

By Senator Richter

37-00786A-11

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1 A bill to be entitled
2 An act relating to uniform prudent management of
3 institutional funds; creating s. 617.2104, F.S.;
4 creating a short title; providing definitions;
5 providing requirements for the management of funds
6 held by an institution exclusively for charitable
7 purposes; providing standards of conduct in managing
8 and investing institutional funds; providing
9 requirements for appropriation for expenditure or
10 accumulation of an endowment fund by an institution;
11 authorizing an institution to delegate to an external
12 agent the management and investment of an
13 institutional fund; authorizing the release or
14 modification of a restriction on management,
15 investment, or purpose of an institutional fund;
16 providing for determination of compliance; providing
17 for application to existing or newly established
18 institutional funds; providing relationship to federal
19 law; providing requirements for uniformity of
20 application and construction of the act; repealing s.
21 1010.10, F.S., relating to the Florida Uniform
22 Management of Institutional Funds Act; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 617.2104, Florida Statutes, is created
28 to read:

29 617.2104 Uniform Prudent Management of Institutional Funds

37-00786A-11

2011952

30 Act.—

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

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

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

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

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

47 (d) “Institution” means:

48 1. A person, other than an individual, organized and
49 operated exclusively for charitable purposes;

50 2. A government or governmental subdivision, agency, or
51 instrumentality to the extent that it holds funds exclusively
52 for a charitable purpose; or

53 3. A trust that had both charitable and noncharitable
54 interests after all noncharitable interests have terminated.

55 (e) “Institutional fund” means a fund held by an
56 institution exclusively for charitable purposes. The term does
57 not include:

58 1. Program-related assets;

37-00786A-11

2011952

59 2. A fund held for an institution by a trustee that is not
60 an institution; or

61 3. A fund in which a beneficiary that is not an institution
62 has an interest, other than an interest that could arise upon
63 violation or failure of the purposes of the fund.

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

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

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

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

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

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

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

37-00786A-11

2011952__

88 institution:

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

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

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

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

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

100 a. General economic conditions.

101 b. The possible effect of inflation or deflation.

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

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

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

108 f. Other resources of the institution.

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

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

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

37-00786A-11

2011952

117 return objectives reasonably suited to the fund and to the
118 institution.

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

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

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

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

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

141 (a) Subject to the intent of a donor expressed in the gift
142 instrument, an institution may appropriate for expenditure or
143 accumulate so much of an endowment fund as the institution
144 determines is prudent for the uses, benefits, purposes, and
145 duration for which the endowment fund is established. Unless

37-00786A-11

2011952

146 stated otherwise in the gift instrument, the assets in an
147 endowment fund are donor-restricted assets until appropriated
148 for expenditure by the institution. In making a determination to
149 appropriate or accumulate, the institution shall act in good
150 faith with the care that an ordinarily prudent person in a like
151 position would exercise under similar circumstances and shall
152 consider, if relevant, the following factors:

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

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

155 3. General economic conditions.

156 4. The possible effect of inflation or deflation.

157 5. The expected total return from income and the
158 appreciation of investments.

159 6. Other resources of the institution.

160 7. The investment policy of the institution.

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

164 (c) Terms in a gift instrument designating a gift as an
165 endowment, or a direction or authorization in the gift
166 instrument to use only "income," "interest," "dividends," or
167 "rents, issues, or profits," or "to preserve the principal
168 intact," or words of similar import:

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

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

174 (5) DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.-

37-00786A-11

2011952

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

183 1. Selecting an agent.

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

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

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

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

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

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

37-00786A-11

2011952

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

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

212 (b) The court, upon application of an institution, may
213 modify a restriction contained in a gift instrument regarding
214 the management or investment of an institutional fund if the
215 restriction has become impracticable or wasteful, if it impairs
216 the management or investment of the fund, or if, because of
217 circumstances not anticipated by the donor, a modification of a
218 restriction will further the purposes of the fund. The
219 institution shall notify the Attorney General of the
220 application, and the Attorney General must be given an
221 opportunity to be heard. To the extent practicable, any
222 modification must be made in accordance with the donor's
223 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 court, upon application of an institution, may
228 modify the purpose of the fund or the restriction on the use of
229 the fund in a manner consistent with the charitable purposes
230 expressed in the gift instrument. The institution shall notify
231 the Attorney General of the application, and the Attorney
232 General must be given an opportunity to be heard.

37-00786A-11

2011952

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 purpose of an institutional fund if
238 the fund has a total value of \$100,000 or less and the
239 restriction has become impracticable or wasteful, impairs the
240 management, investment, or use of the fund or if, because of
241 circumstances not anticipated by the donor, a modification of a
242 restriction 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, 60 days
247 after obtaining written approval from the Attorney General, may
248 release or 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 consistent
254 with the charitable purposes expressed in the gift instrument.

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

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

37-00786A-11

2011952

262 to institutional funds existing on the effective date of this
263 section, this section governs only decisions made or actions
264 taken on or after that date.

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

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

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

277 Section 3. This act shall take effect July 1, 2011.