

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:

24
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;

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; or

62 4. A fund managed or administered by the State Board of
 63 Administration pursuant to its constitutional or statutory
 64 authority.

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

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

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

76 (3) STANDARD OF CONDUCT IN MANAGING AND INVESTING
 77 INSTITUTIONAL FUND.—

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

82 (b) In addition to complying with the duty of loyalty
 83 imposed by law other than this section, each person responsible
 84 for managing and investing an institutional fund shall manage

85 and invest the fund in good faith and with the care an
86 ordinarily prudent person in a like position would exercise
87 under similar circumstances.

88 (c) In managing and investing an institutional fund, an
89 institution:

90 1. May incur only costs that are appropriate and
91 reasonable in relation to the assets, the purposes of the
92 institution, and the skills available to the institution.

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

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

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

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

101 a. General economic conditions.

102 b. The possible effect of inflation or deflation.

103 c. The expected tax consequences, if any, of investment
104 decisions or strategies.

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

107 e. The expected total return from income and the
108 appreciation of investments.

109 f. Other resources of the institution.

110 g. The needs of the institution and the fund to make
111 distributions and to preserve capital.

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

114 2. Management and investment decisions about an individual
115 asset must be made not in isolation but rather in the context of
116 the institutional fund's portfolio of investments as a whole and
117 as a part of an overall investment strategy having risk and
118 return objectives reasonably suited to the fund and to the
119 institution.

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

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

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

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

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

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

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

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

165 (c) Terms in a gift instrument designating a gift as an
 166 endowment, or a direction or authorization in the gift
 167 instrument to use only "income," "interest," "dividends," or

168 "rents, issues, or profits," or "to preserve the principal
169 intact," or words of similar import:

170 1. Create an endowment fund of permanent duration unless
171 other language in the gift instrument limits the duration or
172 purpose of the fund.

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

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

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

184 1. Selecting an agent.

185 2. Establishing the scope and terms of the delegation,
186 consistent with the purposes of the institution and the
187 institutional fund.

188 3. Periodically reviewing the agent's actions in order to
189 monitor the agent's performance and compliance with the scope
190 and terms of the delegation.

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

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

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

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

205 (6) RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT,
 206 INVESTMENT, OR PURPOSE.—

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

213 (b) The circuit court for the circuit in which an
 214 institution is located, upon application of that institution,
 215 may modify a restriction contained in a gift instrument
 216 regarding the management or investment of an institutional fund
 217 if the restriction has become impracticable or wasteful, if it
 218 impairs the management or investment of the fund, or if, because
 219 of circumstances not anticipated by the donor, a modification of
 220 a restriction will further the purposes of the fund. The
 221 institution shall notify the Attorney General of the

222 application. To the extent practicable, any modification must be
223 made in accordance with the donor's probable intention.

224 (c) If a particular charitable purpose or a restriction
225 contained in a gift instrument on the use of an institutional
226 fund becomes unlawful, impracticable, impossible to achieve, or
227 wasteful, the circuit court for the circuit in which an
228 institution is located, upon application of that institution,
229 may modify the purpose of the fund or the restriction on the use
230 of the fund in a manner consistent with the charitable purposes
231 expressed in the gift instrument. The institution shall notify
232 the Attorney General of the application.

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

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

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

251 2. More than 20 years have elapsed since the fund was
 252 established; and

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

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

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

266 (9) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
 267 NATIONAL COMMERCE ACT.—This section modifies, limits, and
 268 supersedes the federal Electronic Signatures in Global and
 269 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not
 270 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.
 271 7001(c), or authorize electronic delivery of any of the notices
 272 described in s. 103(b) of that act, 15 U.S.C. s. 7001(b).

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

CS/HB 599

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277 | Section 2. Section 1010.10, Florida Statutes, is repealed.

278 | Section 3. This act shall take effect July 1, 2012.