

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION

SECTION __. Section 404.024, Government Code, is amended by amending Subsections (b) and (1) and adding Subsections (m) and (n) to read as follows:

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

- (1) direct security repurchase agreements;
- (2) reverse security repurchase agreements;
- (3) direct obligations of or obligations the principal and interest of which are guaranteed by the United States;
- (4) direct obligations of or obligations guaranteed by agencies or instrumentalities of the United States government;
- (5) bankers' acceptances that:
 - (A) are eligible for purchase by the Federal Reserve System;
 - (B) do not exceed 270 days to maturity; and
 - (C) are issued by a bank whose other comparable short-term obligations are rated in [that has received] the highest short-term [credit] rating category, within which there may be subcategories or gradations indicating relative standing, including such subcategories or gradations as "rating category" or "rated," by a nationally recognized statistical rating organization, as defined by Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated under the Investment Company Act of 1940 by the Securities and Exchange Commission [investment rating firm];
- (6) commercial paper that:
 - (A) does not exceed 270 days to maturity; and
 - (B) except as provided by Subsection (i), is issued by an

CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

entity whose other comparable short-term obligations are rated in [has received] the highest short-term [credit] rating category by a nationally recognized statistical rating organization [investment rating firm];
(7)contracts written by the treasury in which the treasury grants the purchaser the right to purchase securities in the treasury's marketable securities portfolio at a specified price over a specified period and for which the treasury is paid a fee and specifically prohibits naked-option or uncovered option trading;
(8)direct obligations of or obligations guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), the African Development Bank, the Asian Development Bank, and the International Finance Corporation that have received the highest long-term [credit] rating categories for debt obligations by a nationally recognized statistical rating organization [investment rating firm];
(9)bonds issued, assumed, or guaranteed by the State of Israel;
(10)obligations of a state or an agency, county, city, or other political subdivision of a state;
(11)mutual funds secured by obligations that are described by Subdivisions (1) through (6) or by obligations consistent with Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated by the Securities and Exchange Commission, including pooled funds:
(A)establishedbytheTexasTreasury Safekeeping Trust Company;

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(B)operated like a mutual fund; and
(C)with portfoliosconsistingonly of dollar-denominated securities; ~~and]~~
(12)foreign currency for the sole purpose of facilitating investment by state agencies that have the authority to invest in foreign securities;
(13)asset-backed securities, as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7), that are rated at least A or its equivalent by a nationally recognized statistical rating organization and that have a weighted-average maturity of five years or less; and
(14)corporate debt obligations that are rated at least A or its equivalent by a nationally recognized statistical rating organization and mature in five years or less from the date on which the obligations were "acquired," as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7).
(1)The comptroller may lend securities under procedures established by the comptroller. The procedures must be consistent with industry practice and must include a requirement to fully secure the loan with cash, obligations described by Subsections (b)(1)-(6), or a combination of cash and the described obligations. Notwithstanding any law to the contrary, cash may be reinvested in the items permitted under Subsection (b) or mutual funds, as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7) ~~[In this subsection, "obligation" means an item described by Subsections (b)(1)-(6)].~~

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

(n)Notwithstanding any other law to the contrary, any government investment pool created to function as a money market mutual fund and managed by the comptroller or the Texas Treasury Safekeeping Trust Company may invest the funds it receives in investments that are "eligible securities," as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7), if it maintains a dollar-weighted average portfolio maturity of 90 days or less, with the maturity of each portfolio security calculated in accordance with Rule 2a-7 (17 C.F.R. Section 270.2a-7), and meets the diversification requirements of Rule 2a-7.

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

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

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

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

Sec. 163.003. DEFINITIONS. In this chapter:

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

SENATE VERSION

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CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

(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 does 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 that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company,

SENATE VERSION

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CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

Sec. 163.004. STANDARD OF CONDUCT IN MANAGING AND INVESTING INSTITUTIONAL FUND. (a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

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

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

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

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

(d) An institution may pool two or more institutional

SENATE VERSION

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.

Sec. 163.004. STANDARD OF CONDUCT IN MANAGING AND INVESTING INSTITUTIONAL FUND. (a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

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

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

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

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

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CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

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

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

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

(F) other resources of the institution;

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

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

(2) Management and investment decisions about an individual asset must be made not 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 fund and to the institution.

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

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

SENATE VERSION

funds for purposes of management and investment.

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(A) general economic conditions;

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

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

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CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

purposes of the fund are better served without diversification.

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

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

Sec. 163.005. APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION.

(a) Subject to the intent of a donor expressed in the gift instrument and to Subsections (d) and (e), an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would

SENATE VERSION

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

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Sec. 163.005. APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION.

(a) Subject to the intent of a donor expressed in the gift instrument and to Subsections (d) and (e), an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would

CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) the duration and preservation of the endowment fund;
 - (2) the purposes of the institution and the endowment fund;
 - (3) general economic conditions;
 - (4) the possible effect of inflation or deflation;
 - (5) the expected total return from income and the appreciation of investments;
 - (6) other resources of the institution; and
 - (7) the investment policy of the institution.
- (b) To limit the authority to appropriate for expenditure or accumulate under Subsection (a), a gift instrument must specifically state the limitation.
- (c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:
- (1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
 - (2) do not otherwise limit the authority to appropriate for expenditure or accumulate under Subsection (a).
- (d) The appropriation for expenditure in any year of an amount greater than seven percent of the fair market value of an endowment fund with an aggregate value of \$1 million or more, calculated on the basis of market values determined at least quarterly and averaged over a

SENATE VERSION

exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) the duration and preservation of the endowment fund;
 - (2) the purposes of the institution and the endowment fund;
 - (3) general economic conditions;
 - (4) the possible effect of inflation or deflation;
 - (5) the expected total return from income and the appreciation of investments;
 - (6) other resources of the institution; and
 - (7) the investment policy of the institution.
- (b) To limit the authority to appropriate for expenditure or accumulate under Subsection (a), a gift instrument must specifically state the limitation.
- (c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:
- (1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
 - (2) do not otherwise limit the authority to appropriate for expenditure or accumulate under Subsection (a).
- (d) **Except as provided in subsection (f),** appropriation for expenditure in any year of an amount greater than seven percent of the fair market value of an endowment fund with an aggregate value of \$1 million or more, calculated on the basis of market values determined at

CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 seven percent of the fair market value of the endowment fund.

(e) For an institution with an endowment fund with an aggregate value of less than \$1 million, a rebuttable presumption of imprudence is created if more than five percent of the fair market value of the endowment fund is appropriated for expenditure in any year, 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. 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

SENATE VERSION

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 seven percent of the fair market value of the endowment fund.

(e) For an institution with an endowment fund with an aggregate value of less than \$1 million, a rebuttable presumption of imprudence is created if more than five percent of the fair market value of the endowment fund is appropriated for expenditure in any year, 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. 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:

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CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

instrument; or

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

(f) If an institution pools the assets of individual endowment funds for collective investment, this section applies to the pooled fund and does not apply to individual endowment funds, including individual

SENATE VERSION

instrument; or

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

(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.

(f) If an institution pools the assets of individual endowment funds for collective investment, this section applies to the pooled fund and does not apply to individual endowment funds, including individual

CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

endowment funds for which the nature of the underlying asset or donor restrictions preclude inclusion in a pool but which are managed by the institution in accordance with a collective investment policy.

Sec. 163.006. DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS. (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) is not liable for the decisions or actions of an agent to which the function was delegated.
- (d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction

SENATE VERSION

endowment funds for which the nature of the underlying asset or donor restrictions preclude inclusion in a pool but which are managed by the institution in accordance with a collective investment policy.

Sec. 163.006. DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS. (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) is not liable for the decisions or actions of an agent to which the function was delegated.
- (d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction

CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

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

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

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. Chapter 123 applies to a proceeding under this subsection. To the extent practicable, any modification must 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,

SENATE VERSION

of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

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

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

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CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

(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 receipt of notice by 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 \$25,000;

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

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

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

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

Sec. 163.009. RELATION TO ELECTRONIC

SENATE VERSION

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Sec. 163.009. RELATION TO ELECTRONIC

CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

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

~~[(2) uncertainty regarding legal restrictions on the management, investment, and expenditure of endowment funds of the organizations has in many instances~~

SENATE VERSION

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CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~precluded obtaining the highest available return on endowment funds; and~~

~~[(3) the organizations, their officers, directors, and trustees, and the citizens of this state will benefit from removal of the uncertainty and by permitting endowment funds to be invested for the long term goals of achieving growth and maintaining purchasing power without adversely affecting availability of funds for current expenditure.~~

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

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

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

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

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

SENATE VERSION

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

CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

fund.

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

~~[(A) an endowment fund at the time it became an endowment fund;~~

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

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

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

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

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

~~[Sec. 163.004. EXPENDITURES. (a) A governing board may appropriate for expenditure, for the uses and purposes for which the fund is established, the net~~

SENATE VERSION

fund.

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

~~[(A) an endowment fund at the time it became an endowment fund;~~

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

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

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

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

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

~~[Sec. 163.004. EXPENDITURES. (a) A governing board may appropriate for expenditure, for the uses and purposes for which the fund is established, the net~~

CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~appreciation, realized and unrealized, in the fair market value of the assets of an endowment fund over the historic dollar value of the fund to the extent prudent under the standard provided by Section 163.007.~~

~~[(b) A determination of the historic dollar value made in good faith by the governing board is conclusive.~~

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

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

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

~~[(1) invest an institutional fund in any real or personal property, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit~~

SENATE VERSION

~~appreciation, realized and unrealized, in the fair market value of the assets of an endowment fund over the historic dollar value of the fund to the extent prudent under the standard provided by Section 163.007.~~

~~[(b) A determination of the historic dollar value made in good faith by the governing board is conclusive.~~

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

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

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CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any governmental entity, whether or not the property produces a current return;~~

~~[(2) retain property contributed by a donor to an institutional fund;~~

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

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

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

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

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

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

~~[Sec. 163.007. STANDARD OF CONDUCT. In the~~

SENATE VERSION

~~corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any governmental entity, whether or not the property produces a current return;~~

~~[(2) retain property contributed by a donor to an institutional fund;~~

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

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

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

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

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

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

~~[Sec. 163.007. STANDARD OF CONDUCT. In the~~

CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~administration of the powers to appropriate appreciation, to make and retain investments, to develop and apply investment and spending policies, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. The members shall consider both the long term and short-term needs of the institution in carrying out its educational, religious, or charitable purposes, its present and anticipated financial requirements, the expected return on its investments, price level trends, and general economic conditions.~~

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

~~[(b) If written consent of the donor cannot be obtained because of the donor's death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the district court for release of a restriction imposed by a gift instrument on the use or investment of an institutional fund. The attorney general must be notified of the application and given an opportunity to intervene in the same manner as provided by Chapter 123 for a proceeding involving a charitable trust. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order~~

SENATE VERSION

~~administration of the powers to appropriate appreciation, to make and retain investments, to develop and apply investment and spending policies, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. The members shall consider both the long term and short-term needs of the institution in carrying out its educational, religious, or charitable purposes, its present and anticipated financial requirements, the expected return on its investments, price level trends, and general economic conditions.~~

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

~~[(b) If written consent of the donor cannot be obtained because of the donor's death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the district court for release of a restriction imposed by a gift instrument on the use or investment of an institutional fund. The attorney general must be notified of the application and given an opportunity to intervene in the same manner as provided by Chapter 123 for a proceeding involving a charitable trust. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order~~

CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~release the restriction in whole or in part. A release under this subsection may not change an endowment fund to another type of fund.~~

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

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

~~[Sec. 163.009. APPLICABILITY OF OTHER PARTS OF CODE. Subtitle B, Title 9 (the Texas Trust Code), does not apply to any institutional fund subject to this chapter.]~~

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

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

(k) In this section, "institution" [:

~~(1) "Governing board"]~~ and "institutional fund" have the meanings assigned by Chapter 163, Property Code.

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

SENATE VERSION

~~release the restriction in whole or in part. A release under this subsection may not change an endowment fund to another type of fund.~~

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

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

~~[Sec. 163.009. APPLICABILITY OF OTHER PARTS OF CODE. Subtitle B, Title 9 (the Texas Trust Code), does not apply to any institutional fund subject to this chapter.]~~

Same as House version.

CONFERENCE

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

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

Same as House version.

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

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

Same as House version.

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

(b) With respect to an institutional fund existing on the effective date of this Act, Chapter 163, Property Code, as amended by this Act, applies only to an action taken or decision made relating to the institutional fund occurring after August 31, 2007. An action taken or decision made relating to the institutional fund that occurs before the effective date of this Act is governed by Chapter 163, Property Code, as that chapter existed before amendment

Same as House version.

House Bill 860
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

by this Act, and that chapter is continued in effect for that purpose.

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

Same as House version.