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# A BILL FOR AN ACT

RELATING TO THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 **UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT**

6 § -1 **Short title.** This chapter may be cited as the  
7 Uniform Prudent Management of Institutional Funds Act.

8 § -2 **Definitions.** As used in this chapter, unless the  
9 context otherwise requires:

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

14 "Community foundation" means a community foundation or  
15 community trust recognized as exempt from federal income tax and  
16 referred to in Section 170(c) of the Internal Revenue Code of  
17 1986, as amended, and which meets the single entity requirements



1 of United States Treasury Regulations Sections 1.170A-9(e) (10-  
2 14) adopted thereunder.

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

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

12 "Institution" means:

- 13 (1) A person, other than an individual, organized and  
14 operated exclusively for charitable purposes;  
15 (2) A government or governmental subdivision, agency, or  
16 instrumentality, to the extent that it holds funds  
17 exclusively for a charitable purpose; or  
18 (3) A trust that had both charitable and noncharitable  
19 interests, after all noncharitable interests have  
20 terminated.

21 "Institutional fund" means a fund held by an institution  
22 exclusively for charitable purposes. The term does not include:



- 1 (1) Program-related assets;
- 2 (2) A fund held for an institution by a trustee that is
- 3 not an institution, unless the fund is held
- 4 exclusively for the benefit of a community foundation;
- 5 or
- 6 (3) A fund in which a beneficiary that is not an
- 7 institution has an interest, other than an interest
- 8 that could arise upon violation or failure of the
- 9 purposes of the fund.

10 "Person" means an individual, corporation, business trust,  
 11 estate, trust, partnership, limited liability company,  
 12 association, joint venture, public corporation, government or  
 13 governmental subdivision, agency, or instrumentality, or any  
 14 other legal or commercial entity.

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

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

21 **§ -3 Standard of conduct in managing and investing an**  
 22 **institutional fund.** (a) Subject to the intent of a donor



1 expressed in a gift instrument, an institution, in managing and  
2 investing an institutional fund, shall consider the charitable  
3 purposes of the institution and the purposes of the  
4 institutional fund.

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

11 (c) In managing and investing an institutional fund, an  
12 institution shall:

13 (1) Incur only costs that are appropriate and reasonable  
14 in relation to the assets, the purposes of the  
15 institution, and the skills available to the  
16 institution; and

17 (2) Make a reasonable effort to verify facts relevant to  
18 the management and investment of the fund.

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

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



- 1           (1) In managing and investing an institutional fund, the  
2           following factors, if relevant, shall be considered:  
3           (A) General economic conditions;  
4           (B) The possible effect of inflation or deflation;  
5           (C) The expected tax consequences, if any, of  
6           investment decisions or strategies;  
7           (D) The role that each investment or course of action  
8           plays within the overall investment portfolio of  
9           the fund;  
10          (E) The expected total return from income and the  
11          appreciation of investments;  
12          (F) Other resources of the institution;  
13          (G) The needs of the institution and the fund to make  
14          distributions and to preserve capital; and  
15          (H) An asset's special relationship or special value,  
16          if any, to the charitable purposes of the  
17          institution;
- 18          (2) Management and investment decisions about an  
19          individual asset shall not be made in isolation but  
20          rather in the context of the institutional fund's  
21          portfolio of investments as a whole and an overall



1 investment strategy having risk and return objectives  
2 reasonably suited to the fund and to the institution;

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

7 (4) An institution shall diversify the investments of an  
8 institutional fund unless the institution reasonably  
9 determines that, because of special circumstances, the  
10 purposes of the fund are better served without  
11 diversification;

12 (5) Within a reasonable time after receiving property, an  
13 institution shall make and carry out decisions  
14 concerning the retention or disposition of the  
15 property or the rebalancing of a portfolio, to bring  
16 the institutional fund into compliance with the  
17 purposes, terms, and distribution requirements of the  
18 institution as necessary to meet other circumstances  
19 of the institution and the requirements of this  
20 chapter; and

21 (6) A person who has special skills or expertise, or is  
22 selected in reliance upon the person's representation



1           that the person has special skills or expertise, has a  
2           duty to use those skills or that expertise in managing  
3           and investing institutional funds.

4           **§ -4 Appropriation for expenditure or accumulation of**  
5 **endowment fund; rules of construction.** (a) Subject to the  
6 intent of a donor expressed in the gift instrument, an  
7 institution may appropriate for expenditure or accumulate so  
8 much of an endowment fund as the institution determines is  
9 prudent for the uses, benefits, purposes, and duration for which  
10 the endowment fund is established. Unless stated otherwise in  
11 the gift instrument, the assets in an endowment fund shall be  
12 donor-restricted assets until appropriated for expenditure by  
13 the institution. In making a determination to appropriate or  
14 accumulate, the institution shall act in good faith, with the  
15 care that an ordinarily prudent person in a like position would  
16 exercise under similar circumstances, and shall consider, if  
17 relevant, the following factors:

- 18           (1) The duration and preservation of the endowment fund;
- 19           (2) The purposes of the institution and the endowment  
20           fund;
- 21           (3) General economic conditions;
- 22           (4) The possible effect of inflation or deflation;



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

3 (6) Other resources of the institution; and

4 (7) The investment policy of the institution.

5 (b) To limit the authority to appropriate for expenditure  
6 or accumulate under subsection (a), a gift instrument shall  
7 specifically state the limitation.

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

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

16 (2) Do not otherwise limit the authority to appropriate  
17 for expenditure or accumulate under subsection (a).

18 **§ -5 Delegation of management and investment functions.**

19 (a) Subject to any specific limitation set forth in a gift  
20 instrument or otherwise provided by law, an institution may  
21 delegate to an external agent the management and investment of  
22 an institutional fund to the extent that an institution could



1 prudently delegate under the circumstances. An institution  
2 shall act in good faith, with the care that an ordinarily  
3 prudent person in a like position would exercise under similar  
4 circumstances, in:

5 (1) Selecting an agent;

6 (2) Establishing the scope and terms of the delegation  
7 consistent with the purposes of the institution and  
8 the institutional fund; and

9 (3) Periodically reviewing the agent's actions to monitor  
10 the agent's performance and compliance with the scope  
11 and terms of the delegation.

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

15 (c) An institution that complies with subsection (a) shall  
16 not be liable for the decisions or actions of an agent to which  
17 the function was delegated.

18 (d) By accepting delegation of a management or investment  
19 function from an institution that is subject to the laws of this  
20 State, an agent submits to the jurisdiction of the courts of  
21 this State in all proceedings arising from or related to the  
22 delegation or the performance of the delegated function.



1 (e) An institution may delegate management and investment  
2 functions to its committees, officers, or employees as  
3 authorized by the laws of this State.

4 **§ -6 Release or modification of restrictions on**  
5 **management, investment, or purpose.** (a) If the donor consents  
6 in a record, an institution may release or modify, in whole or  
7 in part, a restriction on the management, investment, or purpose  
8 of an institutional fund contained in a gift instrument. A  
9 release or modification shall not allow a fund to be used for a  
10 purpose other than a charitable purpose of the institution.

11 (b) The court, upon application of an institution, may  
12 modify a restriction contained in a gift instrument regarding  
13 the management or investment of an institutional fund if the  
14 restriction has become impracticable or wasteful, if it impairs  
15 the management or investment of the fund, or if, because of  
16 circumstances not anticipated by the donor, a modification of a  
17 restriction will further the purposes of the fund. The  
18 institution shall notify the attorney general of the  
19 application, and the attorney general shall be given an  
20 opportunity to be heard. To the extent practicable, any  
21 modification shall be made in accordance with the donor's  
22 probable intention.



1 (c) If a particular charitable purpose or a restriction  
2 contained in a gift instrument on the use of an institutional  
3 fund becomes unlawful, impracticable, impossible to achieve, or  
4 wasteful, the court, upon application of an institution, may  
5 modify the purpose of the fund or the restriction on the use of  
6 the fund in a manner consistent with the charitable purposes  
7 expressed in the gift instrument. The institution shall notify  
8 the attorney general of the application, and the attorney  
9 general shall be given an opportunity to be heard.

10 (d) If an institution determines that a restriction  
11 contained in a gift instrument on the management, investment, or  
12 purpose of an institutional fund is unlawful, impracticable,  
13 impossible to achieve, or wasteful, the institution, without  
14 application to the court, but with the consent of the attorney  
15 general, may modify the purpose of the fund or the restriction  
16 on the use of the fund in a manner consistent with the  
17 charitable purposes expressed in the gift instrument if the fund  
18 subject to the restriction has a total value of less than  
19 \$250,000.

20 (e) If an institution determines that a restriction  
21 contained in a gift instrument on the management, investment, or  
22 purpose of an institutional fund is unlawful, impracticable,



1 impossible to achieve, or wasteful, the institution, sixty days  
2 after notification to the attorney general, may release or  
3 modify the restriction, in whole or part, if:

4 (1) The institutional fund subject to the restriction has  
5 a total value of less than \$50,000;

6 (2) More than twenty years have elapsed since the fund was  
7 established; and

8 (3) The institution uses the property in a manner  
9 consistent with the charitable purposes expressed in  
10 the gift instrument.

11 **§ -7 Reviewing compliance.** Compliance with this chapter  
12 shall be determined in light of the facts and circumstances  
13 existing at the time a decision is made or action is taken, and  
14 not by hindsight.

15 **§ -8 Application to existing institutional funds.** This  
16 chapter shall apply to institutional funds existing on or  
17 established after July 1, 2009. As applied to institutional  
18 funds existing on July 1, 2009, this chapter shall govern only  
19 decisions made or actions taken on or after that date.

20 **§ -9 Relation to Electronic Signatures in Global and**  
21 **National Commerce Act.** This chapter shall modify, limit, and  
22 supersede the Electronic Signatures in Global and National



1 Commerce Act, 15 U.S.C. Section 7001 et seq., but shall not  
2 modify, limit, or supersede Section 101(c) of that Act, 15  
3 U.S.C. Section 7001(c), or authorize electronic delivery of any  
4 of the notices described in Section 103(b) of that Act, 15  
5 U.S.C. Section 7003(b)."

6 SECTION 2. Chapter 517D, Hawaii Revised Statutes, is  
7 repealed.

8 SECTION 3. This Act shall take effect on July 1, 2009.



**Report Title:**

Uniform Prudent Management of Institutional Funds Act

**Description:**

Enacts uniform prudent management of institutional funds act to replace and update existing uniform management of institutional funds act. Provides guidance and authority to charitable organizations concerning the management and investment of funds held by those organizations. Provides additional protections for charities and also protects the interests of donors. Modernizes rules governing expenditures from endowment funds. Gives institutions ability to cope more easily with fluctuations in the value of the endowment. Updates provisions governing the release and modification of restrictions on charitable funds to permit more efficient management of these funds. (HB618 CD1)

