# Part 3
# Management of Endowment Funds

**51-8-301 Appropriation for expenditure or accumulation of endowment fund.**

(1)

(a) Subject to the intent of a donor expressed in a gift instrument and to Subsection (3), an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines to be prudent for the uses, benefits, purposes, and duration for which the endowment fund is established.

(b) Unless stated otherwise in a gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution.

(c) In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(i) the duration and preservation of the endowment fund;

(ii) the purposes of the institution and the endowment fund;

(iii) general economic conditions;

(iv) the possible effect of inflation or deflation;

(v) the expected total return from income and the appreciation of investments;

(vi) other resources of the institution; and

(vii) the investment policy of the institution.

(2) To limit the authority to appropriate for expenditure or accumulate under Subsection (1), a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or similar words:

(a) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(b) do not otherwise limit the authority to appropriate for expenditure or accumulate under Subsection (1).

Amended by Chapter 258, 2015 General Session

**51-8-302 Transferring management of endowment funds.**

(1) A higher education institution may only transfer the management of any institutional fund to a manager if the transferring higher education institution:

(a) retains sufficient funds to cover its cash requirements; and

(b) continues to be responsible for the proper collection, deposit, and disbursement of the institutional fund in the manner provided by law.

(2) The institutional funds transferred as provided in this section are subject to all applicable provisions of this chapter and are under the jurisdiction of the manager until the transferring higher education institution withdraws these institutional funds from the manager.

(3) A higher education institution may withdraw all or any part of the institutional funds transferred to the manager, subject to any rules established by the manager governing notice or limits on the amount of institutional funds that may be withdrawn.

Enacted by Chapter 59, 2007 General Session

**51-8-303 Requirements of member institutions of the state system of higher education.**

(1) The State Board of Regents shall:
  (a) establish asset allocations for the institutional funds;
  (b) in consultation with the commissioner of higher education, establish guidelines for investing the funds; and
  (c) establish a written policy governing conflicts of interest.

(2)
  (a) A higher education institution may not invest its institutional funds in violation of the State Board of Regents' guidelines unless the State Board of Regents approves an investment policy that has been adopted by the higher education institution's board of trustees.
  (b) A higher education institution and its employees shall comply with the State Board of Regents' conflict of interest requirements unless the State Board of Regents approves the conflict of interest policy that has been adopted by the higher education institution's board of trustees.

(3)
  (a) The board of trustees of a higher education institution may adopt:
    (i) an investment policy to govern the investment of the higher education institution's institutional funds; and
    (ii) a conflict of interest policy.
  (b) The investment policy shall:
    (i) define the groups, and the responsibilities of those groups, that must be involved with investing the institutional funds;
    (ii) ensure that the groups defined under Subsection (3)(b)(i) at least include the board of trustees, an investment committee, institutional staff, and a custodian bank;
    (iii) create an investment committee that includes not more than two members of the board of trustees and no less than two independent investment management professionals;
    (iv) determine an appropriate risk level for the institutional funds;
    (v) establish allocation ranges for asset classes considered suitable for the institutional funds;
    (vi) determine prudent diversification of the institutional funds; and
    (vii) establish performance objectives and a regular review process.
  (c) Each higher education institution that adopts an investment policy, a conflict of interest policy, or both, shall submit the policy, and any subsequent amendments, to the State Board of Regents for its approval.

(4) Each higher education institution shall make monthly reports detailing the deposit and investment of funds in its custody or control to:
  (a) its board of trustees; and
  (b) the State Board of Regents.

(5) The state auditor may conduct or cause to be conducted an annual audit of the investment program of each higher education institution.

(6) The State Board of Regents shall submit an annual report to the governor and the Legislature summarizing all investments by higher education institutions under its jurisdiction.

Enacted by Chapter 59, 2007 General Session

**51-8-304 Rebuttable presumption of imprudence -- Scope.**

(1) The appropriation for expenditure in any year of an amount greater than seven percent 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 three years immediately preceding

the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence.

(2) For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund shall be calculated for the period of time the endowment fund has been in existence.

(3) This section does not:

(a) apply to an appropriation for expenditure permitted under law other than this chapter or the gift instrument; or

(b) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to seven percent of the fair market value of the endowment fund.

Enacted by Chapter 59, 2007 General Session