

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill in section 2 in §5103 in subsection 5 by inserting after paragraph F the following:

‘G. An institution shall track the historic dollar value of its institutional funds. For purposes of this paragraph, “historic dollar value” means the aggregate value in dollars of:

(1) Each endowment fund at the time it became an endowment fund;

(2) Each subsequent donation to the fund at the time the donation is made; and

(3) Each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

Amend the bill in section 2 in §5104 by inserting after subsection 3 the following:

‘4. **Rebuttable presumption.** The appropriation for expenditure in any year of an amount greater than 7% of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than 3 years immediately preceding the year in which the appropriation for expenditure is made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for less than 3 years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument.

5. **Notice to donor.** Before an institution appropriates for expenditure in any year any amount of an endowment fund, the institution shall provide written notice to the donor if the donor's gift equals or exceeds \$50,000 and the donor is still living.’

Amend the bill in section 2 in §5106 by striking out all of subsection 4 (page 28, lines 35 to 42 and page 29, lines 1 to 11 in L.D.) and inserting the following:

‘4. **Release or modification by institution.** This subsection governs the release or modification of a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund that the institution determines is unlawful, impracticable, impossible to achieve or wasteful.

A. If an institution determines that a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund is unlawful, impracticable, impossible to achieve or wasteful, the institution, 60 days after notification to the Attorney General and if the Attorney General does not object, may release or modify the restriction, in whole or part, if:

(1) The institutional fund subject to the restriction has a total value of less than \$25,000, except that the dollar limit established in this paragraph must be adjusted to reflect changes in the Consumer Price Index for all Urban Consumers, CPI-U, as compiled by the United States Department of Labor, Bureau of Labor Statistics, or its successor index, using 2009 as the base year. On or before January 1, 2011, and each odd-numbered year thereafter, the dollar value must be adjusted for the next 2-year cycle if the cumulative percentage of change in the index, from the base year or from a later year that was the basis of an adjustment of this amount pursuant to this subparagraph, rounded to the nearest whole percentage point, is in excess of 10%. The adjusted exemption must be rounded upward to the nearest \$5,000 increment. The dollar value must not be reduced below \$25,000;

(2) More than 20 years have elapsed since the fund was established; and

(3) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

B. If the Attorney General objects under paragraph A, the institution may seek to release or modify the restriction in court pursuant to subsection 3.'

Amend the bill in section 2 in §5108 in the first paragraph in the 2nd line (page 31, line 38 in L.D.) by striking out twice the following: "2010" and inserting twice the following: '2009'

Amend the bill in section 2 in §5111 in the first paragraph in the first line (page 32, line 13 in L.D.) by striking out the following: "2010" and inserting the following: '2009'

Amend the bill by inserting after section 2 the following:

**'Sec. 3. Retroactivity.** This Act applies retroactively to July 1, 2009.'

## SUMMARY

This amendment is a minority report.

This amendment requires an institution to track the historic dollar value of its institutional funds.

This amendment establishes a rebuttable presumption that the appropriation for expenditure in any year of an amount greater than 7% of the fair market value of an endowment fund is imprudent.

This amendment requires an institution to notify the donor, if living, before the institution appropriates for expenditure any amount of an endowment fund if the donor's gift was at least \$50,000.

This amendment provides that if the Attorney General objects to the release or modification of a restriction in a gift instrument that applies to a small fund that has been in existence for more than 20 years, the institution must seek court approval of the release or modification.

This amendment changes the effective date of the Act to July 1, 2009 and adds a retroactive application date.