

House Study Bill 751

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON SWAIM)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating the Iowa uniform prudent management of
2 institutional funds Act and including an applicability
3 provision.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5241HC 82
6 rh/rj/5

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1 1 Section 1. NEW SECTION. 540A.101 SHORT TITLE.
1 2 This chapter may be cited as the "Uniform Prudent
1 3 Management of Institutional Funds Act".
1 4 Sec. 2. NEW SECTION. 540A.102 DEFINITIONS.
1 5 For purposes of this chapter, unless the context otherwise
1 6 requires:
1 7 1. "Charitable purpose" means the relief of poverty, the
1 8 advancement of education or religion, the promotion of health,
1 9 the promotion of a governmental purpose, or any other purpose
1 10 the achievement of which is beneficial to the community.
1 11 2. "Endowment fund" means an institutional fund or any
1 12 part of an institutional fund, not wholly expendable by the
1 13 institution on a current basis under the terms of the
1 14 applicable gift instrument. "Endowment fund" does not include
1 15 assets that an institution designates as an endowment fund for
1 16 its own use.
1 17 3. "Gift instrument" means a record or records, including
1 18 an institutional solicitation, under which property is granted
1 19 to, transferred to, or held by an institution as an
1 20 institutional fund.
1 21 4. "Institution" means any of the following:
1 22 a. A person, other than an individual, organized and
1 23 operated exclusively for charitable purposes.
1 24 b. A government or governmental subdivision, agency, or
1 25 instrumentality, to the extent that it holds funds exclusively
1 26 for a charitable purpose.
1 27 c. A trust that had both charitable and noncharitable
1 28 interests, after all noncharitable interests have terminated.
1 29 5. "Institutional fund" means a fund held by an
1 30 institution exclusively for charitable purposes.
1 31 "Institutional fund" does not include any of the following:
1 32 a. Program-related assets.
1 33 b. A fund held for an institution by a trustee that is not
1 34 an institution.
1 35 c. A fund in which a beneficiary that is not an
2 1 institution has an interest, other than an interest that could
2 2 arise upon violation or failure of the purposes of the fund.
2 3 6. "Person" means an individual, corporation, business
2 4 trust, estate, trust, partnership, limited liability company,
2 5 association, joint venture, public corporation, government or
2 6 governmental subdivision, agency, or instrumentality, or any
2 7 other legal or commercial entity.
2 8 7. "Program-related asset" means an asset held by an
2 9 institution primarily to accomplish a charitable purpose of
2 10 the institution and not primarily for investment.
2 11 8. "Record" means information that is inscribed on a
2 12 tangible medium or that is stored in an electronic or other
2 13 medium and is retrievable in perceivable form.
2 14 Sec. 3. NEW SECTION. 540A.103 STANDARD OF CONDUCT ==
2 15 MANAGING AND INVESTING INSTITUTIONAL FUND.
2 16 1. Subject to the intent of a donor expressed in a gift
2 17 instrument, an institution shall consider the charitable

2 18 purposes of the institution and the purposes of the
2 19 institutional fund in managing and investing an institutional
2 20 fund.

2 21 2. In addition to complying with the duty of loyalty
2 22 imposed by law other than this chapter, each person
2 23 responsible for managing and investing an institutional fund
2 24 shall manage and invest the fund in good faith and with the
2 25 care an ordinarily prudent person in a like position would
2 26 exercise under similar circumstances.

2 27 3. All of the following shall apply to an institution
2 28 managing and investing an institutional fund:

2 29 a. An institution may incur only costs that are
2 30 appropriate and reasonable in relation to the assets, the
2 31 purposes of the institution, and the skills available to the
2 32 institution.

2 33 b. An institution shall make a reasonable effort to verify
2 34 facts relevant to the management and investment of the fund.

2 35 4. Subject to the intent of a donor expressed in a gift
3 1 instrument, an institution may pool two or more institutional
3 2 funds for purposes of management and investment.

3 3 5. Except as otherwise provided by a gift instrument, all
3 4 of the following rules shall apply:

3 5 a. In managing and investing an institutional fund, the
3 6 following factors, if relevant, shall be considered:

3 7 (1) General economic conditions.
3 8 (2) The possible effect of inflation or deflation.
3 9 (3) The expected tax consequences, if any, of investment
3 10 decisions or strategies.

3 11 (4) The role that each investment or course of action
3 12 plays within the overall investment portfolio of the fund.

3 13 (5) The expected total return from income and the
3 14 appreciation of investments.

3 15 (6) Other resources of the institution.

3 16 (7) The needs of the institution and the fund to make
3 17 distributions and to preserve capital.

3 18 (8) An asset's special relationship or special value, if
3 19 any, to the charitable purposes of the institution.

3 20 b. Management and investment decisions about an individual
3 21 asset shall be made in the context of the institutional fund's
3 22 portfolio of investments as a whole and as a part of an
3 23 overall investment strategy having risk and return objectives
3 24 reasonably suited to the fund and to the institution.

3 25 c. Except as otherwise provided by law, an institution may
3 26 invest in any kind of property or type of investment
3 27 consistent with this section.

3 28 d. An institution shall diversify the investments of an
3 29 institutional fund unless the institution reasonably
3 30 determines that, because of special circumstances, the
3 31 purposes of the fund are better served without
3 32 diversification.

3 33 e. Within a reasonable time after receiving property, an
3 34 institution shall make and carry out decisions concerning the
3 35 retention or disposition of the property or to rebalance a
4 1 portfolio, in order to bring the institutional fund into
4 2 compliance with the purposes, terms, and distribution
4 3 requirements of the institution as necessary to meet other
4 4 circumstances of the institution and the requirements of this
4 5 chapter.

4 6 f. A person that has special skills or expertise, or is
4 7 selected in reliance upon the person's representation that the
4 8 person has special skills or expertise, has a duty to use
4 9 those skills or that expertise in managing and investing
4 10 institutional funds.

4 11 Sec. 4. NEW SECTION. 540A.104 APPROPRIATION FOR
4 12 EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND == RULES OF
4 13 CONSTRUCTION.

4 14 1. Subject to the intent of a donor expressed in the gift
4 15 instrument and to subsection 4, an institution may appropriate
4 16 for expenditure or accumulate so much of an endowment fund as
4 17 the institution determines is prudent for the uses, benefits,
4 18 purposes, and duration for which the endowment fund is
4 19 established. Unless stated otherwise in the gift instrument,
4 20 the assets in an endowment fund are donor-restricted assets
4 21 until appropriated for expenditure by the institution. In
4 22 making a determination to appropriate or accumulate, the
4 23 institution shall act in good faith, with the care that an
4 24 ordinarily prudent person in a like position would exercise
4 25 under similar circumstances, and shall consider, if relevant,
4 26 all of the following factors:

4 27 a. The duration and preservation of the endowment fund.

4 28 b. The purposes of the institution and the endowment fund.

4 29 c. General economic conditions.
4 30 d. The possible effect of inflation or deflation.
4 31 e. The expected total return from income and the
4 32 appreciation of investments.
4 33 f. Other resources of the institution.
4 34 g. The investment policy of the institution.
4 35 2. In order to limit the authority to appropriate for
5 1 expenditure or accumulate under subsection 1, a gift
5 2 instrument must specifically state the limitation.
5 3 3. Terms in a gift instrument designating a gift as an
5 4 endowment, or a direction or authorization in the gift
5 5 instrument to use only "income", "interest", "dividends", or
5 6 "rents, issues, or profits", or "to preserve the principal
5 7 intact", or words of similar import do all of the following:
5 8 a. Create an endowment fund of permanent duration unless
5 9 other language in the gift instrument limits the duration or
5 10 purpose of the fund.
5 11 b. Do not otherwise limit the authority to appropriate for
5 12 expenditure or accumulate under subsection 1.
5 13 4. a. If a gift instrument uses the terms or phrases
5 14 described in subsection 3, the gift instrument may also
5 15 contain language substantially similar to the following: "A
5 16 direction or authorization herein to use only "income",
5 17 "interest", "dividends", or "rents, issues, or profits", or to
5 18 "preserve the principal intact" or words of similar import,
5 19 does not limit the expenditures from the endowment fund only
5 20 to income, interest, dividends, or rents, issues, or profits.
5 21 Expenditures may also come from other assets in the endowment
5 22 fund. All expenditures from the endowment fund created
5 23 hereunder shall be prudent in light of the uses, benefits,
5 24 purposes, and duration of the endowment fund. In determining
5 25 the amounts to be expended annually or to be accumulated,
5 26 account shall be taken of the following factors: the duration
5 27 and preservation of the endowment fund, the purposes of the
5 28 endowment fund; general economic conditions; the possible
5 29 effect of inflation or deflation; the expected total return
5 30 from income and the appreciation of investments; other
5 31 recourses available to carry out the charitable purposes of
5 32 this gift; and the governing investment policies. Because
5 33 these factors govern expenditures and accumulations from the
5 34 endowment fund created hereunder, terms such as those in the
5 35 first sentence of this subsection shall be interpreted, absent
6 1 other express language to the contrary, as creating an
6 2 endowment fund of permanent duration and such words do not
6 3 limit the authority to expend or accumulate funds in
6 4 accordance with the factors listed above."
6 5 b. The absence of the foregoing language or words of
6 6 similar import in a gift instrument does not invalidate the
6 7 gift instrument or any gift, or portion of a gift, thereunder.
6 8 Sec. 5. NEW SECTION. 540A.105 DELEGATION OF MANAGEMENT
6 9 AND INVESTMENT FUNCTIONS.
6 10 1. Subject to any specific limitation set forth in a gift
6 11 instrument or in law, an institution may delegate to an
6 12 external agent the management and investment of an
6 13 institutional fund to the extent that an institution could
6 14 prudently delegate under the circumstances. An institution
6 15 shall act in good faith, with the care that an ordinarily
6 16 prudent person in a like position would exercise under similar
6 17 circumstances, in doing all of the following:
6 18 a. Selecting an agent.
6 19 b. Establishing the scope and terms of the delegation,
6 20 consistent with the purposes of the institution and the
6 21 institutional fund.
6 22 c. Periodically reviewing the agent's actions in order to
6 23 monitor the agent's performance and compliance with the scope
6 24 and terms of the delegation.
6 25 2. In performing a delegated function, an agent owes a
6 26 duty to the institution to exercise reasonable care to comply
6 27 with the scope and terms of the delegation.
6 28 3. An institution that complies with subsection 1 is not
6 29 liable for the decisions or actions of an agent to which the
6 30 function was delegated.
6 31 4. By accepting delegation of a management or investment
6 32 function from an institution that is subject to the laws of
6 33 this state, an agent submits to the jurisdiction of the courts
6 34 of this state in all proceedings arising from or related to
6 35 the delegation or the performance of the delegated function.
7 1 5. An institution may delegate management and investment
7 2 functions to its committees, officers, or employees as
7 3 authorized by the laws of this state.
7 4 Sec. 6. NEW SECTION. 540A.106 RELEASE OR MODIFICATION OF

7 5 RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE.

7 6 1. If the donor consents in a record, an institution may
7 7 release or modify, in whole or in part, a restriction
7 8 contained in a gift instrument on the management, investment,
7 9 or purpose of an institutional fund. A release or
7 10 modification shall not allow a fund to be used for a purpose
7 11 other than a charitable purpose of the institution.

7 12 2. The court, upon application of an institution, may
7 13 modify a restriction contained in a gift instrument regarding
7 14 the management or investment of an institutional fund if the
7 15 restriction has become impracticable or if, because of
7 16 circumstances not anticipated by the donor, the restriction
7 17 will defeat or substantially impair the accomplishment of the
7 18 purposes of the institutional fund. The institution shall
7 19 notify the attorney general of the application, and the
7 20 attorney general shall be given an opportunity to be heard.
7 21 Any modification must be made in accordance with the donor's
7 22 probable intention.

7 23 3. If a particular charitable purpose or a restriction
7 24 contained in a gift instrument on the use of an institutional
7 25 fund becomes unlawful, impracticable, or impossible to
7 26 fulfill, the court, upon application of an institution, may
7 27 modify the purpose of the fund or the restriction on the use
7 28 of the fund in a manner consistent with the charitable
7 29 purposes expressed in the gift instrument. The institution
7 30 shall notify the attorney general of the application and the
7 31 attorney general shall be given the opportunity to be heard.
7 32 If the donor or the donor's designee having the right to
7 33 enforce the restrictions under subsection 5 provides the
7 34 institution with an address, then the institution shall also
7 35 notify the donor or such designee of the application by United

8 1 States mail addressed to the last address so provided and the

8 2 donor or such designee shall have an opportunity to be heard.
8 3 4. If an institution determines that a restriction
8 4 contained in a gift instrument on the management, investment,
8 5 or purpose of an institutional fund is unlawful,
8 6 impracticable, or impossible to fulfill, the institution may
8 7 release or modify the restriction, in whole or part, sixty
8 8 days after notifying the attorney general, if all of the
8 9 following conditions are met:

8 10 a. The institutional fund subject to the restriction has a
8 11 total value of less than fifty thousand dollars.

8 12 b. More than twenty years have elapsed since the fund was
8 13 established.

8 14 c. The institution uses the property in a manner
8 15 consistent with the charitable purposes expressed in the gift
8 16 instrument.

8 17 5. a. A donor whose aggregate gifts to an endowment fund
8 18 exceeds one hundred thousand dollars may maintain an action in
8 19 the district court of the county in which the institution's
8 20 principal office is located to enforce restrictions respecting
8 21 the purposes of the fund established by the donor in a gift
8 22 instrument. A gift made in property shall be valued at fair
8 23 market value on the date of the gift.

8 24 b. A donor may designate in a gift instrument or other
8 25 record signed by the donor and delivered to the institution
8 26 one or more persons, by name or by description, whether or not
8 27 born at the time of such designation, to enforce the
8 28 restrictions respecting the purposes of the fund during the
8 29 donor's lifetime if the donor is judicially declared
8 30 incompetent.

8 31 c. A donor may designate in a gift instrument or other
8 32 record signed by the donor and delivered to the institution
8 33 one or more persons, by name or by description, whether or not
8 34 born at the time of such designation, to enforce the
8 35 restrictions respecting the purposes of the fund for fifty
9 1 years beginning on the date of the donor's death. If the
9 2 donor prevails in any action in district court to enforce
9 3 restrictions respecting the purposes of the fund in a gift
9 4 instrument, the district court may order the institution to
9 5 reimburse the donor's costs, including reasonable counsel
9 6 fees, incurred in connection with the action, if the court
9 7 finds that the institution acted in bad faith or with gross
9 8 negligence.

9 9 d. The provisions in this subsection 5 may be altered by
9 10 contrary provisions in a gift instrument.

9 11 6. Nothing in subsection 5 affects the authority of the
9 12 attorney general to enforce any restriction in a gift
9 13 instrument.

9 14 7. This section does not limit the application of the
9 15 judicial power of cy pres or the right of an institution to

9 16 modify a restriction on the management, investment, purpose,
9 17 or use of a fund as may be permitted under the gift instrument
9 18 or by law.

9 19 Sec. 7. NEW SECTION. 540A.107 REVIEWING COMPLIANCE.
9 20 Compliance with this chapter is determined in light of the
9 21 facts and circumstances existing at the time a decision is
9 22 made or action is taken and not by hindsight.

9 23 Sec. 8. NEW SECTION. 540A.108 ELECTRONIC SIGNATURES.
9 24 This chapter modifies, limits, and supersedes the federal
9 25 Electronic Signatures in Global and National Commerce Act, 15
9 26 U.S.C. } 7001 et seq., but does not modify, limit, or
9 27 supersede section 101 of that Act, 15 U.S.C. } 7001(a), or
9 28 authorize electronic delivery of any of the notices described
9 29 in section 103 of that Act, 15 U.S.C. } 7003(b).

9 30 Sec. 9. NEW SECTION. 540A.109 UNIFORMITY OF APPLICATION
9 31 AND CONSTRUCTION.
9 32 This chapter shall be applied and construed with
9 33 consideration given to the need to promote uniformity of the
9 34 law with respect to the uniform prudent management of
9 35 institutional funds Act among states which enact this law.

10 1 Sec. 10. Sections 540A.1, 540A.2, 540A.3, 540A.4, 540A.6,
10 2 540A.7, 540A.8, and 540A.9, Code 2007, are repealed.

10 3 Sec. 11. APPLICABILITY DATE. This Act applies to
10 4 institutional funds in existence on or after the effective
10 5 date of this Act.

10 6 EXPLANATION

10 7 This bill creates the "Uniform Prudent Management of
10 8 Institutional Funds Act" in Code chapter 540A, replacing the
10 9 "Uniform Management of Institutional Funds Act" in that same
10 10 Code chapter.

10 11 The bill provides certain guidelines and authority to
10 12 certain institutions organized and operated exclusively for
10 13 charitable purposes concerning the management and investment
10 14 of the funds, including endowment funds, held by such
10 15 institutions, in accordance with modern prudence standards
10 16 based upon both the uniform prudent investor Act (UPIA) and
10 17 the uniform management of institutional funds Act (UMIFA).
10 18 The term "institution" includes charitable organizations
10 19 created as nonprofit corporations, unincorporated
10 20 associations, governmental subdivisions or agencies or any
10 21 entity organized and operated exclusively for charitable
10 22 purposes and also includes a trust organized and operated
10 23 exclusively for charitable purposes, but only if a charity
10 24 acts as a trustee.

10 25 The bill requires a charitable institution as defined in
10 26 the bill to consider certain factors in making management and
10 27 investment decisions and in making expenditure decisions for
10 28 an endowment fund of the institution, subject to the intent of
10 29 the donor as expressed in the gift instrument.

10 30 The bill provides that, subject to any specific limitations
10 31 expressly provided in a gift instrument, an institution may
10 32 delegate to an agent outside the institution the management
10 33 and investment of an institutional fund to the same extent an
10 34 institution could prudently delegate under the circumstances.
10 35 The institution is directed to act in good faith in selecting
11 1 an agent, in establishing the scope and terms of the
11 2 delegation, and in reviewing an agent's delegated actions. In
11 3 performing a delegated function, an agent owes a duty to the
11 4 institution to exercise reasonable care to comply with the
11 5 scope and the terms of the delegation. An institution who
11 6 complies with the requirements contained in the bill for
11 7 delegation is not liable for the decisions or actions of an
11 8 agent to which the function was delegated.

11 9 The bill provides provisions relating to the release and
11 10 modification of restrictions on charitable funds to allow more
11 11 efficient management of the funds. If the donor consents, an
11 12 institution may release or modify a restriction contained in a
11 13 gift instrument relating to the management, investment, or
11 14 purpose of an institutional fund, but a release or
11 15 modification shall not allow a fund to be used for a purpose
11 16 other than a charitable use of the fund. An institution can
11 17 ask a court to modify a restriction contained in a gift
11 18 instrument regarding the management or investment of an
11 19 institutional fund if the restriction has become impracticable
11 20 or if the restriction will defeat or substantially impair the
11 21 accomplishment of the purposes of the fund. An institution
11 22 can also release or modify a restriction contained in a gift
11 23 instrument without court approval if the institutional fund
11 24 subject to the restriction has a total value of less than
11 25 \$50,000, more than 20 years have elapsed since the fund was
11 26 established, and the institution uses the fund in a manner

11 27 consistent with the charitable purposes expressed in the gift
11 28 instrument.

11 29 The bill provides that a donor who gives a gift to an
11 30 endowment fund that exceeds \$100,000 may file a lawsuit to
11 31 enforce restrictions respecting the purposes of the fund
11 32 established by the donor in the gift instrument.

11 33 The bill provides that compliance with the provisions of
11 34 the bill shall be determined in light of the facts and
11 35 circumstances existing at the time a decision is made or an
12 1 action is taken and not by hindsight and contains a provision
12 2 relating to the electronic signatures Act.

12 3 The bill applies to institutional funds in existence on or
12 4 after the effective date of the bill.

12 5 LSB 5241HC 82

12 6 rh/rj/5