liability of directors for actions of their predecessors.

Nothing in this recommendation does, or should, authorize the institution to choose to operate under the Revised Uniform Principal and Income Act (RUPIA) (Prob. Code §§ 16300-16315). That act does not apply to charitable institutions. It does not deal with the appropriation of appreciation of an endowment fund. RUIA is intended to provide default rules concerning allocation of trust receipts and expenditures between income beneficiaries and remainder beneficiaries. A charitable trust is effectively the income beneficiary, the remainder beneficiary, and the trustee. The draftsmen of the original Uniform Principal and Income Act and the Revised Act concur that the acts apply only to private trusts; application of UPIA and RUIA to charitable trusts was not even considered. See W. Cary & C. Bright, *The Law and the Lore of Endowment Funds* 13-14 (1969).

**§ 18509. Laws relating to expenditure of public funds**

18509. Nothing in this part limits the application of any law relating to the expenditure of public funds.

**Comment.** Section 18509 is a new provision that makes clear the relation of the Uniform Management of Institutional Funds Act to any other law concerning expenditure of public funds. See, e.g., Gov't Code § 53601. Thus, under Section 18509, if other law provides greater limitations on the expenditure of public funds, that law prevails over any provision of this part that might otherwise have been applicable.

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**COMMENTS TO REPEALED SECTIONS**

**Education Code § 94600 (repealed). Short title**

**Comment.** Former Section 94600 is continued in Probate Code Section 18500 without change. The Uniform Management of Institutional Funds Act has been moved from the Education Code since it has been expanded to apply to religious, charitable, and other eleemosynary institutions.

**Education Code § 94601 (repealed). Definitions**

**Comment.** Former Section 94601 is restated in Probate Code Section 18501 without substantive change, except that the definition of "institution" in subdivision (a) has been substantially expanded in the new provision. Additional technical changes have been made. See Prob. Code § 18501 and the Comment thereto.

Education Code § 94602 (repealed). Expenditure of asset net appreciation for current use

Comment. The first sentences of former Section 94602 is restated in Probate Code Section 18502 without substantive change. The second sentence is omitted as obsolete. See the Comment to Prob. Code § 18502. The third sentence is continued in the second sentence of Probate Code Section 18502 without change.

Education Code § 94603 (repealed). Construction of gift instrument

Comment. Former Section 94603 is restated in Probate Code Section 18503 without substantive change. See the Comment to Prob. Code § 18503.

Education Code § 94604 (repealed). Authority of board to invest and reinvest

Comment. Former Section 94604 is continued in Probate Code Section 18504 without change, except that the comma following the word "associations" in subdivision (a) is omitted.

Education Code § 94605 (repealed). Delegation of authority

Comment. Former Section 94605 is continued in Probate Code Section 18505 without change.

Education Code § 94606 (repealed). Standard of care

Comment. Former Section 94606 is restated in Probate Code Section 18506 without substantive change, except as noted in the Comment to Probate Code Section 18506.

Education Code § 94607 (repealed). Release of restriction in gift instruments

Comment. Former Section 94607 is restated in Probate Code Section 18507 without substantive change. See the Comment to Prob. Code § 18507.

Education Code § 94608 (repealed). Severability

Comment. Former Section 94608 is omitted because it is unnecessary. See Prob. Code § 11 (severability).

Education Code § 94609 (repealed). Application and construction

Comment. Former Section 94609 is omitted because it is unnecessary. See Prob. Code § 2(b) (interpretation of uniform acts).

Education Code § 94610 (repealed). Status of governing boards

Comment. Former Section 94610 is restated in Probate Code Section 18508 without substantive change. See the Comment to Prob. Code § 18507.