



General Assembly

**Substitute Bill No. 6954**

January Session, 2007

\*           HB06954BA\_HED030607           \*

**AN ACT ADOPTING THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2007*) Sections 1 to 10,  
2 inclusive, of this act may be cited as the "Uniform Prudent  
3 Management of Institutional Funds Act".

4       Sec. 2. (NEW) (*Effective October 1, 2007*) As used in sections 1 to 10,  
5 inclusive, of this act, unless the context otherwise requires:

6       (1) "Charitable purpose" means the relief of poverty, the  
7 advancement of education or religion, the promotion of health, the  
8 promotion of governmental purposes and any other purpose the  
9 achievement of which is beneficial to the community;

10       (2) "Endowment fund" means an institutional fund or any part  
11 thereof not wholly expendable by the institution on a current basis  
12 under the terms of a gift instrument. The term does not include assets  
13 of an institution designated by the institution as an endowment fund  
14 for its own use;

15       (3) "Gift instrument" means a record or records, including an  
16 institutional solicitation, under which property is granted to,  
17 transferred to or held by an institution as an institutional fund;

18 (4) "Institution" means:

19 (A) A person, other than an individual, organized and operated  
20 exclusively for charitable purposes;

21 (B) A government or a governmental subdivision, agency or  
22 instrumentality to the extent that it holds funds exclusively for a  
23 charitable purpose; and

24 (C) A trust that had both charitable and noncharitable interests, after  
25 all noncharitable interests have terminated;

26 (5) "Institutional fund" means a fund held by an institution  
27 exclusively for charitable purposes. The term does not include:

28 (A) Program-related assets;

29 (B) A fund held for an institution by a trustee that is not an  
30 institution; or

31 (C) A fund in which a beneficiary that is not an institution has an  
32 interest other than an interest that could arise upon violation or failure  
33 of the purposes of the fund;

34 (6) "Person" means an individual, corporation, business trust, estate,  
35 trust, partnership, limited liability company, association, joint venture,  
36 public corporation, government or governmental subdivision, agency  
37 or instrumentality or any other legal or commercial entity;

38 (7) "Program-related asset" means an asset held by an institution  
39 primarily to accomplish a charitable purpose of the institution and not  
40 primarily for appreciation or the production of income; and

41 (8) "Record" means information that is inscribed on a tangible  
42 medium or that is stored in an electronic or other medium and is  
43 retrievable in perceivable form.

44 Sec. 3. (NEW) (*Effective October 1, 2007*) (a) Subject to the intent of a  
45 donor expressed in a gift instrument, an institution, in managing and

46 investing an institutional fund, shall consider the charitable purposes  
47 of the institution and the purposes of the institutional fund.

48 (b) In addition to complying with the duty of loyalty imposed by  
49 law other than sections 1 to 10, inclusive, of this act, each person  
50 responsible for managing and investing an institutional fund shall  
51 manage and invest the fund in good faith and with the care an  
52 ordinarily prudent person in a like position would exercise under  
53 similar circumstances.

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

55 (1) May incur only costs that are appropriate and reasonable in  
56 relation to the assets, the purposes of the institution and the skills  
57 available to the institution; and

58 (2) Shall make a reasonable effort to verify facts relevant to the  
59 management and investment of the fund.

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

62 (e) Except as otherwise provided by a gift instrument, the following  
63 shall apply to an institution:

64 (1) In managing and investing an institutional fund, the following  
65 factors, if relevant, shall be considered:

66 (A) General economic conditions;

67 (B) The possible effect of inflation or deflation;

68 (C) The expected tax consequences, if any, of investment decisions  
69 or strategies;

70 (D) The role that each investment or course of action plays within  
71 the overall investment portfolio of the fund;

72 (E) The expected total return from income and the appreciation of

73 investments;

74 (F) Other resources of the institution;

75 (G) The needs of the institution and the fund to make distributions  
76 and to preserve capital; and

77 (H) An asset's special relationship or special value, if any, to the  
78 charitable purposes of the institution.

79 (2) Management and investment decisions about an individual asset  
80 shall be made not in isolation but rather in the context of the  
81 institutional fund's portfolio of investments as a whole and as a part of  
82 an overall investment strategy having risk and return objectives  
83 reasonably suited to the fund and to the institution.

84 (3) Except as otherwise provided by law other than sections 1 to 10,  
85 inclusive, of this act, an institution may invest in any kind of property  
86 or type of investment consistent with the standards of this section.

87 (4) An institution shall diversify the investments of an institutional  
88 fund unless the institution reasonably determines that because of  
89 special circumstances the purposes of the fund are better served  
90 without diversification.

91 (5) Within a reasonable time after receiving property, an institution  
92 shall make and implement decisions concerning the retention or  
93 disposition of the property or to rebalance a portfolio in order to bring  
94 the institutional fund into compliance with the purposes, terms,  
95 distribution requirements and other circumstances of the institution  
96 and the requirements of sections 1 to 10, inclusive, of this act.

97 (6) A person who has special skills or expertise or is selected in  
98 reliance upon the person's representation that the person has special  
99 skills or expertise has a duty to use those special skills or that expertise  
100 in managing and investing institutional funds.

101 Sec. 4. (NEW) (*Effective October 1, 2007*) (a) Subject to the intent of a

102 donor expressed in a gift instrument, an institution may appropriate  
103 for expenditure or accumulate so much of an endowment fund as the  
104 institution determines to be prudent for the uses, benefits, purposes  
105 and duration for which the endowment fund is established. Unless  
106 stated otherwise in a gift instrument, the assets in an endowment fund  
107 are donor-restricted assets until appropriated for expenditure by the  
108 institution. In making a determination to appropriate or accumulate,  
109 the institution shall act in good faith, with the care that an ordinarily  
110 prudent person in a like position would exercise under similar  
111 circumstances and shall consider, if relevant, the following factors:

- 112 (1) The duration and preservation of the endowment fund;
- 113 (2) The purposes of the institution and the endowment fund;
- 114 (3) General economic conditions;
- 115 (4) The possible effect of inflation or deflation;
- 116 (5) The expected total return from income and the appreciation of  
117 investments;
- 118 (6) Other resources of the institution; and
- 119 (7) The investment policy of the institution.

120 (b) To limit the authority to appropriate for expenditure or  
121 accumulate under subsection (a) of this section, a gift instrument shall  
122 specifically state the limitation.

123 (c) Terms in a gift instrument designating a gift as an endowment or  
124 a direction or authorization in the gift instrument to use only "income",  
125 "interest", "dividends" or "rents, issues or profits", or "to preserve the  
126 principal intact", or similar words:

- 127 (1) Create an endowment fund of permanent duration unless other  
128 language in the gift instrument limits the duration or purpose of the  
129 fund; and

130 (2) Do not otherwise limit the authority to appropriate for  
131 expenditure or accumulate under subsection (a) of this section.

132 Sec. 5. (NEW) (*Effective October 1, 2007*) (a) Subject to any specific  
133 limitation set forth in a gift instrument or in law other than sections 1  
134 to 10, inclusive, of this act, an institution may delegate to an external  
135 agent the management and investment of an institutional fund to the  
136 extent that an institution could prudently delegate under the  
137 circumstances. An institution shall act in good faith, with the care that  
138 an ordinarily prudent person in a like position would exercise under  
139 similar circumstances, in:

140 (1) Selecting an agent;

141 (2) Establishing the scope and terms of the delegation, consistent  
142 with the purposes of the institution and the institutional fund; and

143 (3) Periodically reviewing the agent's actions in order to monitor the  
144 agent's performance and compliance with the scope and terms of the  
145 delegation.

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

149 (c) An institution that complies with subsection (a) of this section is  
150 not liable for the decisions or actions of an agent to which the function  
151 was delegated.

152 (d) By accepting delegation of a management or investment  
153 function from an institution that is subject to the laws of this state, an  
154 agent submits to the jurisdiction of the courts of this state in all  
155 proceedings arising from or related to the delegation or the  
156 performance of the delegated function.

157 (e) An institution may delegate management and investment  
158 functions to its committees, officers or employees as authorized by law  
159 other than sections 1 to 10, inclusive, of this act.

160       Sec. 6. (NEW) (*Effective October 1, 2007*) (a) With the donor's consent  
161 in a record, an institution may release or modify, in whole or in part, a  
162 restriction contained in a gift instrument on the management,  
163 investment or purpose of an institutional fund. A release or  
164 modification may not allow a fund to be used for a purpose other than  
165 a charitable purpose of the institution.

166       (b) If a restriction contained in a gift instrument on the management  
167 or investment of an institutional fund becomes impracticable or  
168 wasteful or impairs the management or investment of the fund or if  
169 because of circumstances not anticipated by the donor a modification  
170 of a restriction will further the purposes of the fund, a court, upon  
171 application of the institution, may modify the restriction. The  
172 institution shall notify the Attorney General, who shall be given an  
173 opportunity to be heard. To the extent practicable, any modification  
174 shall be made in accordance with the donor's probable intention.

175       (c) If a particular charitable purpose or a restriction contained in a  
176 gift instrument on the use of an institutional fund becomes unlawful,  
177 impracticable, impossible to achieve or wasteful, a court, upon  
178 application of an institution, may modify the purpose of the fund or  
179 the restriction on the use of the fund in a manner consistent with the  
180 charitable purposes expressed in the gift instrument. The institution  
181 shall notify the Attorney General, who shall be given an opportunity to  
182 be heard.

183       (d) Nothing in this section shall be construed as amending or  
184 altering existing standards in the general statutes for approximation,  
185 cy pres or equitable deviation actions.

186       Sec. 7. (NEW) (*Effective October 1, 2007*) Compliance with sections 1  
187 to 10, inclusive, of this act is determined in light of the facts and  
188 circumstances existing at the time a decision is made or an action is  
189 taken.

190       Sec. 8. (NEW) (*Effective October 1, 2007*) Sections 1 to 10, inclusive, of  
191 this act apply to institutional funds existing on or established after

192 October 1, 2007. As applied to institutional funds existing on October  
193 1, 2007, sections 1 to 10, inclusive, of this act govern only decisions  
194 made or actions taken after such date.

195 Sec. 9. (NEW) (*Effective October 1, 2007*) Sections 1 to 10, inclusive, of  
196 this act modify, limit and supersede the Electronic Signatures in Global  
197 and National Commerce Act, 15 USC Section 7001 et seq., but do not  
198 modify, limit or supersede Section 101 of said act, 15 USC Section  
199 7001(a), or authorize electronic delivery of any of the notices described  
200 in Section 103 of said act, 15 USC Section 7003(b).

201 Sec. 10. (NEW) (*Effective October 1, 2007*) In applying and construing  
202 sections 1 to 9, inclusive, of this act, consideration shall be given to the  
203 need to promote uniformity of the law with respect to its subject  
204 matter among states that enact it.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	New section
Sec. 2	<i>October 1, 2007</i>	New section
Sec. 3	<i>October 1, 2007</i>	New section
Sec. 4	<i>October 1, 2007</i>	New section
Sec. 5	<i>October 1, 2007</i>	New section
Sec. 6	<i>October 1, 2007</i>	New section
Sec. 7	<i>October 1, 2007</i>	New section
Sec. 8	<i>October 1, 2007</i>	New section
Sec. 9	<i>October 1, 2007</i>	New section
Sec. 10	<i>October 1, 2007</i>	New section

**BA**

*Joint Favorable Subst. C/R*

HED