

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/CS/SB 952

INTRODUCER: Higher Education Committee, Commerce and Tourism Committee and Senators Richter and Gaetz

SUBJECT: Uniform Prudent Management of Institutional Funds

DATE: April 8, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McCarthy</u>	<u>Cooper</u>	<u>CM</u>	Fav/CS
2.	<u>Harkey</u>	<u>Matthews</u>	<u>HE</u>	Fav/CS
3.	<u>Roberts</u>	<u>Roberts</u>	<u>GO</u>	Favorable
4.	_____	_____	<u>BC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill adopts the 2006 Uniform Prudent Management of Institutional Funds Act (act), and repeals the current Uniform Management of Institutional Funds Act contained in s. 1010.10, F.S., for educational endowments.

The new act applies to all charitable endowment funds with the exception of funds administered by the State Board of Administration. Charitable purpose is defined under the new act as “the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.”

Similar to current law regarding educational endowments, the primary benefit of this act is to allow charitable institutions holding endowment funds the flexibility to make distributions from the endowment fund when the fund has fallen below the original amount placed into it, so long as the fund is prudently managed and the appropriation is not explicitly prohibited.

Currently, there is no clear statewide guidance for the operation of charitable endowments. This act would apply similar guidance currently provided to educational endowments to endowment funds held for a charitable purpose.

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) has been adopted in 47 states.¹

The bill creates s. 617.2014 of the Florida Statutes.

The bill repeals s. 1010.10, Florida Statutes.

II. Present Situation:

Currently s. 1010.10, F.S., the *Florida Uniform Management of Institutional Funds Act* provides guidance to educational institutions regarding the prudent management of endowment funds under their control. The law regulates the expenditure of endowment funds, establishes standards of conduct of those in charge of the endowment funds, provides guidance for the investment authority, allows for the delegation of investment management functions, sets standards for investment costs, and establishes the criteria for the release of restrictions on use or investment of endowment funds.² The current act relates to an incorporated or unincorporated organization organized and operated exclusively for the advancement of educational purposes, or a governmental entity to the extent that it holds funds exclusively for educational purposes.³ The current act does not apply to charitable organizations other than those holding funds for an educational purpose.

An endowment fund subject to the current act means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.⁴

A governing board means the body responsible for the management of an institution or of an institutional fund. With some limitation, a governing board currently may expend the principle of an endowment fund if they determine such action to be prudent for the uses and purposes for which the endowment fund is established, consistent with the goal of conserving the purchasing power of the endowment fund. In making its determination, the governing board must use reasonable care, skill, and caution in considering the following:

- The purposes of the institution;
- The intent of the donors of the endowment fund;
- The terms of the applicable instrument;
- The long-term and short-term needs of the institution in carrying out its purposes;
- The general economic conditions;
- The possible effect of inflation or deflation;
- The other resources of the institution; and

¹ See Prudent Management of Institutional Funds Act, readable at: [http://uniformlaws.org/LegislativeFactSheet.aspx?title=Prudent Management of Institutional Funds Act](http://uniformlaws.org/LegislativeFactSheet.aspx?title=Prudent%20Management%20of%20Institutional%20Funds%20Act).

² See s. 1010.10, F.S.

³ See s. 1010.10(2)(c), F.S.

⁴ See s. 1010.10((2)(a), F.S.

- Perpetuation of the endowment.

Such expenditures will be considered prudent if the amount expended is consistent with the goal of preserving the purchasing power of the endowment fund.⁵

III. Effect of Proposed Changes:

This bill creates s. 617.2104, F.S., to adopt the 2006 Uniform Prudent Management of Institutional Funds Act (UPMIF),⁶ as proposed by the National Conference of Commissioners on Uniform State Laws,⁷ and repeals the current Uniform Management of Institutional Funds Act contained in s. 1010.10, F.S., for educational endowments.

Consistent with current law and the model act, the bill:

- Applies standards of conduct in managing and investing institutional funds;
- Provides for the appropriation for expenditure or accumulation of endowment funds and rules of construction;
- Allows for the delegation of management and investment functions;
- Provides for the release or modification of restrictions on management, investment, or purpose; and
- Creates a standard for the reviewing for compliance.

Within each of the above standards, the bill provides specific guidance to institutions as to how they are to be applied.

The bill provides that the circuit court for the circuit in which an institution is located is the appropriate court to handle request for changes to restrictions. It also provides that a restriction on an institutional fund may be modified as to its management, investment and use.

The bill differs significantly from s. 1010.10, F.S., the Florida Uniform Management of Institutional Funds Act, in that it applies to all charitable endowment funds, not just educational funds. Charitable purpose is defined under the new act as:

the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

⁵ See s. 1010.10(3), F.S.

⁶ See <http://www.uniformlaws.org/Shared/Docs/UPMIFA/UPMIFA%20Program%20Related%20Assets%20Article.pdf> last visited March 19, 2011.

⁷ “The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.” readable at: <http://uniformlaws.org/Narrative.aspx?title=About%20the%20ULC>.

Similar to current law regarding educational endowments, the primary benefit of this provision is to allow charitable institutions holding endowment funds the flexibility to make distributions from the endowment fund when the fund has fallen below the original amount placed into it, so long as the fund is prudently managed and the appropriation is not explicitly prohibited. The bill excludes funds administered by the State Board of Administration from the definition of “institutional fund”.

The bill makes other significant changes to current law, in that it:

- Expands the types of assets which can be in a charitable organizations portfolio, to include any kind of property or type of investment consistent with the new law;
- Specifies that management and investment of institutional funds are to be accomplished with the care an ordinarily prudent person would exercise;
- Requires an institution to make a reasonable effort to verify relevant facts;
- Allows pooling of institutional funds for purposes of managing and investing;
- Makes reference to an overall investment strategy;
- Obliges a person with special relevant skills or expertise, to use those skills or that expertise in managing and investing institutional funds;
- Delineates factors to be considered prior to expenditure of funds;
- Sets an effective date for the application of this law to existing institutional funds; and
- Clarifies the application of federal Electronic Signatures in Global and National commerce Act.

The bill provides an effective date July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that charitable institutions holding endowment funds exercise the distribution flexibility authorized by this act, beneficiaries of the charity may continue to receive such distributions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not include the proposed section of the UPMIF on the rebuttable presumption of imprudence set forth in the uniformed act. The omitted section deals with creating a presumption of imprudence for spending above a fixed percentage of the value of the fund. According to the notes from the drafters of the uniform act, some were in favor of this provision arguing that the presumption would curb the temptation that a charity might have to spend endowment assets too rapidly. Others opined that a fixed percentage in the statute might be perceived as a safe harbor that could lead institutions to spend more than prudent.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Higher Education on April 4, 2011:

The committee substitute reorders paragraphs for clarity.

CS by Commerce and Tourism on March 22, 2011:

The bill creates s. 617.2014 F.S., cited as the “Uniform Prudent Management of Institutional Funds Act.”

- Expands the exceptions to definition of “institutional fund” to exclude funds administered by the State Board of Administration.
- Clarifies that the circuit court for the circuit in which an institution is located is the appropriate court to handle requests for changes to restrictions.
- Clarifies that the restriction on an institutional fund may be modified as to its “management, investment and use” rather than its “management, investment and purpose.”
- Removes the requirement that the Attorney General be provided an opportunity to respond to requests for modifications.
- Removes the requirement that the Attorney General approve requests to release or modify restrictions for funds with a value of \$100,000 to \$250,000.
- Changes the effective date from July 1, 2011, to July 1, 2012.
- Provides for a technical amendment to correct a reference to a Federal law.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
