

By the Committees on Higher Education; and 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) If consent of the donor in a record cannot be obtained  
216 by reason of the donor's death, disability, unavailability, or  
217 impossibility of identification, a governing board may modify a  
218 restriction contained in a gift instrument regarding the  
219 management, investment, or use of an institutional fund if the  
220 fund has a total value of \$100,000 or less and the restriction  
221 has become impracticable or wasteful, impairs the management,  
222 investment, or use of the fund or if, because of circumstances  
223 not anticipated by the donor, a modification of a restriction  
224 will further the purposes of the fund.

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

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

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233       2. More than 20 years have elapsed since the fund was  
234 established; and

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

237       (d) The circuit court for the circuit in which an  
238 institution is located, upon application of that institution,  
239 may modify a restriction contained in a gift instrument  
240 regarding the management or investment of an institutional fund  
241 if the restriction has become impracticable or wasteful, if it  
242 impairs the management or investment of the fund, or if, because  
243 of circumstances not anticipated by the donor, a modification of  
244 a restriction will further the purposes of the fund. The  
245 institution shall notify the Attorney General of the  
246 application. To the extent practicable, any modification must be  
247 made in accordance with the donor's probable intention.

248       (e) If a particular charitable purpose or a restriction  
249 contained in a gift instrument on the use of an institutional  
250 fund becomes unlawful, impracticable, impossible to achieve, or  
251 wasteful, the circuit court for the circuit in which an  
252 institution is located, upon application of that institution,  
253 may modify the purpose of the fund or the restriction on the use  
254 of the fund in a manner consistent with the charitable purposes  
255 expressed in the gift instrument. The institution shall notify  
256 the Attorney General of the application.

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.