

By the Committee on Commerce and Tourism; and Senators Richter and Gaetz

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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

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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, the term:

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;

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

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; or

64 4. A fund managed or administered by the State Board of
65 Administration pursuant to its constitutional or statutory
66 authority.

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

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

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

78 (3) STANDARD OF CONDUCT IN MANAGING AND INVESTING
79 INSTITUTIONAL FUND.—

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

84 (b) In addition to complying with the duty of loyalty
85 imposed by law other than this section, each person responsible
86 for managing and investing an institutional fund shall manage
87 and invest the fund in good faith and with the care an

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88 ordinarily prudent person in a like position would exercise
89 under similar circumstances.

90 (c) In managing and investing an institutional fund, an
91 institution:

92 1. May incur only costs that are appropriate and reasonable
93 in relation to the assets, the purposes of the institution, and
94 the skills available to the institution.

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

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

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

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

103 a. General economic conditions.

104 b. The possible effect of inflation or deflation.

105 c. The expected tax consequences, if any, of investment
106 decisions or strategies.

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

109 e. The expected total return from income and the
110 appreciation of investments.

111 f. Other resources of the institution.

112 g. The needs of the institution and the fund to make
113 distributions and to preserve capital.

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

116 2. Management and investment decisions about an individual

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117 asset must be made not in isolation but rather in the context of
118 the institutional fund's portfolio of investments as a whole and
119 as a part of an overall investment strategy having risk and
120 return objectives reasonably suited to the fund and to the
121 institution.

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

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

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

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

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

144 (a) Subject to the intent of a donor expressed in the gift
145 instrument, an institution may appropriate for expenditure or

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

- 156 1. The duration and preservation of the endowment fund.
- 157 2. The purposes of the institution and the endowment fund.
- 158 3. General economic conditions.
- 159 4. The possible effect of inflation or deflation.
- 160 5. The expected total return from income and the
161 appreciation of investments.
- 162 6. Other resources of the institution.
- 163 7. The investment policy of the institution.

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

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

- 172 1. Create an endowment fund of permanent duration unless
173 other language in the gift instrument limits the duration or
174 purpose of the fund.

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

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

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

186 1. Selecting an agent.

187 2. Establishing the scope and terms of the delegation,
188 consistent with the purposes of the institution and the
189 institutional fund.

190 3. Periodically reviewing the agent's actions in order to
191 monitor the agent's performance and compliance with the scope
192 and terms of the delegation.

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

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

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

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

207 (6) RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT,
208 INVESTMENT, OR PURPOSE.—

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

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

226 (c) If a particular charitable purpose or a restriction
227 contained in a gift instrument on the use of an institutional
228 fund becomes unlawful, impracticable, impossible to achieve, or
229 wasteful, the circuit court for the circuit in which an
230 institution is located, upon application of that institution,
231 may modify the purpose of the fund or the restriction on the use
232 of the fund in a manner consistent with the charitable purposes

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233 expressed in the gift instrument. The institution shall notify
234 the Attorney General of the application.

235 (d) If consent of the donor in a record cannot be obtained
236 by reason of the donor's death, disability, unavailability, or
237 impossibility of identification, a governing board may modify a
238 restriction contained in a gift instrument regarding the
239 management, investment, or use of an institutional fund if the
240 fund has a total value of \$100,000 or less and the restriction
241 has become impracticable or wasteful, impairs the management,
242 investment, or use of the fund or if, because of circumstances
243 not anticipated by the donor, a modification of a restriction
244 will further the purposes of the fund.

245 (e) If an institution determines that a restriction
246 contained in a gift instrument on the management, investment, or
247 purpose of an institutional fund is unlawful, impracticable,
248 impossible to achieve, or wasteful, the institution, after
249 providing written notice to the Attorney General, may release or
250 modify the restriction, in whole or part, if:

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

253 2. More than 20 years have elapsed since the fund was
254 established; and

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

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

261 (8) APPLICATION TO EXISTING INSTITUTIONAL FUNDS.—This

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

267 (9) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
268 NATIONAL COMMERCE ACT.—This section modifies, limits, and
269 supersedes the federal Electronic Signatures in Global and
270 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not
271 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.
272 7001(c), or authorize electronic delivery of any of the notices
273 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

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

278 Section 2. Section 1010.10, Florida Statutes, is repealed.
279 Section 3. This act shall take effect July 1, 2012.