AMENDMENTS TO HOUSE BILL NO. 2484

Sponsor: REPRESENTATIVE PEIFER

Printer's No. 3712

Amend Bill, page 1, lines 10 and 11, by striking out all of said lines and inserting

Section 1. Section 5548(c) and (d) of Title 15 of the Pennsylvania Consolidated Statutes are amended and the section is amended by adding subsections to read:

Amend Bill, page 1, lines 15 through 21; page 2, lines 1 through 13; by striking out all of said lines on said pages and inserting

(1) Unless otherwise specifically directed in the trust instrument, the board of directors or other body may elect to be governed by this subsection with respect to assets thus received, including any participation in any common trust fund.

(2) To make an election under this subsection, the board of directors or other body shall adopt and follow an investment policy seeking a total return for the assets held by the corporation or in the name of a nominee of the corporation or by an institutional trustee pursuant to section 5549 (relating to transfer of trust or other assets to institutional trustee), whether the return is to be derived from capital appreciation, earnings or distributions with respect to the capital or both. The policy constituting the election shall be in writing, shall be maintained as part of the permanent records of the corporation and shall recite that it constitutes an election to be governed by this subsection.

(3) (i) If an election is made to be governed by this subsection, the term "income" shall mean a percentage of the value of the assets so held by or for the corporation. [The]

(ii) Except as otherwise provided in subparagraph (iii), the board of directors or other body shall in a writing maintained as part of the permanent records of the corporation annually select a percentage and determine that it is consistent with the long-term
preservation of the real value of the assets, but in no
event shall the percentage be less than 2% nor more than
7% per year.

(iii) The board of directors or other governing body
shall, in selecting a percentage, consider both the long-
term preservation of the real value of the assets and the
corporation's need for capital to fulfill its mission and
may select a percentage of not more than 10% per year.
This subparagraph shall only apply during calendar years
2020, 2021 and 2022, or for the corporation's fiscal
years that end during those calendar years.

(4) The board of directors or other body may revoke an
election to be governed by this subsection if the revocation
is made as part of an alternative investment policy seeking
the long-term preservation of the real value of the assets
thus received. The revocation and alternative investment
policy shall be in writing and maintained as part of the
permanent records of the corporation.

(5) For purposes of applying this subsection, the value
of the assets of the corporation shall be the fair market
value of the assets so held by or for the corporation,
determined at least annually and averaged over a period of
three or more preceding years. However, if the assets have
been held for less than three years, the average shall be
determined over the period during which the assets have been
held.

(d) Scope of section.--[This section] Subsections (a), (b)
and (c) shall apply to assets hereafter received pursuant to
section 5547 (relating to authority to take and hold trust
property), to assets heretofore so received and held at the time
when this article takes effect and to reinvestments of all such
assets.

(d.1) Nonjudicial settlement agreement.--

(1) Notwithstanding section 5547(b), except as expressly
provided in the gift instrument and as otherwise provided in
subsection (d.2), if the donor placed restrictions on the use
or management of property transferred to a nonprofit
corporation, the donor or anyone the donor appointed for the
purpose in the gift instrument, or the guardian of the
donor's property, the agent under the donor's financial power
of attorney or the donor's personal representative, together
with the nonprofit corporation holding the property, may
enter into a binding nonjudicial settlement agreement with
respect to any matter involving the property, including a
restriction.

(2) This subsection shall only apply during calendar
years 2020, 2021 and 2022, or for the corporation's fiscal
years that end during those calendar years.

(d.2) Exception.--

(1) Notwithstanding section 5547(b), a nonjudicial
settlement agreement is valid only to the extent it includes
terms and conditions that the court could approve under this chapter or other applicable law, and that the property remains committed to a charitable purpose or purposes.

(2) This subsection shall only apply during calendar years 2020, 2021 and 2022, or for the corporation's fiscal years that end during those calendar years.

(d.3) Request of court.--

(1) Notwithstanding section 5547(b), a nonprofit corporation may request the court to review a nonjudicial settlement agreement in order to determine whether the agreement contains terms and conditions the court could have approved.

(2) This subsection shall only apply during calendar years 2020, 2021 and 2022, or for the corporation's fiscal years that end during those calendar years.

(d.4) Proceeding to enforce gift instrument.--

(1) Notwithstanding section 5547(b), a proceeding to enforce a gift instrument related to assets held by a nonprofit corporation for a charitable purpose may be brought by the donor during the donor's lifetime or at any time by the Office of the Attorney General, by a charitable organization expressly named in the gift instrument to receive any portion of the assets governed by the gift instrument or by any other person having standing to do so, which may include anyone appointed in the gift instrument.

(2) This subsection shall only apply during calendar years 2020, 2021 and 2022, or for the corporation's fiscal years that end during those calendar years.

Amend Bill, page 2, lines 18 through 30; page 3, lines 1 through 10; by striking out all of said lines on said pages and inserting

(c) Effect of election.--

(1) If an election is made to be governed by this section, [governed by this section,] the term "income" shall mean a percentage of the value of the trust. [The]

(2) Except as otherwise provided in paragraph (3), the trustee shall, in a writing maintained as part of the permanent records of the trust, select the percentage and determine that it is consistent with the long-term preservation of the real value of the principal of the trust[,] but in no event shall the percentage be less than 2% nor more than 7% per year.

(3) The trustee shall consider the long-term preservation of the real value of the trust assets in selecting a percentage and, as to each charitable organization to which the trustee is required to or may distribute funds, shall consider the organization's need for capital to fulfill its mission and communicate with the
organization to make that determination, in selecting a percentage, and may select a percentage as great as 10% per year. This paragraph shall only apply during calendar years 2020, 2021 and 2022, or for the trust's fiscal years that end during those calendar years.

(4) The term "principal" shall mean all other assets held by the trustee with respect to the trust. The selection may be made either annually or subject to change only when the trustee deems such change necessary and prudent.