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CS/CS/CS/HB 599, Engrossed 1

2011 Legislature

1 A bill to be entitled
2 An act relating to corporations not for profit; creating
3 s. 617.2104, F.S.; providing a short title; providing
4 definitions; providing requirements for the management of
5 funds held by an institution exclusively for charitable
6 purposes; providing standards of conduct in managing and
7 investing institutional funds; providing requirements for
8 appropriation for expenditure or accumulation of an
9 endowment fund by an institution; authorizing an
10 institution to delegate to an external agent the
11 management and investment of an institutional fund;
12 authorizing the release or modification of a restriction
13 on management, investment, or purpose of an institutional
14 fund; providing for determination of compliance; providing
15 for application to existing or newly established
16 institutional funds; providing relationship to federal
17 law; providing requirements for uniformity of application
18 and construction of the act; creating s. 617.2105, F.S.;
19 authorizing reversion of real property to the Board of
20 Trustees of the Internal Improvement Trust Fund if a not-
21 for-profit corporation holding a deed subject to a
22 reverter clause violates deed restrictions; providing for
23 retroactive and prospective application; repealing s.
24 1010.10, F.S., relating to the Florida Uniform Management
25 of Institutional Funds Act; providing effective dates.

26
27 Be It Enacted by the Legislature of the State of Florida:
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29 Section 1. Section 617.2104, Florida Statutes, is created
 30 to read:

31 617.2104 Florida Uniform Prudent Management of
 32 Institutional Funds Act.—

33 (1) SHORT TITLE.—This section may be cited as the "Florida
 34 Uniform Prudent Management of Institutional Funds Act."

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

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

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

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

49 (d) "Institution" means:

50 1. A person organized and operated exclusively for
 51 charitable purposes, other than:

52 a. An individual; or

53 b. A trust subject to s. 518.11;
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55 2. A government or governmental subdivision, agency, or
 56 instrumentality to the extent that it holds funds exclusively
 57 for a charitable purpose; or

58 3. A trust that had both charitable and noncharitable
 59 interests after all noncharitable interests have been terminated
 60 if the trust is not subject to s. 518.11.

61 (e) "Institutional fund" means a fund held by an
 62 institution exclusively for charitable purposes. The term does
 63 not include:

64 1. Program-related assets;

65 2. A fund held for an institution by a trustee that is not
 66 an institution;

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

70 4. A fund managed or administered by the State Board of
 71 Administration pursuant to its constitutional or statutory
 72 authority.

73 (f) "Person" means an individual, corporation, business
 74 trust, estate, trust, partnership, limited liability company,
 75 association, joint venture, public corporation, government or
 76 governmental subdivision, agency, or instrumentality, or any
 77 other legal or commercial entity.

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

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

84 (3) STANDARD OF CONDUCT IN MANAGING AND INVESTING
 85 INSTITUTIONAL FUND.—

86 (a) Subject to the intent of a donor expressed in a gift
 87 instrument, an institution, in managing and investing an
 88 institutional fund, shall consider the charitable purposes of
 89 the institution and the purposes of the institutional fund.

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

96 (c) In managing and investing an institutional fund, an
 97 institution:

98 1. May incur only costs that are appropriate and
 99 reasonable in relation to the assets, the purposes of the
 100 institution, and the skills available to the institution.

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

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

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

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

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- 109 a. General economic conditions.
- 110 b. The possible effect of inflation or deflation.
- 111 c. The expected tax consequences, if any, of investment
 112 decisions or strategies.
- 113 d. The role that each investment or course of action plays
 114 within the overall investment portfolio of the fund.
- 115 e. The expected total return from income and the
 116 appreciation of investments.
- 117 f. Other resources of the institution.
- 118 g. The needs of the institution and the fund to make
 119 distributions and to preserve capital.
- 120 h. An asset's special relationship or special value, if
 121 any, to the charitable purposes of the institution.
- 122 2. Management and investment decisions about an individual
 123 asset must be made not in isolation but rather in the context of
 124 the institutional fund's portfolio of investments as a whole and
 125 as a part of an overall investment strategy having risk and
 126 return objectives reasonably suited to the fund and to the
 127 institution.
- 128 3. Except as otherwise provided by law other than this
 129 section, an institution may invest in any kind of property or
 130 type of investment consistent with this section.
- 131 4. An institution shall diversify the investments of an
 132 institutional fund unless the institution reasonably and
 133 prudently determines under this section that the purposes of the
 134 fund are better served without diversification.
- 135 5. Within a reasonable time after receiving property, an
 136 institution shall make and carry out decisions concerning the

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137 retention or disposition of the property or to rebalance a
 138 portfolio in order to bring the institutional fund into
 139 compliance with the purposes, terms, and distribution
 140 requirements of the institution as necessary to meet other
 141 circumstances of the institution and the requirements of this
 142 section.

143 6. A person that has special skills or expertise, or is
 144 selected in reliance upon the person's representation that the
 145 person has special skills or expertise, has a duty to use those
 146 skills or that expertise in managing and investing institutional
 147 funds.

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

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

- 162 1. The duration and preservation of the endowment fund.
- 163 2. The purposes of the institution and the endowment fund.
- 164 3. General economic conditions.

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- 165 4. The possible effect of inflation or deflation.
- 166 5. The expected total return from income and the
- 167 appreciation of investments.
- 168 6. Other resources of the institution.
- 169 7. The investment policy of the institution.
- 170 (b) To limit the authority to appropriate for expenditure
- 171 or accumulate under paragraph (a), a gift instrument must
- 172 specifically state the limitation.
- 173 (c) Terms in a gift instrument designating a gift as an
- 174 endowment, or a direction or authorization in the gift
- 175 instrument to use only "income," "interest," "dividends," or
- 176 "rents, issues, or profits," or "to preserve the principal
- 177 intact," or words of similar import:
- 178 1. Create an endowment fund of permanent duration unless
- 179 other language in the gift instrument limits the duration or
- 180 purpose of the fund.
- 181 2. Do not otherwise limit the authority to appropriate for
- 182 expenditure or accumulate under paragraph (a).
- 183 (5) DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.—
- 184 (a) Subject to any specific limitation set forth in a gift
- 185 instrument or in law other than this section, an institution may
- 186 delegate to an external agent the management and investment of
- 187 an institutional fund to the extent that an institution could
- 188 prudently delegate under the circumstances. An institution shall
- 189 act in good faith, with the care that an ordinarily prudent
- 190 person in a like position would exercise under similar
- 191 circumstances, in:
- 192 1. Selecting an agent.

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193 2. Establishing the scope and terms of the delegation,
 194 consistent with the purposes of the institution and the
 195 institutional fund.

196 3. Periodically reviewing the agent's actions in order to
 197 monitor the agent's performance and compliance with the scope
 198 and terms of the delegation.

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

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

205 (d) By accepting delegation of a management or investment
 206 function from an institution that is subject to the laws of this
 207 state, an agent submits to the jurisdiction of the courts of
 208 this state in all proceedings arising from or related to the
 209 delegation or the performance of the delegated function.

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

213 (6) RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT,
 214 INVESTMENT, OR PURPOSE.—

215 (a) If the donor consents in a record, an institution may
 216 release or modify, in whole or in part, a restriction contained
 217 in a gift instrument on the management, investment, or purpose
 218 of an institutional fund. A release or modification may not
 219 allow a fund to be used for a purpose other than a charitable
 220 purpose of the institution.

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221 (b) If consent of the donor in a record cannot be obtained
 222 by reason of the donor's death, disability, unavailability, or
 223 impossibility of identification, a governing board may modify a
 224 restriction contained in a gift instrument regarding the
 225 management, investment, or use of an institutional fund if the
 226 fund has a total value of \$100,000 or less and the restriction
 227 has become impracticable or wasteful, impairs the management,
 228 investment, or use of the fund or if, because of circumstances
 229 not anticipated by the donor, a modification of a restriction
 230 will further the purposes of the fund.

231 (c) If an institution determines that a restriction
 232 contained in a gift instrument on the management, investment, or
 233 purpose of an institutional fund is unlawful, impracticable,
 234 impossible to achieve, or wasteful, the institution, after
 235 providing written notice to the Attorney General, may release or
 236 modify the restriction, in whole or part, if:

- 237 1. The institutional fund subject to the restriction has a
 238 total value of at least \$100,000 and not more than \$250,000;
- 239 2. More than 20 years have elapsed since the fund was
 240 established; and
- 241 3. The institution uses the property in a manner
 242 consistent with the charitable purposes expressed in the gift
 243 instrument.

244 (d) The circuit court for the circuit in which an
 245 institution is located, upon application of that institution,
 246 may modify a restriction contained in a gift instrument
 247 regarding the management or investment of an institutional fund
 248 if the restriction has become impracticable or wasteful, if it

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249 impairs the management or investment of the fund, or if, because
 250 of circumstances not anticipated by the donor, a modification of
 251 a restriction will further the purposes of the fund. The
 252 institution shall notify the Attorney General of the
 253 application. To the extent practicable, any modification must be
 254 made in accordance with the donor's probable intention.

255 (e) If a particular charitable purpose or a restriction
 256 contained in a gift instrument on the use of an institutional
 257 fund becomes unlawful, impracticable, impossible to achieve, or
 258 wasteful, the circuit court for the circuit in which an
 259 institution is located, upon application of that institution,
 260 may modify the purpose of the fund or the restriction on the use
 261 of the fund in a manner consistent with the charitable purposes
 262 expressed in the gift instrument. The institution shall notify
 263 the Attorney General of the application.

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

268 (8) APPLICATION TO EXISTING INSTITUTIONAL FUNDS.—This
 269 section applies to institutional funds existing on or
 270 established after the effective date of this section. As applied
 271 to institutional funds existing on the effective date of this
 272 section, this section governs only decisions made or actions
 273 taken on or after that date.

274 (9) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
 275 NATIONAL COMMERCE ACT.—This section modifies, limits, and
 276 supersedes the federal Electronic Signatures in Global and

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277 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not
 278 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.
 279 7001(c), or authorize electronic delivery of any of the notices
 280 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

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

285 Section 2. Effective upon this act becoming a law, section
 286 617.2105, Florida Statutes, is created to read:

287 617.2105 Corporation issued a deed to real property.—When
 288 a corporation or foreign corporation subject to this chapter is
 289 issued a deed to real property in the state by the Board of
 290 Trustees of the Internal Improvement Trust Fund containing a
 291 reverter clause that restricts the use of property to specified
 292 uses in the deed, the failure to put the property to the
 293 required use within a period of 3 years after the grant, unless
 294 a stricter time period is contained in the deed, is prima facie
 295 evidence that the restriction is violated, subjecting the
 296 property to reversion to the Board of Trustees of the Internal
 297 Improvement Trust Fund at its discretion. This section applies
 298 retroactively and prospectively and may not be construed to
 299 excuse for any period of time a use of the property in violation
 300 of the restrictive use.

301 Section 3. Section 1010.10, Florida Statutes, is repealed.

302 Section 4. Except as otherwise expressly provided in this
 303 act and except for this section, which shall take effect upon

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304 | this act becoming a law, this act shall take effect July 1,
305 | 2012.