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Charities pushing for new fund rules

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Business First

Charitable organizations are lobbying state lawmakers to adopt changes they say would provide fiscal relief, offering greater flexibility in how they use endowment funds.

New York is among the last half-dozen states to address the issue, which updates a law from the 1970s.

The Uniform Prudent Management of Institutional Funds Act “would bring a lot more consistency how to interpret donor intent and what the organization’s responsibilities are,” says Alan Gracie, director in the health-care assurance advisory practice at Freed Maxick & Battaglia PC.

The UPMIFA focuses on the management, investment and expenditure of restricted funds donated to nonprofits, including colleges, hospitals and cultural institutions.

Introduced in New York last year, the bill is being reviewed by state legislators on the Committee on Corporations, Authorities and Commissions as AB7907/SB4778.

The biggest legal changes for charities would be the ability to spend a greater amount of endowments, but the bill also sets standards aimed at protecting the original intent of donors and encourages prudent management of investments.

It would also simplify the process of releasing restrictions on endowment funds whose purpose is no longer relevant.

Proponents say the time is right for



FILE PHOTO

Albright-Knox Art Gallery Director Louis Grachos says proposed changes to rules regarding charity endowments will help open up a “vital” funding stream for New York charitable organizations.

an update - especially during a down market, when endowments are low and charities are hampered in their ability to provide services due to lower-than-normal investment returns. The law also will bring some change to organizations in terms of how much attention they pay to the quality of their investment managers and advisers, as well as the financial literacy of board members in general.

“If they don’t have individuals who are financially literate on the board, then it’s a bit of a stretch for them to say they’ve effectively reviewed the services of an investment adviser,” Gracie says.

The intent of the original law from 1972 was to allow universities and

other nonprofits to have access to modern portfolio investments and gave them greater flexibility to invest for growth, says Barry Hawkins, chairman of the national drafting committee for the UPMIFA for the National Conference of Commissioners on Uniform State Laws and a partner in the Stamford, Conn., law firm Shipman & Goodwin LLP.



Gracie

One restriction in particular, however, required that investments for endowments should remain conservative, and meant charities could not under any circumstances spend below the historic value of the gift, unless

FUNDS: *CICU advocates reforms*

they had approval from the donor. So called “under-water” gifts become useless to the charity.

The revised rules contained in the UPMIFA include criteria that allow boards of directors and endowment managers to make better-informed decisions regarding under-water holdings and grant greater flexibility to carry out the presumed intent of the donor. The UPMIFA has since been adopted by 43 states, plus the District of Columbia and the Virgin Islands.

Critics say the changes could open the floodgates to being too liberal in spending endowments and making imprudent spending decisions that could deplete the value of the endowment. Hawkins counters that argument by pointing out that boards of directors retain oversight over decisions.

Albright-Knox Art Gallery Director Louis Grachos says have access to unrestricted endowment funds is vital, but so too is remaining true to donor wishes. While the board and staff of the Albright support the ability to use funds that may have been donated for a use that’s no longer relevant, they’re

very careful not to use funds restricted for the acquisition of art for other purposes.

“It’s vital to the longterm health of an institution, the ability to have those funds available for the nuts and bolts of the organization, building maintenance and so on. But you don’t want to erode the confidence the donors have given the institution over the years,” Grachos says. “The danger, of course, is you end up eroding your endowment to the point where, potentially, the organization wouldn’t be able to deal with its operating costs and build the collection.”

The bill is being pushed hard in New York by the Council of Independent Colleges and Universities, which has assembled a coalition of 300 institutions, including cultural institutions, colleges and hospitals around the state. CICU President Laura Anglin says New York’s version of the UPMIFA also includes some additional donor protections.

“As the endowments lost money and you saw tremendous market losses, it really showed how antiquated the current laws were,” she says.

The impact in New York will depend largely on how state legislators modify the law to fit individual preferences, says Edward Schneider, executive director of the University at Buffalo Foundation Inc., which manages the institution’s endowment fund. If properly adopted, he says, the law will empower boards of nonprofit organizations to be more prudent about spending in a more flexible way than currently permitted.

“It should give the boards more latitude in terms of donor designation and being able to amend circumstances where a donor’s design is no longer applicable,” Schneider says. “I’m a proponent of empowering the governance of the local charities, rather than have rules and regulations imposed on them by the state. In the end, the people closest to the charities - if they’re properly informed and sufficiently knowledgeable or sophisticated, should be able to make better decisions, which would be enabled by this change.”

Mary Moore of the *Boston Business Journal* contributed to this story.