Bill Analysis

Jennifer A. Parker *Legislative Service Commission*

H.B. 161

123rd General Assembly
(As Passed by the House)

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**

BILL 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 applicable fund value of the prior fiscal year.

- 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 terms of an institutional trust and specifies the application of these provisions to existing trusts.

- Specifies the bill's relation to the Uniform Management of Institutional Funds Act.

CONTENT AND OPERATION

Overview

Currently, the Uniform Management of Institutional Funds Act (secs. 1715.51 to 1715.59), in part, governs institutional expenditures for educational, religious, charitable, or other eleemosynary institutions from endowment funds trusteed by those institutions and created by wills, deeds, and other gift instruments. One of its provisions authorizes expenditures by the institutions of funds representing a "net appreciation" of asset values in the endowment fund "over the historic dollar value of the fund as is prudent under the standard established by" the act. The bill addresses this type of expenditure for trust funds trusteed by noncharities by enacting the Institutional Trust Funds Act in the Fiduciary Law (Chapter 1340.). It specifies how income is to be determined pursuant to trust funds designating that income from the trust is to be distributed to institutions covered under the current Uniform Management of Institutional Funds Act. The bill establishes standards for the request and distribution of income under its provisions and also specifies the relation of its provisions to the Uniform Management of Institutional Funds Act.

Determination of distributable income

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

The bill provides that, except as provided under the terms of a trust instrument, during any fiscal year in which income may or is required to be distributed to 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 bill's provisions, or (2) the amount requested by the institution's governing board for the fiscal year.

The bill provides that the governing board's requested amount permitted by (2), above, may not exceed 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 bill's effective date, the governing board requested less than 5% of the "applicable fund value" for the prior fiscal year and if the amount the institution actually received as income from the institutional trust fund was less than 5% for the prior fiscal year, then that amount would be the aggregate difference between 5% of the "applicable fund value" with respect to each prior fiscal year and the amount actually received for each prior fiscal year.

The bill 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 those months in which the fund has been in existence during the prior 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. The bill specifies that "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 bill, "**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 bill 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.

<u>Multiple beneficiaries</u>

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

If, under a trust instrument, more than one institution is a beneficiary of an institutional trust fund, the bill 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 bill specifies that it 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.

Terms of trust

(sec. 1340.33)

The bill'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 bill. However, a restriction upon the bill'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) unless the trust specifies that the bill's provisions do not apply, the inclusion of specified provisions in a trust instrument setting forth the way in which income and principal are to be determined. The bill specifies that this rule of construction applies to trust instruments executed or in effect before, on, or after the bill's effective date.

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

(sec. 1340.34)

In administering the powers to request amounts from a trustee of an institutional trust fund under the bill, the bill establishes duties for governing boards and specifies limitations on the duties and liability of the trustees. It requires members of a governing board of an institution to exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision and to make requests for income amounts under the bill only as is prudent under this standard. In so doing, the bill 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 bill permits the members of the governing board of the institution to follow the determination of the trustee; however, it does not require them to independently examine the determination.

The bill 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 its duties imposed by this part of the bill. Also, the bill provides that the trustee does not have any liability for the failure of the governing board to satisfy those duties.

Application and relation to Uniform Management of Institutional Funds Act

(secs. 1340.35 and 1340.36)

The bill 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 bill, 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 bill's provisions.

In relation to the Uniform Management of Institutional Funds Act, the bill specifies that nothing in the bill's provisions affects the construction or interpretation of that Act. Neither the percentage of the applicable fund value requested by a governing board in compliance with the bill's provisions nor the amount actually requested by a governing board pursuant to the bill 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.

In addition, if an institutional trust fund under the bill 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 bill provides that the Uniform Management of Institutional Funds Act applies and the bill's provisions do not apply to the institutional trust fund.

Name

(sec. 1340.37)

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

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

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