

1                   A bill to be entitled  
 2           An act relating to uniform prudent management of  
 3           institutional funds; creating s. 617.2104, F.S.; creating  
 4           a short title; providing definitions; providing  
 5           requirements for the management of funds held by an  
 6           institution exclusively for charitable purposes; providing  
 7           standards of conduct in managing and investing  
 8           institutional funds; providing requirements for  
 9           appropriation for expenditure or accumulation of an  
 10          endowment fund by an institution; authorizing an  
 11          institution to delegate to an external agent the  
 12          management and investment of an institutional fund;  
 13          authorizing the release or modification of a restriction  
 14          on management, investment, or purpose of an institutional  
 15          fund; providing for determination of compliance; providing  
 16          for application to existing or newly established  
 17          institutional funds; providing relationship to federal  
 18          law; providing requirements for uniformity of application  
 19          and construction of the act; repealing s. 1010.10, F.S.,  
 20          relating to the Florida Uniform Management of  
 21          Institutional Funds Act; providing an effective date.

22  
 23   Be It Enacted by the Legislature of the State of Florida:

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 25           Section 1. Section 617.2104, Florida Statutes, is created  
 26   to read:

27           617.2104 Uniform Prudent Management of Institutional Funds  
 28   Act.—

29           (1) SHORT TITLE.—This section may be cited as the "Uniform  
 30 Prudent Management of Institutional Funds Act."

31           (2) DEFINITIONS.—For purposes of this section:

32           (a) "Charitable purpose" means the relief of poverty, the  
 33 advancement of education or religion, the promotion of health,  
 34 the promotion of a governmental purpose, or any other purpose  
 35 the achievement of which is beneficial to the community.

36           (b) "Endowment fund" means an institutional fund or part  
 37 thereof that, under the terms of a gift instrument, is not  
 38 wholly expendable by the institution on a current basis. The  
 39 term does not include assets that an institution designates as  
 40 an endowment fund for its own use.

41           (c) "Gift instrument" means a record or records, including  
 42 an institutional solicitation, under which property is granted  
 43 to, transferred to, or held by an institution as an  
 44 institutional fund.

45           (d) "Institution" means:

46           1. A person, other than an individual, organized and  
 47 operated exclusively for charitable purposes;

48           2. A government or governmental subdivision, agency, or  
 49 instrumentality to the extent that it holds funds exclusively  
 50 for a charitable purpose; or

51           3. A trust that had both charitable and noncharitable  
 52 interests after all noncharitable interests have terminated.

53           (e) "Institutional fund" means a fund held by an  
 54 institution exclusively for charitable purposes. The term does  
 55 not include:

56           1. Program-related assets;

57 2. A fund held for an institution by a trustee that is not  
 58 an institution; or

59 3. A fund in which a beneficiary that is not an  
 60 institution has an interest, other than an interest that could  
 61 arise upon violation or failure of the purposes of the fund.

62 (f) "Person" means an individual, corporation, business  
 63 trust, estate, trust, partnership, limited liability company,  
 64 association, joint venture, public corporation, government or  
 65 governmental subdivision, agency, or instrumentality, or any  
 66 other legal or commercial entity.

67 (g) "Program-related asset" means an asset held by an  
 68 institution primarily to accomplish a charitable purpose of the  
 69 institution and not primarily for investment.

70 (h) "Record" means information that is inscribed on a  
 71 tangible medium or that is stored in an electronic or other  
 72 medium and is retrievable in perceivable form.

73 (3) STANDARD OF CONDUCT IN MANAGING AND INVESTING  
 74 INSTITUTIONAL FUND.—

75 (a) Subject to the intent of a donor expressed in a gift  
 76 instrument, an institution, in managing and investing an  
 77 institutional fund, shall consider the charitable purposes of  
 78 the institution and the purposes of the institutional fund.

79 (b) In addition to complying with the duty of loyalty  
 80 imposed by law other than this section, each person responsible  
 81 for managing and investing an institutional fund shall manage  
 82 and invest the fund in good faith and with the care an  
 83 ordinarily prudent person in a like position would exercise  
 84 under similar circumstances.

85 (c) In managing and investing an institutional fund, an  
 86 institution:

87 1. May incur only costs that are appropriate and  
 88 reasonable in relation to the assets, the purposes of the  
 89 institution, and the skills available to the institution.

90 2. Shall make a reasonable effort to verify facts relevant  
 91 to the management and investment of the fund.

92 (d) An institution may pool two or more institutional  
 93 funds for purposes of management and investment.

94 (e) Except as otherwise provided by a gift instrument, the  
 95 following rules apply:

96 1. In managing and investing an institutional fund, the  
 97 following factors, if relevant, must be considered:

98 a. General economic conditions.

99 b. The possible effect of inflation or deflation.

100 c. The expected tax consequences, if any, of investment  
 101 decisions or strategies.

102 d. The role that each investment or course of action plays  
 103 within the overall investment portfolio of the fund.

104 e. The expected total return from income and the  
 105 appreciation of investments.

106 f. Other resources of the institution.

107 g. The needs of the institution and the fund to make  
 108 distributions and to preserve capital.

109 h. An asset's special relationship or special value, if  
 110 any, to the charitable purposes of the institution.

111 2. Management and investment decisions about an individual  
 112 asset must be made not in isolation but rather in the context of

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113 the institutional fund's portfolio of investments as a whole and  
114 as a part of an overall investment strategy having risk and  
115 return objectives reasonably suited to the fund and to the  
116 institution.

117 3. Except as otherwise provided by law other than this  
118 section, an institution may invest in any kind of property or  
119 type of investment consistent with this section.

120 4. An institution shall diversify the investments of an  
121 institutional fund unless the institution reasonably determines  
122 that, because of special circumstances, the purposes of the fund  
123 are better served without diversification.

124 5. Within a reasonable time after receiving property, an  
125 institution shall make and carry out decisions concerning the  
126 retention or disposition of the property or to rebalance a  
127 portfolio in order to bring the institutional fund into  
128 compliance with the purposes, terms, and distribution  
129 requirements of the institution as necessary to meet other  
130 circumstances of the institution and the requirements of this  
131 section.

132 6. A person that has special skills or expertise, or is  
133 selected in reliance upon the person's representation that the  
134 person has special skills or expertise, has a duty to use those  
135 skills or that expertise in managing and investing institutional  
136 funds.

137 (4) APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF  
138 ENDOWMENT FUND; RULES OF CONSTRUCTION.—

139 (a) Subject to the intent of a donor expressed in the gift  
140 instrument, an institution may appropriate for expenditure or

141 accumulate so much of an endowment fund as the institution  
142 determines is prudent for the uses, benefits, purposes, and  
143 duration for which the endowment fund is established. Unless  
144 stated otherwise in the gift instrument, the assets in an  
145 endowment fund are donor-restricted assets until appropriated  
146 for expenditure by the institution. In making a determination to  
147 appropriate or accumulate, the institution shall act in good  
148 faith with the care that an ordinarily prudent person in a like  
149 position would exercise under similar circumstances and shall  
150 consider, if relevant, the following factors:

- 151 1. The duration and preservation of the endowment fund.
- 152 2. The purposes of the institution and the endowment fund.
- 153 3. General economic conditions.
- 154 4. The possible effect of inflation or deflation.
- 155 5. The expected total return from income and the  
156 appreciation of investments.
- 157 6. Other resources of the institution.
- 158 7. The investment policy of the institution.

159 (b) To limit the authority to appropriate for expenditure  
160 or accumulate under paragraph (a), a gift instrument must  
161 specifically state the limitation.

162 (c) Terms in a gift instrument designating a gift as an  
163 endowment, or a direction or authorization in the gift  
164 instrument to use only "income," "interest," "dividends," or  
165 "rents, issues, or profits," or "to preserve the principal  
166 intact," or words of similar import:

167 1. Create an endowment fund of permanent duration unless  
168 other language in the gift instrument limits the duration or  
169 purpose of the fund.

170 2. Do not otherwise limit the authority to appropriate for  
171 expenditure or accumulate under paragraph (a).

172 (5) DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.—

173 (a) Subject to any specific limitation set forth in a gift  
174 instrument or in law other than this section, an institution may  
175 delegate to an external agent the management and investment of  
176 an institutional fund to the extent that an institution could  
177 prudently delegate under the circumstances. An institution shall  
178 act in good faith, with the care that an ordinarily prudent  
179 person in a like position would exercise under similar  
180 circumstances, in:

181 1. Selecting an agent.

182 2. Establishing the scope and terms of the delegation,  
183 consistent with the purposes of the institution and the  
184 institutional fund.

185 3. Periodically reviewing the agent's actions in order to  
186 monitor the agent's performance and compliance with the scope  
187 and terms of the delegation.

188 (b) In performing a delegated function, an agent owes a  
189 duty to the institution to exercise reasonable care to comply  
190 with the scope and terms of the delegation.

191 (c) An institution that complies with paragraph (a) is not  
192 liable for the decisions or actions of an agent to which the  
193 function was delegated.

194 (d) By accepting delegation of a management or investment  
 195 function from an institution that is subject to the laws of this  
 196 state, an agent submits to the jurisdiction of the courts of  
 197 this state in all proceedings arising from or related to the  
 198 delegation or the performance of the delegated function.

199 (e) An institution may delegate management and investment  
 200 functions to its committees, officers, or employees as  
 201 authorized by law other than this section.

202 (6) RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT,  
 203 INVESTMENT, OR PURPOSE.—

204 (a) If the donor consents in a record, an institution may  
 205 release or modify, in whole or in part, a restriction contained  
 206 in a gift instrument on the management, investment, or purpose  
 207 of an institutional fund. A release or modification may not  
 208 allow a fund to be used for a purpose other than a charitable  
 209 purpose of the institution.

210 (b) The court, upon application of an institution, may  
 211 modify a restriction contained in a gift instrument regarding  
 212 the management or investment of an institutional fund if the  
 213 restriction has become impracticable or wasteful, if it impairs  
 214 the management or investment of the fund, or if, because of  
 215 circumstances not anticipated by the donor, a modification of a  
 216 restriction will further the purposes of the fund. The  
 217 institution shall notify the Attorney General of the  
 218 application, and the Attorney General must be given an  
 219 opportunity to be heard. To the extent practicable, any  
 220 modification must be made in accordance with the donor's  
 221 probable intention.



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222 (c) If a particular charitable purpose or a restriction  
223 contained in a gift instrument on the use of an institutional  
224 fund becomes unlawful, impracticable, impossible to achieve, or  
225 wasteful, the court, upon application of an institution, may  
226 modify the purpose of the fund or the restriction on the use of  
227 the fund in a manner consistent with the charitable purposes  
228 expressed in the gift instrument. The institution shall notify  
229 the Attorney General of the application, and the Attorney  
230 General must be given an opportunity to be heard.

231 (d) If consent of the donor in a record cannot be obtained  
232 by reason of the donor's death, disability, unavailability, or  
233 impossibility of identification, a governing board may modify a  
234 restriction contained in a gift instrument regarding the  
235 management, investment, or purpose of an institutional fund if  
236 the fund has a total value of \$100,000 or less and the  
237 restriction has become impracticable or wasteful, impairs the  
238 management, investment, or use of the fund or if, because of  
239 circumstances not anticipated by the donor, a modification of a  
240 restriction will further the purposes of the fund.

241 (e) If an institution determines that a restriction  
242 contained in a gift instrument on the management, investment, or  
243 purpose of an institutional fund is unlawful, impracticable,  
244 impossible to achieve, or wasteful, the institution, 60 days  
245 after obtaining written approval from the Attorney General, may  
246 release or modify the restriction, in whole or part, if:

247 1. The institutional fund subject to the restriction has a  
248 total value of at least \$100,000 and not more than \$250,000;

249 2. More than 20 years have elapsed since the fund was  
 250 established; and

251 3. The institution uses the property in a manner  
 252 consistent with the charitable purposes expressed in the gift  
 253 instrument.

254 (7) REVIEWING COMPLIANCE.—Compliance with this section is  
 255 determined in light of the facts and circumstances existing at  
 256 the time a decision is made or action is taken, and not by  
 257 hindsight.

258 (8) APPLICATION TO EXISTING INSTITUTIONAL FUNDS.—This  
 259 section applies to institutional funds existing on or  
 260 established after the effective date of this section. As applied  
 261 to institutional funds existing on the effective date of this  
 262 section, this section governs only decisions made or actions  
 263 taken on or after that date.

264 (9) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND  
 265 NATIONAL COMMERCE ACT.—This section modifies, limits, and  
 266 supersedes the federal Electronic Signatures in Global and  
 267 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not  
 268 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.  
 269 7001(c), or authorize electronic delivery of any of the notices  
 270 described in s. 103(b) of that act, 15 U.S.C. s. 7001(b).

271 (10) UNIFORMITY OF APPLICATION AND CONSTRUCTION.—In  
 272 applying and construing this uniform act, consideration must be  
 273 given to the need to promote uniformity of the law with respect  
 274 to its subject matter among states that enact it.

275 Section 2. Section 1010.10, Florida Statutes, is repealed.

276 Section 3. This act shall take effect July 1, 2011.