

AN ACT

To enact sections 1340.31 to 1340.37 of the Revised Code to enact the "Institutional Trust Funds Act" to define income and establish spending standards for trust assets that are held for the benefit of charities.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1340.31, 1340.32, 1340.33, 1340.34, 1340.35, 1340.36, and 1340.37 of the Revised Code be enacted to read as follows:

Sec. 1340.31. As used in sections 1340.31 to 1340.37 of the Revised Code:

(A) "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.

(B) "Governing Board" means the body responsible for the management of an institution.

(C) "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 the institution or institutions on a current basis under the terms of the applicable 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 applicable trust instrument or upon a violation of or the failure of the purposes of the fund.

(D) "Applicable Fund Value" means for any particular fiscal year 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 institutional trust fund has been in existence during such prior fiscal year divided by the number of those months. The month-end values shall be determined by the trustee in accordance with the trustee's records, and any such determination made by a trustee in good faith is conclusive.

(E) "Trust instrument" means a testamentary or inter vivos trust under

which the trustee of the trust holds an institutional trust fund.

(E) "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.

Sec. 1340.32. (A) Subject to division (D) of this section and section 1340.33 of the Revised Code, during any fiscal year in which income may be or is required to be distributed to an institution from an institutional trust fund, income means the greater of the following:

(1) The income from the assets of the institutional trust fund for the fiscal year as determined in accordance with the applicable trust instrument and applicable law without regard to sections 1340.31 TO 1340.37 of the Revised Code;

(2) The amount requested by the institution's governing board for the fiscal year pursuant to division (B) of this section.

(B) An institution's governing board may request that an amount be distributed to the institution for the fiscal year, and that amount shall not exceed the sum of both of the following:

(1) Five per cent of the Applicable Fund Value for the institutional trust fund for the fiscal year;

(2) If, in any prior fiscal year that is after the effective date of this section, the governing board requested less than five per cent of the Applicable Fund Value for such prior fiscal year and if the amount the institution actually received from the institutional trust fund pursuant to division (A) of this section was less than five per cent for such prior fiscal year, the aggregate difference between five per cent of the Applicable Fund Value with respect to each such prior fiscal year and the amount the institution actually received pursuant to division (A) of this section for such prior fiscal year.

(C) If, under a trust instrument, more than one institution is a beneficiary of an institutional trust fund, the trustee shall take such actions that the trustee determines appropriate or necessary to allow for the distributions of income as contemplated by division (A) of this section, which 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.

(D) This section 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 applicable trust instrument.

Sec. 1340.33. (A) Division (A) of Section 1340.32 of the Revised Code does not apply if the applicable trust instrument expressly indicates the settlor's intention that income is to be otherwise than as defined in division (A) of section 1340.32 of the Revised Code.

(B) A restriction upon the definition of income in division (A) of section 1340.32 of the Revised Code may not be inferred from a designation of an institutional trust fund as an endowment; a direction or authorization in the applicable 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; a direction in a trust instrument that income and principal are to be determined by reference to certain statutory provisions; or, subject to division (A) of this section, the inclusion of specified provisions in a trust instrument setting forth the way in which income and principal are to be determined.

(C) The rule of construction set forth in division (B) of this section applies to trust instruments executed or in effect before, on, or after the effective date of this section.

Sec. 1340.34. (A) In administering the powers to request amounts from a trustee of an institutional trust fund in accordance with divisions (A) and (B) of section 1340.32 of the Revised Code, members of a governing board of an institution shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision and shall make requests for amounts under divisions (A) and (B) of section 1340.32 of the Revised Code only as is prudent under this standard. In so doing, the governing board shall consider the long- and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes; the institution's present and anticipated financial requirements; the expected total return on the investments held by the institution and held by the trustee under the applicable trust instrument; price level trends; and general economic conditions.

(B) In determining the expected total return on the investments held by a trustee of an institutional trust fund under the applicable trust instrument, the members of the governing board of an institution may follow, and are not required to examine independently, the determination of the trustee regarding the expected total return on the investments held by the trustee.

(C) A trustee of an institutional trust fund has no duty to inquire or ascertain whether the governing board of an institution has satisfied the standards set forth in divisions (A) and (B) of this section, and the trustee does not have any liability for the failure of the governing board to satisfy those standards.

Sec. 1340.35. Nothing in section 2109.67, sections 1340.01 to 1340.13, or any other section of the Revised Code limits or restricts the definition of income in division (A) of section 1340.32 of the Revised Code or limits or restricts a governing board of an institution from requesting, or a trustee from making, distributions from an institutional trust fund in accordance with sections 1340.31 TO 1340.37 of the Revised Code.

Sec. 1340.36. (A) Nothing in sections 1340.31 to 1340.35 of the Revised Code affects the construction or interpretation of sections 1715.51 to 1715.59 of the Revised Code relating to the Uniform Management of Institutional Funds Act. Specifically, neither the percentage set forth in division (B) of section 1340.32 of the Revised Code nor the amount actually requested by a governing board pursuant to section 1340.32 of the Revised Code shall 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 sections 1715.51 to 1715.59 of the Revised Code.

(B) If an institutional trust fund is also an institutional fund as defined in division (B) of section 1715.51 of the Revised Code with the result that sections 1715.51 to 1715.59 of the Revised Code also are applicable to the institutional trust fund, then sections 1715.51 to 1715.59 of the Revised Code apply to the institutional trust fund, and sections 1340.31 TO 1340.37 of the Revised Code do not apply to the institutional trust fund.

Sec. 1340.37. Sections 1340.31 TO 1340.37 of the Revised Code may be cited as the "Institutional Trust Funds Act."

Speaker _____ of the House of Representatives.

President _____ of the Senate.

H. B. No. 161

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Passed _____, 20____

Approved _____, 20____

Governor.

H. B. No. 161

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____