

CHAPTER 240

S.B. No. 709

AN ACT

relating to the management, investment, and expenditure of funds held by public institutions of higher education.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 163.002, Property Code, is amended to read as follows:

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.

SECTION 2. Section 163.003, Property Code, is amended by amending Subdivision (5) and adding Subdivision (7) to read as follows:

(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) an institution of higher education as defined by Section 61.003, Education Code, or other governmental entity, or a foundation chartered for the benefit of that type of institution or entity, or the benefit of a component of that type of institution or entity; or~~

~~[(B)] a private foundation as defined by Section 509(a) of the Internal Revenue Code of 1986.~~

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

SECTION 3. Section 163.004, Property Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) *Except as provided by Subsection (e), the [The] 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.*

*(e) The governing board of an institution of higher education as defined by Section 61.003(8), Education Code, may not appropriate for expenditure the net unrealized appreciation of the assets of an endowment fund.*

SECTION 4. Section 51.0031, Education Code, is amended to read as follows:

Sec. 51.0031. DEPOSITS AND INVESTMENTS. (a) A governing board may deposit funds under its control as provided in Section 51.003 of this code, may invest funds under its control in financial instruments eligible for investment of funds in the state treasury and, with regard to donations, gifts, and trusts, may establish endowment funds that operate as trusts and are managed under prudent person standards.

*(b) Funds described in this section may also be invested in cash management and fixed income funds held by organizations exempt from federal taxation under Section 501(f) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(f)), as that section may be amended.*

*(c) If a governing board has under its control at least \$25 million in book value of endowment funds, such governing board may invest all funds described in this section under prudent person standards.*

*(d) As used in this section, "prudent person standard" is the standard of care described in Article VII, Section 11b, of the Texas Constitution, and means that standard of judgment and care that persons of ordinary prudence, discretion, and intelligence exercise in the management of their affairs in regard to the investments of their funds considering probable income as well as probable safety of their capital.*

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the

constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 1, 1993: Yeas 30, Nays 0; the Senate concurred in House amendments on May 11, 1993: Yeas 31, Nays 0; passed the House, with amendments, on May 7, 1993: Yeas 139, Nays 0, two present not voting.

Approved May 22, 1993.

Effective May 22, 1993.