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LEGISLATIVE ACTION

Senate

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House

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Senator Richter moved the following:

**Senate Amendment (with title amendment)**

Delete lines 27 - 279

and insert:

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

617.2104 Florida Uniform Prudent Management of Institutional Funds Act.—

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

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

(a) “Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health,



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14 the promotion of a governmental purpose, or any other purpose  
15 the achievement of which is beneficial to the community.

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

21 (c) "Gift instrument" means a record or records, including  
22 an institutional solicitation, under which property is granted  
23 to, transferred to, or held by an institution as an  
24 institutional fund.

25 (d) "Institution" means:

26 1. A person organized and operated exclusively for  
27 charitable purposes, other than:

28 a. An individual; or

29 b. A trust subject to s. 518.11;

30 2. A government or governmental subdivision, agency, or  
31 instrumentality to the extent that it holds funds exclusively  
32 for a charitable purpose; or

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

36 (e) "Institutional fund" means a fund held by an  
37 institution exclusively for charitable purposes. The term does  
38 not include:

39 1. Program-related assets;

40 2. A fund held for an institution by a trustee that is not  
41 an institution;

42 3. A fund in which a beneficiary that is not an institution



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43 has an interest, other than an interest that could arise upon  
44 violation or failure of the purposes of the fund; or

45 4. A fund managed or administered by the State Board of  
46 Administration pursuant to its constitutional or statutory  
47 authority.

48 (f) "Person" means an individual, corporation, business  
49 trust, estate, trust, partnership, limited liability company,  
50 association, joint venture, public corporation, government or  
51 governmental subdivision, agency, or instrumentality, or any  
52 other legal or commercial entity.

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

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

59 (3) STANDARD OF CONDUCT IN MANAGING AND INVESTING  
60 INSTITUTIONAL FUND.—

61 (a) Subject to the intent of a donor expressed in a gift  
62 instrument, an institution, in managing and investing an  
63 institutional fund, shall consider the charitable purposes of  
64 the institution and the purposes of the institutional fund.

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

71 (c) In managing and investing an institutional fund, an



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72 institution:

73 1. May incur only costs that are appropriate and reasonable  
74 in relation to the assets, the purposes of the institution, and  
75 the skills available to the institution.

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

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

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

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

84 a. General economic conditions.

85 b. The possible effect of inflation or deflation.

86 c. The expected tax consequences, if any, of investment  
87 decisions or strategies.

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

90 e. The expected total return from income and the  
91 appreciation of investments.

92 f. Other resources of the institution.

93 g. The needs of the institution and the fund to make  
94 distributions and to preserve capital.

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

97 2. Management and investment decisions about an individual  
98 asset must be made not in isolation but rather in the context of  
99 the institutional fund's portfolio of investments as a whole and  
100 as a part of an overall investment strategy having risk and



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101 return objectives reasonably suited to the fund and to the  
102 institution.

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

106 4. An institution shall diversify the investments of an  
107 institutional fund unless the institution reasonably and  
108 prudently determines under this section that the purposes of the  
109 fund are better served without diversification.

110 5. Within a reasonable time after receiving property, an  
111 institution shall make and carry out decisions concerning the  
112 retention or disposition of the property or to rebalance a  
113 portfolio in order to bring the institutional fund into  
114 compliance with the purposes, terms, and distribution  
115 requirements of the institution as necessary to meet other  
116 circumstances of the institution and the requirements of this  
117 section.

118 6. A person that has special skills or expertise, or is  
119 selected in reliance upon the person's representation that the  
120 person has special skills or expertise, has a duty to use those  
121 skills or that expertise in managing and investing institutional  
122 funds.

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

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



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130 stated otherwise in the gift instrument, the assets in an  
131 endowment fund are donor-restricted assets until appropriated  
132 for expenditure by the institution. In making a determination to  
133 appropriate or accumulate, the institution shall act in good  
134 faith with the care that an ordinarily prudent person in a like  
135 position would exercise under similar circumstances and shall  
136 consider, if relevant, the following factors:

- 137 1. The duration and preservation of the endowment fund.
- 138 2. The purposes of the institution and the endowment fund.
- 139 3. General economic conditions.
- 140 4. The possible effect of inflation or deflation.
- 141 5. The expected total return from income and the  
142 appreciation of investments.
- 143 6. Other resources of the institution.
- 144 7. The investment policy of the institution.

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

148 (c) Terms in a gift instrument designating a gift as an  
149 endowment, or a direction or authorization in the gift  
150 instrument to use only "income," "interest," "dividends," or  
151 "rents, issues, or profits," or "to preserve the principal  
152 intact," or words of similar import:

- 153 1. Create an endowment fund of permanent duration unless  
154 other language in the gift instrument limits the duration or  
155 purpose of the fund.
- 156 2. Do not otherwise limit the authority to appropriate for  
157 expenditure or accumulate under paragraph (a).

158 (5) DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.- (a)



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159 Subject to any specific limitation set forth in a gift  
160 instrument or in law other than this section, an institution may  
161 delegate to an external agent the management and investment of  
162 an institutional fund to the extent that an institution could  
163 prudently delegate under the circumstances. An institution shall  
164 act in good faith, with the care that an ordinarily prudent  
165 person in a like position would exercise under similar  
166 circumstances, in:

167 1. Selecting an agent.

168 2. Establishing the scope and terms of the delegation,  
169 consistent with the purposes of the institution and the  
170 institutional fund.

171 3. Periodically reviewing the agent's actions in order to  
172 monitor the agent's performance and compliance with the scope  
173 and terms of the delegation.

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

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

180 (d) By accepting delegation of a management or investment  
181 function from an institution that is subject to the laws of this  
182 state, an agent submits to the jurisdiction of the courts of  
183 this state in all proceedings arising from or related to the  
184 delegation or the performance of the delegated function.

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



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188           (6) RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT,  
189 INVESTMENT, OR PURPOSE.—

190           (a) If the donor consents in a record, an institution may  
191 release or modify, in whole or in part, a restriction contained  
192 in a gift instrument on the management, investment, or purpose  
193 of an institutional fund. A release or modification may not  
194 allow a fund to be used for a purpose other than a charitable  
195 purpose of the institution.

196           (b) If consent of the donor in a record cannot be obtained  
197 by reason of the donor's death, disability, unavailability, or  
198 impossibility of identification, a governing board may modify a  
199 restriction contained in a gift instrument regarding the  
200 management, investment, or use of an institutional fund if the  
201 fund has a total value of \$100,000 or less and the restriction  
202 has become impracticable or wasteful, impairs the management,  
203 investment, or use of the fund or if, because of circumstances  
204 not anticipated by the donor, a modification of a restriction  
205 will further the purposes of the fund.

206           (c) If an institution determines that a restriction  
207 contained in a gift instrument on the management, investment, or  
208 purpose of an institutional fund is unlawful, impracticable,  
209 impossible to achieve, or wasteful, the institution, after  
210 providing written notice to the Attorney General, may release or  
211 modify the restriction, in whole or part, if:

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

214           2. More than 20 years have elapsed since the fund was  
215 established; and

216           3. The institution uses the property in a manner consistent





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217 with the charitable purposes expressed in the gift instrument.

218 (d) The circuit court for the circuit in which an  
219 institution is located, upon application of that institution,  
220 may modify a restriction contained in a gift instrument  
221 regarding the management or investment of an institutional fund  
222 if the restriction has become impracticable or wasteful, if it  
223 impairs the management or investment of the fund, or if, because  
224 of circumstances not anticipated by the donor, a modification of  
225 a restriction will further the purposes of the fund. The  
226 institution shall notify the Attorney General of the  
227 application. To the extent practicable, any modification must be  
228 made in accordance with the donor's probable intention.

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

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

242 (8) APPLICATION TO EXISTING INSTITUTIONAL FUNDS.—This  
243 section applies to institutional funds existing on or  
244 established after the effective date of this section. As applied  
245 to institutional funds existing on the effective date of this



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246 section, this section governs only decisions made or actions  
247 taken on or after that date.

248 (9) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND  
249 NATIONAL COMMERCE ACT.—This section modifies, limits, and  
250 supersedes the federal Electronic Signatures in Global and  
251 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not  
252 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.  
253 7001(c), or authorize electronic delivery of any of the notices  
254 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

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

259 Section 2. Effective upon this act becoming a law, section  
260 617.2105, Florida Statutes, is created to read:

261 617.2105 Corporation issued a deed to real property.—When a  
262 corporation or foreign corporation subject to this chapter is  
263 issued a deed to real property in the state by the Board of  
264 Trustees of the Internal Improvement Trust Fund containing a  
265 reverter clause that restricts the use of property to specified  
266 uses in the deed, the failure to put the property to the  
267 required use within a period of 3 years after the grant, unless  
268 a stricter time period is contained in the deed, is prima facie  
269 evidence that the restriction is violated, subjecting the  
270 property to reversion to the Board of Trustees of the Internal  
271 Improvement Trust Fund at its discretion. This section applies  
272 retroactively and prospectively and may not be construed to  
273 excuse for any period of time a use of the property in violation  
274 of the restrictive use.



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

276 Section 4. Except as otherwise expressly provided in this  
277 act and except for this section, which shall take effect upon  
278 this act becoming a law, this act shall take effect July 1,  
279 2012.

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281 ===== T I T L E A M E N D M E N T =====

282 And the title is amended as follows:

283 Delete lines 2 - 23

284 and insert:

285 An act relating to corporations not for profit;  
286 creating s. 617.2104, F.S.; providing a short title;  
287 providing definitions; providing requirements for the  
288 management of funds held by an institution exclusively  
289 for charitable purposes; providing standards of  
290 conduct in managing and investing institutional funds;  
291 providing requirements for appropriation for  
292 expenditure or accumulation of an endowment fund by an  
293 institution; authorizing an institution to delegate to  
294 an external agent the management and investment of an  
295 institutional fund; authorizing the release or  
296 modification of a restriction on management,  
297 investment, or purpose of an institutional fund;  
298 providing for determination of compliance; providing  
299 for application to existing or newly established  
300 institutional funds; providing relationship to federal  
301 law; providing requirements for uniformity of  
302 application and construction of the act; creating s.  
303 617.2105, F.S.; authorizing reversion of real property



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304 to the Board of Trustees of the Internal Improvement  
305 Trust Fund if a not-for-profit corporation holding a  
306 deed subject to a reverter clause violates deed  
307 restrictions; providing for retroactive and  
308 prospective application; repealing s. 1010.10, F.S.,  
309 relating to the Florida Uniform Management of  
310 Institutional Funds Act; providing effective dates.