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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2011	.	
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The Committee on Commerce and Tourism (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

617.2104 Uniform Prudent Management of Institutional Funds
Act.—

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

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

(a) “Charitable purpose” means the relief of poverty, the



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13 advancement of education or religion, the promotion of health,
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, other than an individual, organized and
27 operated exclusively for charitable purposes;

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

31 3. A trust that had both charitable and noncharitable
32 interests after all noncharitable interests have terminated.

33 (e) "Institutional fund" means a fund held by an
34 institution exclusively for charitable purposes. The term does
35 not include:

36 1. Program-related assets;

37 2. A fund held for an institution by a trustee that is not
38 an institution;

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



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42 4. A fund managed or administered by the State Board of
43 Administration pursuant to its constitutional or statutory
44 authority.

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

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

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

56 (3) STANDARD OF CONDUCT IN MANAGING AND INVESTING
57 INSTITUTIONAL FUND.—

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

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

68 (c) In managing and investing an institutional fund, an
69 institution:

70 1. May incur only costs that are appropriate and reasonable



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71 in relation to the assets, the purposes of the institution, and
72 the skills available to the institution.

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

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

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

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

81 a. General economic conditions.

82 b. The possible effect of inflation or deflation.

83 c. The expected tax consequences, if any, of investment
84 decisions or strategies.

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

87 e. The expected total return from income and the
88 appreciation of investments.

89 f. Other resources of the institution.

90 g. The needs of the institution and the fund to make
91 distributions and to preserve capital.

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

94 2. Management and investment decisions about an individual
95 asset must be made not in isolation but rather in the context of
96 the institutional fund's portfolio of investments as a whole and
97 as a part of an overall investment strategy having risk and
98 return objectives reasonably suited to the fund and to the
99 institution.



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

103 4. An institution shall diversify the investments of an
104 institutional fund unless the institution reasonably determines
105 that, because of special circumstances, the purposes of the fund
106 are better served without diversification.

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

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

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

122 (a) Subject to the intent of a donor expressed in the gift
123 instrument, an institution may appropriate for expenditure or
124 accumulate so much of an endowment fund as the institution
125 determines is prudent for the uses, benefits, purposes, and
126 duration for which the endowment fund is established. Unless
127 stated otherwise in the gift instrument, the assets in an
128 endowment fund are donor-restricted assets until appropriated



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129 for expenditure by the institution. In making a determination to
130 appropriate or accumulate, the institution shall act in good
131 faith with the care that an ordinarily prudent person in a like
132 position would exercise under similar circumstances and shall
133 consider, if relevant, the following factors:

134 1. The duration and preservation of the endowment fund.

135 2. The purposes of the institution and the endowment fund.

136 3. General economic conditions.

137 4. The possible effect of inflation or deflation.

138 5. The expected total return from income and the
139 appreciation of investments.

140 6. Other resources of the institution.

141 7. The investment policy of the institution.

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

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

150 1. Create an endowment fund of permanent duration unless
151 other language in the gift instrument limits the duration or
152 purpose of the fund.

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

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

156 (a) Subject to any specific limitation set forth in a gift
157 instrument or in law other than this section, an institution may



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158 delegate to an external agent the management and investment of
159 an institutional fund to the extent that an institution could
160 prudently delegate under the circumstances. An institution shall
161 act in good faith, with the care that an ordinarily prudent
162 person in a like position would exercise under similar
163 circumstances, in:

164 1. Selecting an agent.

165 2. Establishing the scope and terms of the delegation,
166 consistent with the purposes of the institution and the
167 institutional fund.

168 3. Periodically reviewing the agent's actions in order to
169 monitor the agent's performance and compliance with the scope
170 and terms of the delegation.

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

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

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

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

185 (6) RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT,
186 INVESTMENT, OR PURPOSE.-



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

193 (b) The circuit court for the circuit in which an
194 institution is located, upon application of that institution,
195 may modify a restriction contained in a gift instrument
196 regarding the management or investment of an institutional fund
197 if the restriction has become impracticable or wasteful, if it
198 impairs the management or investment of the fund, or if, because
199 of circumstances not anticipated by the donor, a modification of
200 a restriction will further the purposes of the fund. The
201 institution shall notify the Attorney General of the
202 application. To the extent practicable, any modification must be
203 made in accordance with the donor's probable intention.

204 (c) If a particular charitable purpose or a restriction
205 contained in a gift instrument on the use of an institutional
206 fund becomes unlawful, impracticable, impossible to achieve, or
207 wasteful, the circuit court for the circuit in which an
208 institution is located, upon application of that institution,
209 may modify the purpose of the fund or the restriction on the use
210 of the fund in a manner consistent with the charitable purposes
211 expressed in the gift instrument. The institution shall notify
212 the Attorney General of the application.

213 (d) If consent of the donor in a record cannot be obtained
214 by reason of the donor's death, disability, unavailability, or
215 impossibility of identification, a governing board may modify a



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216 restriction contained in a gift instrument regarding the
217 management, investment, or use of an institutional fund if the
218 fund has a total value of \$100,000 or less and the restriction
219 has become impracticable or wasteful, impairs the management,
220 investment, or use of the fund or if, because of circumstances
221 not anticipated by the donor, a modification of a restriction
222 will further the purposes of the fund.

223 (e) If an institution determines that a restriction
224 contained in a gift instrument on the management, investment, or
225 purpose of an institutional fund is unlawful, impracticable,
226 impossible to achieve, or wasteful, the institution, after
227 providing written notice to the Attorney General, may release or
228 modify the restriction, in whole or part, if:

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

231 2. More than 20 years have elapsed since the fund was
232 established; and

233 3. The institution uses the property in a manner consistent
234 with the charitable purposes expressed in the gift instrument.

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

239 (8) APPLICATION TO EXISTING INSTITUTIONAL FUNDS.—This
240 section applies to institutional funds existing on or
241 established after the effective date of this section. As applied
242 to institutional funds existing on the effective date of this
243 section, this section governs only decisions made or actions
244 taken on or after that date.



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

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

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

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

258
259 ===== T I T L E A M E N D M E N T =====

260 And the title is amended as follows:

261 Delete everything before the enacting clause
262 and insert:

263 A bill to be entitled
264 An act relating to uniform prudent management of
265 institutional funds; creating s. 617.2104, F.S.;

266 creating a short title; providing definitions;

267 providing requirements for the management of funds

268 held by an institution exclusively for charitable

269 purposes; providing standards of conduct in managing

270 and investing institutional funds; providing

271 requirements for appropriation for expenditure or

272 accumulation of an endowment fund by an institution;

273 authorizing an institution to delegate to an external



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274 agent the management and investment of an
275 institutional fund; authorizing the release or
276 modification of a restriction on management,
277 investment, or purpose of an institutional fund;
278 providing for determination of compliance; providing
279 for application to existing or newly established
280 institutional funds; providing relationship to federal
281 law; providing requirements for uniformity of
282 application and construction of the act; repealing s.
283 1010.10, F.S., relating to the Florida Uniform
284 Management of Institutional Funds Act; providing an
285 effective date.