

SENATE AMENDMENTS

2nd Printing

By: Paxton, Cook of Navarro

H.B. No. 860

A BILL TO BE ENTITLED

AN ACT

relating to management, investment, and expenditure of institutional funds and adoption of the Uniform Prudent Management of Institutional Funds Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 163, Property Code, is amended to read as follows:

CHAPTER 163. MANAGEMENT, INVESTMENT, AND EXPENDITURE OF
INSTITUTIONAL FUNDS

Sec. 163.001. SHORT TITLE. This chapter may be cited as the Uniform Prudent Management of Institutional Funds Act.

Sec. 163.002. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) institutions organized and operated exclusively for a charitable purpose perform essential and needed services in the state;

(2) uncertainty exists regarding the prudence standards for the management and investment of charitable funds and for endowment spending by institutions described by Subdivision (1); and

(3) the institutions, their officers, directors, and trustees, and the citizens of this state will benefit from removal of the uncertainty regarding applicable prudence standards and by permitting endowment funds to be invested for the long-term goals

1 of achieving growth and maintaining purchasing power without
2 adversely affecting the availability of funds for current
3 expenditure.

4 (b) The purpose of this chapter is to provide guidance and
5 authority through modern articulations of prudence standards for
6 the management and investment of charitable funds and for endowment
7 spending by institutions organized and operated exclusively for a
8 charitable purpose in order to provide uniformity and remove
9 uncertainty regarding those standards.

10 Sec. 163.003. DEFINITIONS. In this chapter:

11 (1) "Charitable purpose" means the promotion of a
12 scientific, educational, philanthropic, or environmental purpose,
13 social welfare, the arts and humanities, or another civic or public
14 purpose described by Section 501(c)(3) of the Internal Revenue Code
15 of 1986.

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

21 (3) "Gift instrument" means a record or records,
22 including an institutional solicitation, under which property is
23 granted to, transferred to, or held by an institution as an
24 institutional fund.

25 (4) "Institution" means:

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

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

4 (C) a trust that had both charitable and
5 noncharitable interests, after all noncharitable interests have
6 terminated.

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

10 (A) program-related assets;

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

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

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

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

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

27 Sec. 163.004. STANDARD OF CONDUCT IN MANAGING AND INVESTING

1 INSTITUTIONAL FUND. (a) Subject to the intent of a donor expressed
2 in a gift instrument, an institution, in managing and investing an
3 institutional fund, shall consider the charitable purposes of the
4 institution and the purposes of the institutional fund.

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

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

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

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

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

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

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

24 (A) general economic conditions;

25 (B) the possible effect of inflation or
26 deflation;

27 (C) the expected tax consequences, if any, of

1 investment decisions or strategies;

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

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

6 (F) other resources of the institution;

7 (G) the needs of the institution and the fund to
8 make distributions and to preserve capital; and

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

11 (2) Management and investment decisions about an
12 individual asset must be made not in isolation but rather in the
13 context of the institutional fund's portfolio of investments as a
14 whole and as a part of an overall investment strategy having risk
15 and return objectives reasonably suited to the fund and to the
16 institution.

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

20 (4) An institution shall diversify the investments of
21 an institutional fund unless the institution reasonably determines
22 that, because of special circumstances, the purposes of the fund
23 are better served without diversification.

24 (5) Within a reasonable time after receiving property,
25 an institution shall make and carry out decisions concerning the
26 retention or disposition of the property or to rebalance a
27 portfolio, in order to bring the institutional fund into compliance

1 with the purposes, terms, and distribution requirements of the
2 institution as necessary to meet other circumstances of the
3 institution and the requirements of this chapter.

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

9 Sec. 163.005. APPROPRIATION FOR EXPENDITURE OR
10 ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION. (a)
11 Subject to the intent of a donor expressed in the gift instrument
12 and to Subsections (d) and (e), an institution may appropriate for
13 expenditure or accumulate so much of an endowment fund as the
14 institution determines is prudent for the uses, benefits, purposes,
15 and duration for which the endowment fund is established. Unless
16 stated otherwise in the gift instrument, the assets in an endowment
17 fund are donor-restricted assets until appropriated for
18 expenditure by the institution. In making a determination to
19 appropriate or accumulate, the institution shall act in good faith,
20 with the care that an ordinarily prudent person in a like position
21 would exercise under similar circumstances, and shall consider, if
22 relevant, the following factors:

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

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

27 (3) general economic conditions;

1 (4) the possible effect of inflation or deflation;

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

4 (6) other resources of the institution; and

5 (7) the investment policy of the institution.

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

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

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

17 (2) do not otherwise limit the authority to
18 appropriate for expenditure or accumulate under Subsection (a).

19 (d) The appropriation for expenditure in any year of an
20 amount greater than seven percent of the fair market value of an
21 endowment fund with an aggregate value of \$1 million or more,
22 calculated on the basis of market values determined at least
23 quarterly and averaged over a period of not less than three years
24 immediately preceding the year in which the appropriation for
25 expenditure was made, creates a rebuttable presumption of
26 imprudence. For an endowment fund in existence for fewer than three
27 years, the fair market value of the endowment fund must be

1 calculated for the period the endowment fund has been in existence.

2 This subsection does not:

3 (1) apply to an appropriation for expenditure
4 permitted under law other than this chapter or by the gift
5 instrument; or

6 (2) create a presumption of prudence for an
7 appropriation for expenditure of an amount less than or equal to
8 seven percent of the fair market value of the endowment fund.

9 (e) For an institution with an endowment fund with an
10 aggregate value of less than \$1 million, a rebuttable presumption
11 of imprudence is created if more than five percent of the fair
12 market value of the endowment fund is appropriated for expenditure
13 in any year, calculated on the basis of market values determined at
14 least quarterly and averaged over a period of not less than three
15 years immediately preceding the year in which the appropriation for
16 expenditure was made. For an endowment fund in existence for fewer
17 than three years, the fair market value of the endowment fund must
18 be calculated for the period the endowment fund has been in
19 existence. This subsection does not:

20 (1) apply to an appropriation for expenditure
21 permitted under law other than this chapter or by the gift
22 instrument; or

23 (2) create a presumption of prudence for an
24 appropriation for expenditure of an amount less than or equal to
25 five percent of the fair market value of the endowment fund.

26 (f) If an institution pools the assets of individual
27 endowment funds for collective investment, this section applies to

1 the pooled fund and does not apply to individual endowment funds,
2 including individual endowment funds for which the nature of the
3 underlying asset or donor restrictions preclude inclusion in a pool
4 but which are managed by the institution in accordance with a
5 collective investment policy.

6 Sec. 163.006. DELEGATION OF MANAGEMENT AND INVESTMENT
7 FUNCTIONS. (a) Subject to any specific limitation set forth in a
8 gift instrument or in law other than this chapter, an institution
9 may delegate to an external agent the management and investment of
10 an institutional fund to the extent that an institution could
11 prudently delegate under the circumstances. An institution shall
12 act in good faith, with the care that an ordinarily prudent person
13 in a like position would exercise under similar circumstances, in:

14 (1) selecting an agent;

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

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

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

24 (c) An institution that complies with Subsection (a) is not
25 liable for the decisions or actions of an agent to which the
26 function was delegated.

27 (d) By accepting delegation of a management or investment

1 function from an institution that is subject to the laws of this
2 state, an agent submits to the jurisdiction of the courts of this
3 state in all proceedings arising from or related to the delegation
4 or the performance of the delegated function.

5 (e) An institution may delegate management and investment
6 functions to its committees, officers, or employees as authorized
7 by law of this state other than this chapter.

8 Sec. 163.007. RELEASE OR MODIFICATION OF RESTRICTIONS ON
9 MANAGEMENT, INVESTMENT, OR PURPOSE. (a) If the donor consents in a
10 record, an institution may release or modify, in whole or in part, a
11 restriction contained in a gift instrument on the management,
12 investment, or purpose of an institutional fund. A release or
13 modification may not allow a fund to be used for a purpose other
14 than a charitable purpose of the institution.

15 (b) The court, upon application of an institution, may
16 modify a restriction contained in a gift instrument regarding the
17 management or investment of an institutional fund if the
18 restriction has become impracticable or wasteful, if it impairs the
19 management or investment of the fund, or if, because of
20 circumstances not anticipated by the donor, a modification of a
21 restriction will further the purposes of the fund. Chapter 123
22 applies to a proceeding under this subsection. To the extent
23 practicable, any modification must be made in accordance with the
24 donor's probable intention.

25 (c) If a particular charitable purpose or a restriction
26 contained in a gift instrument on the use of an institutional fund
27 becomes unlawful, impracticable, impossible to achieve, or

1 wasteful, the court, upon application of an institution, may modify
2 the purpose of the fund or the restriction on the use of the fund in
3 a manner consistent with the charitable purposes expressed in the
4 gift instrument. Chapter 123 applies to a proceeding under this
5 subsection.

6 (d) If an institution determines that a restriction
7 contained in a gift instrument on the management, investment, or
8 purpose of an institutional fund is unlawful, impracticable,
9 impossible to achieve, or wasteful, the institution, 60 days after
10 receipt of notice by the attorney general, may release or modify the
11 restriction, in whole or part, if:

12 (1) the institutional fund subject to the restriction
13 has a total value of less than \$25,000;

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

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

19 (e) The notification to the attorney general under
20 Subsection (d) must be accompanied by a copy of the gift instrument
21 and a statement of facts sufficient to evidence compliance with
22 Subsections (d)(1), (2), and (3).

23 Sec. 163.008. REVIEWING COMPLIANCE. Compliance with this
24 chapter is determined in light of the facts and circumstances
25 existing at the time a decision is made or action is taken, and not
26 by hindsight.

27 Sec. 163.009. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL

1 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and
2 supersedes the provisions of the Electronic Signatures in Global
3 and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does
4 not modify, limit, or supersede Section 101 of that Act (15 U.S.C.
5 Section 7001(a)) or authorize electronic delivery of any of the
6 notices described in Section 103 of that Act (15 U.S.C. Section
7 7003(b)).

8 Sec. 163.010. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
9 In applying and construing this chapter, consideration must be
10 given to the need to promote uniformity of the law with respect to
11 the subject matter of this chapter among states that enact a law
12 substantially similar to this chapter.

13 Sec. 163.011. APPLICABILITY OF OTHER PARTS OF CODE.
14 Subtitle B, Title 9 (the Texas Trust Code), does not apply to any
15 institutional fund subject to this chapter.

16 ~~[Sec. 163.001. SHORT TITLE. This chapter may be cited as~~
17 ~~the Uniform Management of Institutional Funds Act.~~

18 ~~[Sec. 163.002. LEGISLATIVE FINDINGS AND PURPOSE. (a) The~~
19 ~~legislature finds that:~~

20 ~~[(1) publicly and privately supported educational,~~
21 ~~religious, and charitable organizations perform essential and~~
22 ~~needed services in the state,~~

23 ~~[(2) uncertainty regarding legal restrictions on the~~
24 ~~management, investment, and expenditure of endowment funds of the~~
25 ~~organizations has in many instances precluded obtaining the highest~~
26 ~~available return on endowment funds, and~~

27 ~~[(3) the organizations, their officers, directors,~~

1 ~~and trustees, and the citizens of this state will benefit from~~
2 ~~removal of the uncertainty and by permitting endowment funds to be~~
3 ~~invested for the long-term goals of achieving growth and~~
4 ~~maintaining purchasing power without adversely affecting~~
5 ~~availability of funds for current expenditure.~~

6 ~~[(b) The purpose of this chapter is to provide guidelines~~
7 ~~for the management, investment, and expenditure of endowment funds~~
8 ~~of publicly and privately supported educational, religious, and~~
9 ~~charitable organizations in order to eliminate the uncertainty~~
10 ~~regarding legal restrictions on the management, investment, and~~
11 ~~expenditure of the funds and to enable the organizations to~~
12 ~~maximize their resources.~~

13 ~~[Sec. 163.003. DEFINITIONS. In this chapter:~~

14 ~~[(1) "Endowment fund" means an institutional fund, or~~
15 ~~any part of such a fund, not wholly expendable by the institution on~~
16 ~~a current basis under the terms of the applicable gift instrument.~~

17 ~~[(2) "Gift instrument" means a will, deed, grant,~~
18 ~~conveyance, agreement, memorandum, writing, or other governing~~
19 ~~document, including the terms of any institutional solicitations~~
20 ~~from which an institutional fund resulted, under which property is~~
21 ~~transferred to or held by an institution as an institutional fund.~~

22 ~~[(3) "Governing board" means the body responsible for~~
23 ~~the management of an institution or of an institutional fund.~~

24 ~~[(4) "Historic dollar value" means the aggregate fair~~
25 ~~market value in dollars of:~~

26 ~~[(A) an endowment fund at the time it became an~~
27 ~~endowment fund,~~

1 ~~[(B) each subsequent donation to the fund at the~~
2 ~~time it is made, and~~

3 ~~[(C) each accumulation made pursuant to a~~
4 ~~direction in the applicable gift instrument at the time the~~
5 ~~accumulation is added to the fund.~~

6 ~~[(5) "Institution" means an incorporated or~~
7 ~~unincorporated organization organized and operated exclusively for~~
8 ~~educational, religious, or charitable purposes, an institution of~~
9 ~~higher education, or a foundation chartered for the benefit of an~~
10 ~~institution of higher education. The term does not include a~~
11 ~~private foundation as defined by Section 509(a) of the Internal~~
12 ~~Revenue Code of 1986.~~

13 ~~[(6) "Institutional fund" means a fund held by an~~
14 ~~institution for its exclusive use, benefit, or purposes, except a~~
15 ~~fund held for an institution by a trustee that is not an institution~~
16 ~~or a fund in which a beneficiary that is not an institution has an~~
17 ~~interest other than possible rights that could arise on violation~~
18 ~~or failure of the purposes of the fund.~~

19 ~~[(7) "Institution of higher education" has the meaning~~
20 ~~assigned by Section 61.003, Education Code.~~

21 ~~[Sec. 163.004. EXPENDITURES. (a) A governing board may~~
22 ~~appropriate for expenditure, for the uses and purposes for which~~
23 ~~the fund is established, the net appreciation, realized and~~
24 ~~unrealized, in the fair market value of the assets of an endowment~~
25 ~~fund over the historic dollar value of the fund to the extent~~
26 ~~prudent under the standard provided by Section 163.007.~~

27 ~~[(b) A determination of the historic dollar value made in~~

1 ~~good faith by the governing board is conclusive.~~

2 ~~[(c) Subsection (a) does not limit the authority of the~~
3 ~~governing board to expend funds as permitted under other law, the~~
4 ~~terms of the applicable gift instrument, or the charter or articles~~
5 ~~of incorporation of the institution.~~

6 ~~[(d) Subsection (a) does not apply if the applicable gift~~
7 ~~instrument indicates the donor's intention that the net~~
8 ~~appreciation not be expended. A restriction on the expenditure of~~
9 ~~net appreciation may not be implied from a designation of a gift as~~
10 ~~an endowment or from a direction or authorization in the applicable~~
11 ~~gift instrument to use only "income." This rule of construction~~
12 ~~applies to gift instruments executed or in effect before, on, or~~
13 ~~after the effective date of this chapter.~~

14 ~~[Sec. 163.005. INVESTMENT AUTHORITY. In addition to an~~
15 ~~investment authorized by other law or by the applicable gift~~
16 ~~instrument, and without restriction to investments a fiduciary may~~
17 ~~make, the governing board, subject to any specific limitations in~~
18 ~~the applicable gift instrument or the applicable law other than law~~
19 ~~relating to investments by a fiduciary, may:~~

20 ~~[(1) invest an institutional fund in any real or~~
21 ~~personal property, including mortgages, stocks, bonds, debentures,~~
22 ~~and other securities of profit or nonprofit corporations, shares in~~
23 ~~or obligations of associations, partnerships, or individuals, and~~
24 ~~obligations of any governmental entity, whether or not the property~~
25 ~~produces a current return,~~

26 ~~[(2) retain property contributed by a donor to an~~
27 ~~institutional fund,~~

1 ~~[(3) include all or any portion of an institutional~~
2 ~~fund in a pooled or common fund maintained by the institution, and~~

3 ~~[(4) invest all or any portion of an institutional~~
4 ~~fund in a pooled or common fund, including shares or interests in~~
5 ~~regulated investment companies, mutual funds, common trust funds,~~
6 ~~investment partnerships, real estate investment trusts, or similar~~
7 ~~organizations in which funds are commingled and investment~~
8 ~~determinations are made by persons other than the governing board.~~

9 ~~[Sec. 163.006. DELEGATION OF INVESTMENT MANAGEMENT. Except~~
10 ~~as provided by the applicable gift instrument, the governing board~~
11 ~~may:~~

12 ~~[(1) delegate to its committees, officers, or~~
13 ~~employees of the institution or the fund, and other agents,~~
14 ~~including investment counsel, the authority to act for the board in~~
15 ~~investment of institutional funds,~~

16 ~~[(2) contract with independent investment advisers,~~
17 ~~investment counsel, investment managers, banks, or trust companies~~
18 ~~to act for the board in investment of institutional funds, and~~

19 ~~[(3) authorize payment of compensation for investment~~
20 ~~advisory or management services.~~

21 ~~[Sec. 163.007. STANDARD OF CONDUCT. In the administration~~
22 ~~of the powers to appropriate appreciation, to make and retain~~
23 ~~investments, to develop and apply investment and spending policies,~~
24 ~~and to delegate investment management of institutional funds,~~
25 ~~members of a governing board shall exercise ordinary business care~~
26 ~~and prudence under the facts and circumstances prevailing at the~~
27 ~~time of the action or decision. The members shall consider both the~~

1 ~~long-term and short-term needs of the institution in carrying out~~
2 ~~its educational, religious, or charitable purposes, its present and~~
3 ~~anticipated financial requirements, the expected return on its~~
4 ~~investments, price level trends, and general economic conditions.~~

5 ~~[Sec. 163.008. RELEASE OF RESTRICTIONS ON USE OR~~
6 ~~INVESTMENT. (a) With the written consent of the donor, the~~
7 ~~governing board may release, in whole or in part, a restriction~~
8 ~~imposed by the applicable gift instrument on the use or investment~~
9 ~~of an institutional fund.~~

10 ~~[(b) If written consent of the donor cannot be obtained~~
11 ~~because of the donor's death, disability, unavailability, or~~
12 ~~impossibility of identification, the governing board may apply in~~
13 ~~the name of the institution to the district court for release of a~~
14 ~~restriction imposed by a gift instrument on the use or investment of~~
15 ~~an institutional fund. The attorney general must be notified of the~~
16 ~~application and given an opportunity to intervene in the same~~
17 ~~manner as provided by Chapter 123 for a proceeding involving a~~
18 ~~charitable trust. If the court finds that the restriction is~~
19 ~~obsolete, inappropriate, or impracticable, it may by order release~~
20 ~~the restriction in whole or in part. A release under this~~
21 ~~subsection may not change an endowment fund to another type of fund.~~

22 ~~[(c) A release under this section may not allow a fund to be~~
23 ~~used for a purpose other than the educational, religious, or~~
24 ~~charitable purposes of the affected institution.~~

25 ~~[(d) This section does not limit the application of the~~
26 ~~doctrine of "cy pres."~~

27 ~~[Sec. 163.009. APPLICABILITY OF OTHER PARTS OF CODE.~~

1 ~~Subtitle B, Title 9 (the Texas Trust Code), does not apply to any~~
2 ~~institutional fund subject to this chapter.]~~

3 SECTION 2. Sections 43.006(a) and (k), Education Code, are
4 amended to read as follows:

5 (a) The State Board of Education may delegate investment
6 authority [~~and contract~~] for the investment of the permanent school
7 fund to the same extent as an institution [~~the governing board of an~~
8 ~~institution of higher education~~] with respect to an institutional
9 fund under Chapter 163, Property Code.

10 (k) In this section, "institution" [+
11 [~~(1) "Governing board"~~] and "institutional fund" have
12 the meanings assigned by Chapter 163, Property Code.

13 [~~(2) "Institution of higher education" has the meaning~~
14 ~~assigned by Section 61.003.~~]

15 SECTION 3. Section 66.08(a), Education Code, is amended to
16 read as follows:

17 (a) The board may delegate investment authority [~~and~~
18 ~~contract~~] for the investment of the permanent university fund to
19 the same extent as an institution [~~the governing board of an~~
20 ~~institution of higher education~~] with respect to an institutional
21 fund under Chapter 163, Property Code.

22 SECTION 4. Section 66.08(o)(2), Education Code, is amended
23 to read as follows:

24 (2) "Institution" and "institutional fund"
25 [~~"Governing board," "institutional fund," and "institution of~~
26 ~~higher education"~~] have the meanings assigned by Chapter 163,
27 Property Code.

1 SECTION 5. (a) Chapter 163, Property Code, as amended by
2 this Act, applies only to an institutional fund existing on or
3 established after the effective date of this Act.

4 (b) With respect to an institutional fund existing on the
5 effective date of this Act, Chapter 163, Property Code, as amended
6 by this Act, applies only to an action taken or decision made
7 relating to the institutional fund occurring after August 31, 2007.
8 An action taken or decision made relating to the institutional fund
9 that occurs before the effective date of this Act is governed by
10 Chapter 163, Property Code, as that chapter existed before
11 amendment by this Act, and that chapter is continued in effect for
12 that purpose.

13 SECTION 6. This Act takes effect September 1, 2007.

ADOPTED

MAY 23 2007

Lotay Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: Robert Duncan

1 Amend A.B. No. 060 by adding the following
2 appropriately numbered sections:

3 SECTION __. Section 404.024, Government Code, is
4 amended by amending Subsections (b) and (l) and adding
5 Subsections (m) and (n) to read as follows:

6 (b) State funds not deposited in state depositories
7 shall be invested by the comptroller in:

8 (1) direct security repurchase agreements;

9 (2) reverse security repurchase agreements;

10 (3) direct obligations of or obligations the
11 principal and interest of which are guaranteed by the United
12 States;

13 (4) direct obligations of or obligations
14 guaranteed by agencies or instrumentalities of the United
15 States government;

16 (5) bankers' acceptances that:

17 (A) are eligible for purchase by the Federal
18 Reserve System;

19 (B) do not exceed 270 days to maturity; and

20 (C) are issued by a bank whose other
21 comparable short-term obligations are rated in [that has
22 received] the highest short-term [credit] rating category,
23 within which there may be subcategories or gradations
24 indicating relative standing, including such subcategories or
25 gradations as "rating category" or "rated," by a nationally
26 recognized statistical rating organization, as defined by

1 Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated under the
2 Investment Company Act of 1940 by the Securities and Exchange
3 Commission [~~investment rating firm~~];

4 (6) commercial paper that:

5 (A) does not exceed 270 days to maturity; and

6 (B) except as provided by Subsection (i), is
7 issued by an entity whose other comparable short-term
8 obligations are rated in [~~has received~~] the highest
9 short-term [~~credit~~] rating category by a nationally
10 recognized statistical rating organization [~~investment rating~~
11 ~~firm~~];

12 (7) contracts written by the treasury in which the
13 treasury grants the purchaser the right to purchase
14 securities in the treasury's marketable securities portfolio
15 at a specified price over a specified period and for which
16 the treasury is paid a fee and specifically prohibits naked-
17 option or uncovered option trading;

18 (8) direct obligations of or obligations
19 guaranteed by the Inter-American Development Bank, the
20 International Bank for Reconstruction and Development (the
21 World Bank), the African Development Bank, the Asian
22 Development Bank, and the International Finance Corporation
23 that have received the highest long-term [~~credit~~] rating
24 categories for debt obligations by a nationally recognized
25 statistical rating organization [~~investment rating firm~~];

26 (9) bonds issued, assumed, or guaranteed by the
27 State of Israel;

1 (10) obligations of a state or an agency, county,
2 city, or other political subdivision of a state;

3 (11) mutual funds secured by obligations that are
4 described by Subdivisions (1) through (6) or by obligations
5 consistent with Rule 2a-7 (17 C.F.R. Section 270.2a-7),
6 promulgated by the Securities and Exchange Commission,
7 including pooled funds:

8 (A) established by the Texas Treasury
9 Safekeeping Trust Company;

10 (B) operated like a mutual fund; and

11 (C) with portfolios consisting only of
12 dollar-denominated securities; ~~and~~

13 (12) foreign currency for the sole purpose of
14 facilitating investment by state agencies that have the
15 authority to invest in foreign securities;

16 (13) asset-backed securities, as defined by the
17 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R.
18 Section 270.2a-7), that are rated at least A or its
19 equivalent by a nationally recognized statistical rating
20 organization and that have a weighted-average maturity of
21 five years or less; and

22 (14) corporate debt obligations that are rated at
23 least A or its equivalent by a nationally recognized
24 statistical rating organization and mature in five years or
25 less from the date on which the obligations were "acquired,"
26 as defined by the Securities and Exchange Commission in Rule
27 2a-7 (17 C.F.R. Section 270.2a-7).

1 (1) The comptroller may lend securities under
2 procedures established by the comptroller. The procedures
3 must be consistent with industry practice and must include a
4 requirement to fully secure the loan with cash, obligations
5 described by Subsections (b)(1)-(6), or a combination of cash
6 and the described obligations. Notwithstanding any law to
7 the contrary, cash may be reinvested in the items permitted
8 under Subsection (b) or mutual funds, as defined by the
9 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R.
10 Section 270.2a-7) [In this subsection, "obligation" means an
11 item described by Subsections (b)(1)-(6)].

12 (m) In entering into a direct security repurchase
13 agreement or a reverse security repurchase agreement, the
14 comptroller may agree to accept cash on an overnight basis in
15 lieu of the securities, obligations, or participation
16 certificates identified in Section 404.001(3). Cash held by
17 the state under this subsection is not a deposit of state or
18 public funds for purposes of any statute, including this
19 subchapter or Subchapter D, that requires a deposit of state
20 or public funds to be collateralized by eligible securities.

21 (n) Notwithstanding any other law to the contrary, any
22 government investment pool created to function as a money
23 market mutual fund and managed by the comptroller or the
24 Texas Treasury Safekeeping Trust Company may invest the funds
25 it receives in investments that are "eligible securities," as
26 defined by the Securities and Exchange Commission in Rule 2a-
27 7 (17 C.F.R. Section 270.2a-7), if it maintains a dollar-

1 weighted average portfolio maturity of 90 days or less, with
2 the maturity of each portfolio security calculated in
3 accordance with Rule 2a-7 (17 C.F.R. Section 270.2a-7), and
4 meets the diversification requirements of Rule 2a-7.

ADOPTED

Amendment No 1

MAY 24 2007

By Will

Atty. Gen.
Secretary of the Senate

Amend HB 860 as follows:

change
(1) on page 7, line 19 strike the word "The" and insert in lieu thereof "Except as provided in subsection (f)."

change
(2) add a new subsection (f) on page 8, after line 25 to read as follows:

(f) This subsection applies only to a university system, as defined by Section 61.003(10), education code. The appropriation for expenditure in any year of an amount greater than nine percent of the fair market value of an endowment fund with an aggregate value of \$450 million or more, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(1) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument; or

(2) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to nine percent of the fair market value of the endowment fund.

(3) renumber subsequent subsections accordingly.

25

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 18, 2007

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB860 by Paxton (Relating to management, investment, and expenditure of institutional funds and adoption of the Uniform Prudent Management of Institutional Funds Act.),
Committee Report 2nd House, As Amended

No significant fiscal implication to the State is anticipated.

The bill would create standards for the management and investment of charitable funds and for endowment spending by institutions organized and operated exclusively for a charitable purpose. It is anticipated that any costs associated with implementation of the bill could be absorbed within existing state resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 701 Central Education Agency, 720 The University of Texas System Administration

LBB Staff: JOB, KJG, MS, JM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 11, 2007

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB860 by Paxton (Relating to management, investment, and expenditure of institutional funds and adoption of the Uniform Prudent Management of Institutional Funds Act.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would create standards for the management and investment of charitable funds and for endowment spending by institutions organized and operated exclusively for a charitable purpose. It is anticipated that any costs associated with implementation of the bill could be absorbed within existing state resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 701 Central Education Agency, 720 The University of Texas System Administration

LBB Staff: JOB, KJG, MS, JM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION
Revision 2

March 15, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB860 by Paxton (Relating to management, investment, and expenditure of institutional funds and adoption of the Uniform Prudent Management of Institutional Funds Act.),
Committee Report 1st House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would create standards for the management and investment of charitable funds and for endowment spending by institutions organized and operated exclusively for a charitable purpose. It is anticipated that any costs associated with implementation of the bill could be absorbed within existing state resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 701 Central Education Agency, 720 The University of Texas System Administration

LBB Staff: JOB, KJG, MS, JM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION
Revision 1

March 12, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB860 by Paxton (Relating to management, investment, and expenditure of institutional funds and adoption of the Uniform Prudent Management of Institutional Funds Act.),
Committee Report 1st House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would create standards for the management and investment of charitable funds and for endowment spending by institutions organized and operated exclusively for a charitable purpose. It is anticipated that any costs associated with implementation of the bill could be absorbed within existing state resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 701 Central Education Agency, 720 The University of Texas System Administration

LBB Staff: JOB, KJG, MS, JM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

February 27, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB860 by Paxton (Relating to management, investment, and expenditure of institutional funds and adoption of the Uniform Prudent Management of Institutional Funds Act.),
Committee Report 1st House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would create standards for the management and investment of chartable funds and for endowment spending by institutions organized and operated exclusively for a charitable purpose. It is anticipated that any costs associated with implementation of the bill could be absorbed within existing state resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 701 Central Education Agency, 720 The University of Texas System Administration

LBB Staff: JOB, KJG, MS, JM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION
Revision 2

March 13, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB860 by Paxton (Relating to management, investment, and expenditure of institutional funds and adoption of the Uniform Prudent Management of Institutional Funds Act.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would create standards for the management and investment of charitable funds and for endowment spending by institutions organized and operated exclusively for a charitable purpose. It is anticipated that any costs associated with implementation of the bill could be absorbed within existing state resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 701 Central Education Agency, 720 The University of Texas System Administration

LBB Staff: JOB, KJG, MS, JM

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

Revision 1

March 12, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB860 by Paxton (Relating to management, investment, and expenditure of institutional funds and adoption of the Uniform Prudent Management of Institutional Funds Act.), **As Introduced**

No significant fiscal implication to the State is anticipated.

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Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 701 Central Education Agency, 720 The University of Texas System Administration

LBB Staff: JOB, KJG, MS, JM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

February 18, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB860 by Paxton (Relating to management, investment, and expenditure of institutional funds and adoption of the Uniform Prudent Management of Institutional Funds Act.), **As Introduced**

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Source Agencies: 302 Office of the Attorney General, 701 Central Education Agency, 720 The University of Texas System Administration

LBB Staff: JOB, KJG, MS, JM

