15:18-25

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2009 **CHAPTER:** 64

NJSA: 15:18-25 (The "Uniform Prudent Management of Institutional Funds Act.")

BILL NO: S2583 (Substituted for A3871)

SPONSOR(S) Codey and Others

DATE INTRODUCED: February 26, 2009

COMMITTEE: **ASSEMBLY:** State Government

SENATE: Commerce

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** May 21, 2009

SENATE: March 16, 2009

DATE OF APPROVAL: June 10, 2009

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Senate Committee Substitute enacted)

S2583

SPONSOR'S STATEMENT: (Begins on page 3 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

A3871

SPONSOR'S STATEMENT: (Begins on page 6 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE:	No
GOVERNOR'S PRESS RELEASE ON SIGNING:	No

FOLLOWING WERE PRINTED:

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REPORTS:	No
HEARINGS:	No
NEWSPAPER ARTICLES:	No

LAW/RWH 10/2/09

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 2583

STATE OF NEW JERSEY

213th LEGISLATURE

ADOPTED MARCH 9, 2009

Sponsored by:
Senator RICHARD J. CODEY
District 27 (Essex)
Senator M. TERESA RUIZ
District 29 (Essex and Union)
Senator NIA H. GILL
District 34 (Essex and Passaic)
Assemblyman PATRICK J. DIEGNAN, JR.
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Assemblyman JOHN F. MCKEON
District 27 (Essex)
Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)

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SYNOPSIS

The "Uniform Prudent Management of Institutional Funds Act."

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Commerce Committee.

(Sponsorship Updated As Of: 5/22/2009)

AN ACT concerning management and use of certain funds held by charitable institutions, supplementing Title 15 of the Revised Statutes, and repealing P.L.1975, c.26.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Uniform Prudent Management of Institutional Funds Act."

2. As used in this act:

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

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

"Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

"Institution" means: a person, other than an individual, organized and operated exclusively for charitable purposes; a government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

"Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include: program-related assets; a fund held for an institution by a trustee that is not an institution; or a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, for-profit corporation, non-profit corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

3. a. Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

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

c. In managing and investing an institutional fund, an institution:

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

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

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

e. Except as otherwise provided by a gift instrument, the following apply:

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

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the expected tax consequences, if any, of investment decisions or strategies;

(d) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(e) the expected total return from income and the appreciation of investments;

(f) other resources of the institution;

(g) the needs of the institution and the fund to make distributions and to preserve capital; and

(h) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset shall be made in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution, and shall not be made in isolation from these considerations.

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

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that,

because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this act.

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

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

(1) the duration and preservation of the endowment fund;

(2) the purposes of the institution and the endowment fund;

(3) general economic conditions;

(4) the possible effect of inflation or deflation;

(5) the expected total return from income and the appreciation of investments;

(6) other resources of the institution; and

(7) the investment policy of the institution.

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

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

(1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

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

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

(1) selecting an agent;

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

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

b. In performing a delegated function, an agent shall owe a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

c. An institution that complies with subsection a. of this section shall not be liable for the decisions or actions of an agent to which the function was delegated.

d. By accepting delegation of a management or investment function from an institution that is subject to the laws of this State, an agent shall submit to the jurisdiction of the courts of this State in all proceedings arising from or related to the delegation or the performance of the delegated function.

e. An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this State other than this act.

6. a. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund, so long as the release or modification does not allow a fund to be used for a purpose other than a charitable purpose of the institution.

b. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall give notice to the Attorney General in accordance with the Rules of Court of the application, and the Attorney General shall be given an opportunity to be heard. To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

c. If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purpose of the institution or charitable intent of the donor. The institution shall give notice to the Attorney General of the application in accordance with the Rules of Court, and the Attorney General shall be given an opportunity to be heard.

d. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution may, following 60 days notice to the Attorney General, release or modify the restriction, in whole or in part, if:

(1) the institutional fund subject to the restriction has a total value of less than $250,000;

(2) more than 20 years have elapsed since the fund was established; and

(3) the institution uses the property in a manner consistent with the charitable purpose expressed in the gift instrument.

7. Compliance with this act shall be determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

8. This act shall apply to institutional funds existing on or established after the effective date of this act. As applied to institutional funds existing on the effective date of this act, this act governs only decisions made or actions taken on or after that date.

9. This act modifies, limits, and supersedes the "Electronic Signatures in Global and National Commerce Act," Pub.L.106-229 (15 U.S.C. s.7001 et seq.), but does not modify, limit, or supersede Section 101(a) of that act (15 U.S.C. s.7001(a)), or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. s.7003(b)).

10. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among the states which enact it.

11. P.L.1975, c.26 (C.15:18-15 through 24) is repealed.

12. This act shall take effect immediately.

SPONSOR'S STATEMENT

This bill amends section 2 of P.L.1975, c.26 (C.15:18-16), which currently permits the expenditure of appreciation of an endowment fund of a charitable organization to the extent the fund has appreciated in value above the fund's historic dollar value. The "historic dollar value" model was included in the 1972 "Uniform Management of Institutional Funds Act" (UMIFA), adopted in 47 states, including the State of New Jersey, effective 1975. UMIFA defined historic dollar value to mean all contributions to the fund, valued at the time of contribution.

This bill is based upon new standards recommended by the National Conference of Commissioners on Uniform State Laws as contained in its model legislation, the "Uniform Prudent Management of Institutional Funds Act," (UPMIFA). Instead of using historic dollar value as a limitation, this bill, based on UPMIFA, applies a more carefully articulated prudence standard to the process of making decisions about expenditures from an endowment fund of a charitable organization. As provided in the bill, the governing board of an organization shall consider, if relevant, the following factors: the duration and preservation of the endowment fund; the purposes of the organization and the endowment fund; general economic conditions; the possible effect of inflation or deflation; the expected total return from income and the appreciation of investments; other resources of the organization; and the investment policy of the organization.

These expenditure rules apply only to the extent that a donor and an organization have not reached some other agreement about spending from an endowment. If a gift instrument sets forth specific requirements for spending, then the charity must comply with those requirements.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2583

STATE OF NEW JERSEY

DATED: MAY 11, 2009

The Assembly State Government Committee reports favorably the Senate Committee Substitute for Senate Bill No. 2583.

This substitute bill, titled the "Uniform Prudent Management of Institutional Funds Act," is based upon new fund management and investment standards for charitable institutions recommended pursuant to the 2006 model act of the same name prepared by the National Conference of Commissioners on Uniform State Laws and further updated by the New Jersey Law Review Commission in 2008. It repeals and replaces the "Uniform Management of Institutional Funds Act," P.L.1975, c.26 (C.15:18-15 et seq.), which itself was based upon an earlier model act by the national conference.

The bill applies to any institution organized and operated exclusively for charitable purposes, and includes most charitable trusts, except those managed by corporate trustees and individuals. The bill provides primacy to the intent of a donor as expressed in the donor's gift instrument, and subject to this intent, an institution is given broad discretion to appropriate and accumulate funds to carry out the charitable purposes of the institution and institutional fund. Each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

The bill includes provisions specifically applicable to an endowment fund, being a restricted form of institutional fund that is intended to exist in perpetuity, as the principal is not wholly expendable on a current basis. While the current law does not permit any expenditures from an endowment fund whenever that fund falls below its "historic dollar value" (generally the total sum of all contributions to the fund from its beginning), the bill's provisions do away with this restriction. Instead, the bill permits endowment fund managers to make determinations to expend or accumulate money as deemed prudent, consistent with the donor's intent set forth in the gift instrument. Factors for the endowment fund managers to consider concerning expenditures and accumulations include: the duration and preservation of the endowment fund; general economic conditions; the possible effect of inflation or deflation; the expected total return from income and the appreciation of investments; other resources of the institution; and the investment policy of the institution.

The bill also provides that an institution may delegate to an external agent the management and investment of an institutional fund, subject to any donor restrictions or other applicable law. The institution will act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in selecting an agent, establishing the scope of delegated responsibilities, and reviewing the agent's actions as delegated. The agent will owe the institution a duty to exercise reasonable care in complying with the scope and terms of any delegated responsibilities. Any institution that complies with the bill with respect to its selection and oversight of an agent will not be liable for the decisions or actions of that agent.

Finally, the bill permits a donor, who consents in a record, to allow an institution to release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. An institution may also apply to a court to request a modification of a fund's purpose or a restriction in a gift instrument to a fund, if the restriction has become unlawful, impracticable, impossible to achieve, or wasteful. The institution will provide notice of such modification action to the Attorney General, giving the Attorney General an opportunity to be heard with regard to the institution's proposed action. A court hearing will not be necessary with respect to institutional funds that are more than 20 years old, and are valued at less than $250,000; however, the institution is still required to give the Attorney General notice of its proposed modification.

The Senate Committee Substitute for Senate Bill No. 2583 is identical to Assembly Bill No. 3871 of 2009.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2583

STATE OF NEW JERSEY

DATED: MARCH 9, 2009

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill No. 2583

This substitute bill, titled the "Uniform Prudent Management of Institutional Funds Act," is based upon new fund management and investment standards for charitable institutions recommended pursuant to the 2006 model act of the same name prepared by the National Conference of Commissioners on Uniform State Laws and further updated by the New Jersey Law Review Commission in 2008. It repeals and replaces the "Uniform Management of Institutional Funds Act," P.L.1975, c.26 (C.15:18-15 et seq.), which itself was based upon an earlier model act by the national conference.

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The bill also provides that an institution may delegate to an external agent the management and investment of an institutional fund, subject to any donor restrictions or other applicable law. The institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in selecting an agent, establishing the scope of delegated responsibilities, and reviewing the agent's actions as delegated. The agent shall owe the institution a duty to exercise reasonable care in complying with the scope and terms of any delegated responsibilities. Any institution that complies with the bill with respect to its selection and oversight of an agent shall not be liable for the decisions or actions of that agent.

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consistent with the charitable purpose of the institution or charitable intent of the donor. The institution shall give notice to the Attorney General of the application in accordance with the Rules of Court, and the Attorney General shall be given an opportunity to be heard.

d. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution may, following 60 days notice to the Attorney General, release or modify the restriction, in whole or in part, if:

(1) the institutional fund subject to the restriction has a total value of less than $250,000;

(2) more than 20 years have elapsed since the fund was established; and

(3) the institution uses the property in a manner consistent with the charitable purpose expressed in the gift instrument.

7. Compliance with this act shall be determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

8. This act shall apply to institutional funds existing on or established after the effective date of this act. As applied to institutional funds existing on the effective date of this act, this act governs only decisions made or actions taken on or after that date.

9. This act modifies, limits, and supersedes the "Electronic Signatures in Global and National Commerce Act," Pub.L.106-229 (15U.S.C. s.7001 et seq.), but does not modify, limit, or supersede Section 101(a) of that act (15U.S.C. s.7001(a)), or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15U.S.C. s.7003(b)).

10. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among the states which enact it.

11. P.L.1975, c.26 (C.15:18-15 through 24) is repealed.

12. This act shall take effect immediately.

SPONSOR'S STATEMENT

This bill, titled the "Uniform Prudent Management of Institutional Funds Act," is based upon new fund management and investment standards for charitable institutions recommended pursuant to the 2006 model act of the same name prepared by the

National Conference of Commissioners on Uniform State Laws and further updated by the New Jersey Law Review Commission in 2008. It repeals and replaces the "Uniform Management of Institutional Funds Act," P.L.1975, c.26 (C.15:18-15 et seq.), which itself was based upon an earlier model act by the national conference.

The bill applies to any institution organized and operated exclusively for charitable purposes, and includes most charitable trusts, except those managed by corporate trustees and individuals. The bill provides primacy to the intent of a donor as expressed in the donor's gift instrument, and subject to this intent, an institution is given broad discretion to appropriate and accumulate funds to carry out the charitable purposes of the institution and institutional fund. Each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

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ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3871

STATE OF NEW JERSEY

DATED: MAY 11, 2009

The Assembly State Government Committee reports favorably Assembly Bill No. 3871.

This bill, titled the "Uniform Prudent Management of Institutional Funds Act," is based upon new fund management and investment standards for charitable institutions recommended pursuant to the 2006 model act of the same name prepared by the National Conference of Commissioners on Uniform State Laws and further updated by the New Jersey Law Review Commission in 2008. It repeals and replaces the "Uniform Management of Institutional Funds Act," P.L.1975, c.26 (C.15:18-15 et seq.), which itself was based upon an earlier model act by the national conference.

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Assembly Bill No. 3871 is identical to the Senate Committee Substitute for Senate Bill No. 2583 of 2009.