House Bill 972 (AS PASSED HOUSE AND SENATE)

By: Representatives Tumlin of the 38th, Lane of the 167th, and Lindsey of the 54th

:

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 15 of Title 44 of the Official Code of Georgia Annotated, relating to the management of institutional funds, so as to enact the "Uniform Prudent Management of Institutional Funds Act"; to provide standards for charities to use in managing investments and spending from endowments; to provide for the management of institutional funds; to provide for a short title; to provide for applicability; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by revising Chapter 15, relating to the management of institutional funds, in its entirety as follows:

″CHAPTER 15

44-15-1.

This chapter shall be known and may be cited as the 'Uniform Prudent Management of Institutional Funds Act.'

44-15-2.

As used in this chapter, the term:

(1) '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.

(2) '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 shall not include assets that an institution designates as an endowment fund for its own use.

(3) '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.

(4) 'Institution' means:

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

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

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

(5) 'Institutional fund' means a fund held by an institution exclusively for charitable purposes. The term shall not include:

(A) Program related assets;

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

(C) A fund in which a beneficiary who is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) 'Program related asset' means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) '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.

44-15-3.

(a) Subject to the intent of a donor expressed in a gift instrument or any express written agreement between the donor and the institution, 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 chapter, each person responsible for managing and investing an institutional fund shall manage and invest such fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, considering the purposes, terms, distribution requirements, and other circumstances of the institutional fund.

(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 institutional fund, and the skills reasonably available to the institution; and

(2) Shall make a reasonable effort to verify facts relevant to the management and investment of such 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 rules 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 such 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 such 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 or to the donor;

(2) Management and investment decisions about an individual asset shall not be made in isolation but rather 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 institutional fund and to the institution;

(3) An institution may invest in any kind of property or type of investment consistent with this Code section;

(4) An institution shall reasonably manage the risk of concentrated holdings of assets by diversifying the investments of the institutional fund or by using some other appropriate mechanism, except as provided in this paragraph, as follows:

(A) The duty imposed by this paragraph shall not apply if the institution reasonably determines that, because of special circumstances, or because of the specific purposes, terms, distribution requirements, and other circumstances of the institutional fund, the purposes of such fund are better served without complying with the duty. For purposes of this paragraph, special circumstances shall include an asset´s special relationship or special value, if any, to the charitable purposes of the institution or to the donor;

(B) No person responsible for managing and investing an institutional fund shall be liable for failing to comply with the duty imposed by this paragraph to the extent that the terms of the gift instrument or express written agreement between the donor and the institution limits or waives the duty; and

(C) The governing board of an institution may retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(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 the rebalancing of a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution or the institutional fund as necessary to meet other circumstances of the institution or the institutional fund and the requirements of this chapter; and

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

44-15-4.

(a) Subject to the intent of a donor expressed in the gift instrument or to any express written agreement between a donor and an institution, an institution may appropriate for expenditure or accumulate assets of an endowment fund as the institution determines shall be 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 shall be donor restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate assets, 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 assets for expenditure or accumulation under subsection (a) of this Code 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 other words of similar meaning shall:

(1) Create an endowment fund of permanent duration, unless otherwise provided by the gift instrument for limiting the duration of such fund; and

(2) Not otherwise limit the authority to appropriate assets for expenditure or accumulation under subsection (a) of this Code section.

44-15-5.

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, 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 owes 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 Code section shall not be liable for the decisions or actions of an agent for the performance of a delegated function.

(d) By accepting the delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits 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 otherwise authorized by law.

44-15-6.

(a) If the donor or a donor´s designee 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. A release or modification may not allow an institutional 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 such fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of such fund. The institution shall notify the Attorney General 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 such fund or the restriction on the use of such fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, 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, 60 days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

(1) The institutional fund subject to the restriction has a total value of less than $100,000.00;

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

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

44-15-7.

Compliance with this chapter 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. This chapter applies to institutional funds existing on or established after July 1, 2008. As applied to institutional funds existing on July 1, 2008, this chapter governs only decisions made or actions taken on or after that date. This chapter shall not authorize electronic delivery of any legally required notice.

44-15-8.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.″

SECTION 2.

This Act shall become effective on July 1, 2008.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.