



## **H.B. 161**

123rd General Assembly  
(As Passed by the General Assembly)

- Reps.** Womer Benjamin, Mottley, Tiberi, Harris, Boggs, Gerberry, Jolivette, Metelsky, Callender, Vesper, Hartnett, Olman, Trakas, Allen, Schuler, Patton, O'Brien, Sullivan, Logan, D. Miller, Van Vyven, Hollister, Corbin, Bender, Willamowski, Goodman, Jones, Young, Clancy, Roman, Jacobson, Evans, Maier, Sulzer, Salerno, Gardner, Myers, Buchy, Verich, DePiero, Barnes, Coughlin, Damschroder, Flannery, Terwilleger, Thomas, Carey, Perz, Austria, Britton, Barrett, Mead, Wilson, Hoops, Opfer
- Sens.** Hottinger, Fingerhut, Prentiss, Herington, Kearns, Drake, Watts, Espy, Spada, Gardner, Mumper, DiDonato

**Effective date:** \*

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### **ACT SUMMARY**

- Enacts the "Institutional Trust Funds Act" generally governing the determination of income in trust instruments that designate income from the trust to institutions organized for educational, religious, charitable, or other eleemosynary purposes or to governmental organizations to the extent they hold funds exclusively for these purposes.
- Defines "income" in terms of "applicable fund value," which, for any particular year, generally is the average of the month-end values of the net trust fund assets for the preceding fiscal year.
- Permits an institution's governing board, under certain circumstances, to request up to 5% of the applicable fund value for the institutional trust fund for the fiscal year and a specified additional amount based on the amount requested by the governing board in a prior fiscal year.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Establishes duties applicable to governing boards of institutions requesting income from institutional trusts and specifies limitations on the duties and liability of trustees of institutional trusts in distributing the income.
- Establishes distribution standards if there is more than one institutional beneficiary of income from an institutional trust.
- Establishes guidelines for interpretation of the terms of an institutional trust, and specifies the application of the act's provisions to existing trusts.
- Specifies the act's relation to the Uniform Management of Institutional Funds Act.

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## CONTENT AND OPERATION

### Overview

The Uniform Management of Institutional Funds Act (secs. 1715.51 to 1715.59 of the Revised Code), in part, governs expenditures by educational, religious, charitable, or other eleemosynary institutions from endowment funds *held by those institutions* for their exclusive benefit. One of its provisions authorizes expenditures by the institutions of amounts representing a "net appreciation" of fund assets "over the historic dollar value of the fund as is prudent under the standard established by" the Uniform Management of Institutional Funds Act.

The act addresses a similar type of expenditure by such institutions from trust funds *held by third-party trustees*. The "Institutional Trust Funds Act" (Chapter 1340.) specifies how "income" is to be determined under an institutional trust fund, thereby permitting the distribution of amounts based on "applicable fund value," rather than on interest and dividends.

### Determination of distributable income

(secs. 1340.31 and 1340.32(A) and (B))

The act provides that, except as otherwise provided under the terms of a trust instrument, during any fiscal year in which income may or is required to be distributed to an institution from an institutional trust fund, "**income**" means the greater of either: (1) the income from the assets of the institutional trust fund for

the fiscal year as determined in accordance with the trust instrument and the law, without regard to the act's provisions, or (2) the amount requested by the institution's governing board for the fiscal year, as permitted by the act.

Under the act, a governing board may request an amount not exceeding the sum of: (a) 5% of the "applicable fund value" for the institutional trust fund for the fiscal year, and (b) an amount determined as follows: if, in any prior fiscal year after the act's effective date, the governing board requested less than 5% of the "applicable fund value" for that fiscal year and if the amount the institution actually received as income from the institutional trust fund was less than 5% for that fiscal year, the aggregate difference between 5% of the "applicable fund value" with respect to each prior fiscal year and the amount actually received.

The act defines "**applicable fund value**" for any particular fiscal year to mean the sum of the month-end values of the net assets of an institutional trust fund for the prior fiscal year for those months in which the fund has been in existence during that fiscal year, divided by the number of those months. These month-end values are to be determined by the trustee in accordance with the trustee's records, and any determination made by a trustee in good faith is conclusive.

"**Institutional trust fund**" means a trust fund, or a part of a trust fund, that is held by a trustee for the exclusive use, benefit, or purposes of one or more institutions and that is not wholly distributable to an institution or institutions on a current basis under the terms of the trust instrument. "Institutional trust fund" does not include a fund in which a beneficiary that is not an institution has an interest other than a right that may arise upon a violation of a covenant under the terms of the trust instrument or upon a violation of or the failure of the purposes of the fund.

Under the act, "**institution**" means an incorporated or unincorporated organization that is organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes or a governmental organization to the extent that it holds funds exclusively for any of those purposes. "**Governing board**" means the body responsible for the management of an institution. The act provides that "**trust instrument**" means a testamentary or inter vivos trust under which the trustee of the trust holds an institutional trust fund. Finally, "**trustee**" means an individual, corporation, institution, or organization, including, but not limited to, a bank, trust company, or other financial institution, serving as a trustee or as sole trustee under a trust instrument. "Trustee" includes an original trustee and any successor or added trustee.

### **Multiple beneficiaries**

(sec. 1340.32(C) and (D))

If, under a trust instrument, more than one institution is a beneficiary of an institutional trust fund, the act requires the trustee to take such actions that the trustee determines appropriate or necessary to allow for the distribution of income as discussed above. These actions may include dividing the institutional trust fund into separate shares according to the interest that each institution has in the total institutional trust fund held under the trust instrument. However, the act does not limit the authority or obligation of a trustee to distribute, or the authority of a governing board to request, funds as permitted or required under the terms of the trust instrument.

### **Effect of the terms of a trust**

(sec. 1340.33)

The act's provisions on the determination of distributable income do not apply if the trust instrument expressly indicates the trust creator's intention that income is to be determined otherwise than as provided under the act. However, a restriction upon the act's determination of distributable income may not be inferred from: (1) a designation of an institutional trust fund as an endowment, (2) a direction or authorization in the trust instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or a direction that contains other words of a similar import, (3) a direction in a trust instrument that income and principal are to be determined by reference to certain statutory provisions, or (4) the inclusion of specified provisions in a trust instrument setting forth the way in which income and principal are to be determined, unless the trust expressly indicates that the act's provisions do not apply.

The act specifies that this rule of construction applies to trust instruments executed or in effect before, on, or after the act's effective date.

### **Duties of the institutional governing board; limitations on the duties and liability of the trustee**

(sec. 1340.34)

In administering the power to request amounts from a trustee of an institutional trust fund under the act, members of a governing board of an institution must exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision and make requests

for income amounts only as is prudent under this standard. In so doing, the act requires the governing board to consider: (1) the long- and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, (2) the institution's present and anticipated financial requirements, (3) the expected total return on the investments held by the institution and held by the trustee under the trust instrument, (4) price level trends, and (5) general economic conditions. In addition, in determining the expected total return on the investments held by the trustee under the trust instrument, the act permits the members of the governing board of the institution to follow the determination of the trustee; they are not required to independently examine the determination.

The act provides that a trustee of an institutional trust fund has no duty to inquire or ascertain whether the governing board of an institution has satisfied the above-described standards, and the trustee is not liable if the governing board has failed to do so.

**Application and relation to Uniform Management of Institutional Funds Act**

(secs. 1340.35 and 1340.36)

The act provides that nothing in law dealing with the determination of income in a decedent's estate, inter vivos or testamentary trust laws, or any other law limits or restricts either: (1) the determination of distributable trust income as defined by the act, or (2) a governing board of an institution from requesting, or a trustee from making, distributions from an institutional trust fund in accordance with the act's provisions.

In relation to the Uniform Management of Institutional Funds Act, the act specifies that none of its provisions affects the construction or interpretation of that Act. Specifically, neither the percentage of the applicable fund value that can be requested by a governing board pursuant to the act, nor the amount actually requested by a governing board, is to be construed or interpreted to limit or expand what is a prudent amount that can be expended by a governing board of an institution under the Uniform Management of Institutional Funds Act.

If an institutional trust fund under the act also is an institutional fund as defined under the Uniform Management of Institutional Funds Act, with the result that the Act also applies to the institutional trust fund, the act specifies that the Uniform Management of Institutional Funds Act applies to the institutional trust fund and the act's provisions do not apply.

**Name**

(sec. 1340.37)

The act specifies that its provisions may be cited as the "Institutional Trust Funds Act."

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	02-09-99	p. 173
Reported, H. Financial Institutions	03-22-99	pp. 326-327
Passed House (91-7)	04-14-99	pp. 407-408
Reported, S. Finance & Financial Institutions	04-29-99	pp. 356-357
Passed Senate (32-0)	04-29-99	p. 361

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