

1 A bill to be entitled
2 An act relating to corporations not for profit; creating
3 s. 617.2104, F.S.; providing a short title; providing
4 definitions; providing requirements for the management of
5 funds held by an institution exclusively for charitable
6 purposes; providing standards of conduct in managing and
7 investing institutional funds; providing requirements for
8 appropriation for expenditure or accumulation of an
9 endowment fund by an institution; authorizing an
10 institution to delegate to an external agent the
11 management and investment of an institutional fund;
12 authorizing the release or modification of a restriction
13 on management, investment, or purpose of an institutional
14 fund; providing for determination of compliance; providing
15 for application to existing or newly established
16 institutional funds; providing relationship to federal
17 law; providing requirements for uniformity of application
18 and construction of the act; creating s. 617.2105, F.S.;
19 authorizing reversion of real property to the Board of
20 Trustees of the Internal Improvement Trust Fund if a not-
21 for-profit corporation holding a deed subject to a
22 reverter clause violates deed restrictions; repealing s.
23 1010.10, F.S., relating to the Florida Uniform Management
24 of Institutional Funds Act; providing effective dates.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Section 617.2104, Florida Statutes, is created
 29 to read:

30 617.2104 Florida Uniform Prudent Management of
 31 Institutional Funds Act.—

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

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

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

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

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

48 (d) "Institution" means:

49 1. A person organized and operated exclusively for
 50 charitable purposes, other than:

51 a. An individual; or

52 b. A trust subject to s. 518.11;
 53

54 2. A government or governmental subdivision, agency, or
55 instrumentality to the extent that it holds funds exclusively
56 for a charitable purpose; or

57 3. A trust that had both charitable and noncharitable
58 interests after all noncharitable interests have been terminated
59 if the trust is not subject to s. 518.11.

60 (e) "Institutional fund" means a fund held by an
61 institution exclusively for charitable purposes. The term does
62 not include:

63 1. Program-related assets;

64 2. A fund held for an institution by a trustee that is not
65 an institution;

66 3. A fund in which a beneficiary that is not an
67 institution has an interest, other than an interest that could
68 arise upon violation or failure of the purposes of the fund; or

69 4. A fund managed or administered by the State Board of
70 Administration pursuant to its constitutional or statutory
71 authority.

72 (f) "Person" means an individual, corporation, business
73 trust, estate, trust, partnership, limited liability company,
74 association, joint venture, public corporation, government or
75 governmental subdivision, agency, or instrumentality, or any
76 other legal or commercial entity.

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

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

83 (3) STANDARD OF CONDUCT IN MANAGING AND INVESTING
84 INSTITUTIONAL FUND.—

85 (a) Subject to the intent of a donor expressed in a gift
86 instrument, an institution, in managing and investing an
87 institutional fund, shall consider the charitable purposes of
88 the institution and the purposes of the institutional fund.

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

95 (c) In managing and investing an institutional fund, an
96 institution:

97 1. May incur only costs that are appropriate and
98 reasonable in relation to the assets, the purposes of the
99 institution, and the skills available to the institution.

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

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

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

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

108 a. General economic conditions.

109 b. The possible effect of inflation or deflation.

110 c. The expected tax consequences, if any, of investment
111 decisions or strategies.

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

114 e. The expected total return from income and the
115 appreciation of investments.

116 f. Other resources of the institution.

117 g. The needs of the institution and the fund to make
118 distributions and to preserve capital.

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

121 2. Management and investment decisions about an individual
122 asset must be made not in isolation but rather in the context of
123 the institutional fund's portfolio of investments as a whole and
124 as a part of an overall investment strategy having risk and
125 return objectives reasonably suited to the fund and to the
126 institution.

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

130 4. An institution shall diversify the investments of an
131 institutional fund unless the institution reasonably and
132 prudently determines under this section that the purposes of the
133 fund are better served without diversification.

134 5. Within a reasonable time after receiving property, an
135 institution shall make and carry out decisions concerning the

136 retention or disposition of the property or to rebalance a
137 portfolio in order to bring the institutional fund into
138 compliance with the purposes, terms, and distribution
139 requirements of the institution as necessary to meet other
140 circumstances of the institution and the requirements of this
141 section.

142 6. A person that has special skills or expertise, or is
143 selected in reliance upon the person's representation that the
144 person has special skills or expertise, has a duty to use those
145 skills or that expertise in managing and investing institutional
146 funds.

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

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

- 161 1. The duration and preservation of the endowment fund.
- 162 2. The purposes of the institution and the endowment fund.
- 163 3. General economic conditions.

164 4. The possible effect of inflation or deflation.

165 5. The expected total return from income and the
 166 appreciation of investments.

167 6. Other resources of the institution.

168 7. The investment policy of the institution.

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

172 (c) Terms in a gift instrument designating a gift as an
 173 endowment, or a direction or authorization in the gift
 174 instrument to use only "income," "interest," "dividends," or
 175 "rents, issues, or profits," or "to preserve the principal
 176 intact," or words of similar import:

177 1. Create an endowment fund of permanent duration unless
 178 other language in the gift instrument limits the duration or
 179 purpose of the fund.

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

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

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

191 1. Selecting an agent.

192 2. Establishing the scope and terms of the delegation,
 193 consistent with the purposes of the institution and the
 194 institutional fund.

195 3. Periodically reviewing the agent's actions in order to
 196 monitor the agent's performance and compliance with the scope
 197 and terms of the delegation.

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

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

204 (d) By accepting delegation of a management or investment
 205 function from an institution that is subject to the laws of this
 206 state, an agent submits to the jurisdiction of the courts of
 207 this state in all proceedings arising from or related to the
 208 delegation or the performance of the delegated function.

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

212 (6) RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT,
 213 INVESTMENT, OR PURPOSE.—

214 (a) If the donor consents in a record, an institution may
 215 release or modify, in whole or in part, a restriction contained
 216 in a gift instrument on the management, investment, or purpose
 217 of an institutional fund. A release or modification may not
 218 allow a fund to be used for a purpose other than a charitable
 219 purpose of the institution.

220 (b) If consent of the donor in a record cannot be obtained
221 by reason of the donor's death, disability, unavailability, or
222 impossibility of identification, a governing board may modify a
223 restriction contained in a gift instrument regarding the
224 management, investment, or use of an institutional fund if the
225 fund has a total value of \$100,000 or less and the restriction
226 has become impracticable or wasteful, impairs the management,
227 investment, or use of the fund or if, because of circumstances
228 not anticipated by the donor, a modification of a restriction
229 will further the purposes of the fund.

230 (c) If an institution determines that a restriction
231 contained in a gift instrument on the management, investment, or
232 purpose of an institutional fund is unlawful, impracticable,
233 impossible to achieve, or wasteful, the institution, after
234 providing written notice to the Attorney General, may release or
235 modify the restriction, in whole or part, if:

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

238 2. More than 20 years have elapsed since the fund was
239 established; and

240 3. The institution uses the property in a manner
241 consistent with the charitable purposes expressed in the gift
242 instrument.

243 (d) The circuit court for the circuit in which an
244 institution is located, upon application of that institution,
245 may modify a restriction contained in a gift instrument
246 regarding the management or investment of an institutional fund
247 if the restriction has become impracticable or wasteful, if it

248 impairs the management or investment of the fund, or if, because
 249 of circumstances not anticipated by the donor, a modification of
 250 a restriction will further the purposes of the fund. The
 251 institution shall notify the Attorney General of the
 252 application. To the extent practicable, any modification must be
 253 made in accordance with the donor's probable intention.

254 (e) If a particular charitable purpose or a restriction
 255 contained in a gift instrument on the use of an institutional
 256 fund becomes unlawful, impracticable, impossible to achieve, or
 257 wasteful, the circuit court for the circuit in which an
 258 institution is located, upon application of that institution,
 259 may modify the purpose of the fund or the restriction on the use
 260 of the fund in a manner consistent with the charitable purposes
 261 expressed in the gift instrument. The institution shall notify
 262 the Attorney General of the application.

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

267 (8) APPLICATION TO EXISTING INSTITUTIONAL FUNDS.—This
 268 section applies to institutional funds existing on or
 269 established after the effective date of this section. As applied
 270 to institutional funds existing on the effective date of this
 271 section, this section governs only decisions made or actions
 272 taken on or after that date.

273 (9) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
 274 NATIONAL COMMERCE ACT.—This section modifies, limits, and
 275 supersedes the federal Electronic Signatures in Global and

276 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not
 277 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.
 278 7001(c), or authorize electronic delivery of any of the notices
 279 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

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

284 Section 2. Effective upon this act becoming a law, section
 285 617.2105, Florida Statutes, is created to read:

286 617.2105 Corporation issued a deed to real property.—When
 287 a corporation or foreign corporation subject to this chapter is
 288 issued a deed to real property in the state by the Board of
 289 Trustees of the Internal Improvement Trust Fund containing a
 290 reverter clause that restricts the use of property to specified
 291 uses in the deed, the failure to put the property to the
 292 required use within a period of 3 years after the grant, unless
 293 a stricter time period is contained in the deed, is prima facie
 294 evidence that the restriction is violated, subjecting the
 295 property to reversion to the Board of Trustees of the Internal
 296 Improvement Trust Fund at its discretion. This section may not
 297 be construed to excuse for any period of time a use of the
 298 property in violation of the restrictive use.

299 Section 3. Section 1010.10, Florida Statutes, is repealed.

300 Section 4. Except as otherwise expressly provided in this
 301 act and except for this section, which shall take effect upon
 302 this act becoming a law, this act shall take effect July 1,
 303 2012.