

AMENDMENTS TO HOUSE BILL NO. 2484

Sponsor: REPRESENTATIVE PEIFER

Printer's No. 3712

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

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

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

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

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

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

31 (ii) Except as otherwise provided in subparagraph
32 (iii), the board of directors or other body shall in a
33 writing maintained as part of the permanent records of
34 the corporation annually select a percentage and
35 determine that it is consistent with the long-term

1 preservation of the real value of the assets, but in no
2 event shall the percentage be less than 2% nor more than
3 7% per year.

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

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

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

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

33 (d.1) Nonjudicial settlement agreement.--

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

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

49 (d.2) Exception.--

50 (1) Notwithstanding section 5547(b), a nonjudicial
51 settlement agreement is valid only to the extent it includes

1 terms and conditions that the court could approve under this
2 chapter or other applicable law, and that the property
3 remains committed to a charitable purpose or purposes.

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

7 (d.3) Request of court.--

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

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

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

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

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

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

32 (c) Effect of election.--

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

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

43 (3) The trustee shall consider the long-term
44 preservation of the real value of the trust assets in
45 selecting a percentage and, as to each charitable
46 organization to which the trustee is required to or may
47 distribute funds, shall consider the organization's need for
48 capital to fulfill its mission and communicate with the

1 organization to make that determination, in selecting a
2 percentage, and may select a percentage as great as 10% per
3 year. This paragraph shall only apply during calendars years
4 2020, 2021 and 2022, or for the trust's fiscal years that end
5 during those calendar years.

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