As Introduced

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H. B. No. 720

Representative Young

To amend sections 117.30, 117.36, and 1715.51 and to enact sections 117.281, 1715.60, 1715.61, 1715.62, 1715.63, 1715.64, 1715.65, 1715.66, 1715.67, 1715.68, 1715.69, 1715.70, and 1715.71 of the Revised Code to establish standards for transparency and oversight of non-private endowment funds and to permit the state to recover public money provided to tax-exempt organizations that fail to comply with federal tax regulation and reporting law.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 117.30, 117.36, and 1715.51 be amended and sections 117.281, 1715.60, 1715.61, 1715.62, 1715.63, 1715.64, 1715.65, 1715.66, 1715.67, 1715.68, 1715.69, 1715.70, and 1715.71 of the Revised Code be enacted to read as follows:

Sec. 117.281. (A) As used in this section:

(1) "Covered organization" means any organization exempt from income tax under section 501 of the Internal Revenue Code.

(2) "Internal Revenue Code" has the same meaning as in section 5747.01 of the Revised Code.

(B) Where an audit report, accounting, or any other investigation sets forth that a public office has placed or deposited public money into a fund or account of a covered organization that has failed to adhere to any regulation or reporting required by the Internal Revenue Code or any regulation adopted thereunder, the officer receiving the report or accounting, the auditor of state, or the auditor of state's appointee may, within one hundred twenty days after receiving the report, accounting, or investigation findings, institute a civil action in the proper court in the name of the public office from which the public money was received for the recovery of the money or property and prosecute the action to final determination.

(C) The auditor of state shall notify the attorney general in writing of every audit report, accounting, or investigation that sets forth that any public money has been placed or deposited into a fund or account of a covered organization that has failed to adhere to any regulation or reporting required by the Internal Revenue Code or any regulation adopted thereunder, and of the date that the report was filed or that the accounting or investigation was completed.

(D) Within one hundred twenty days after receiving a certified copy of the audit report, accounting, or investigation findings, the officer, auditor of state, or the auditor of state's appointee shall notify the attorney general in writing of whether any legal action has been taken. If no legal action has been taken, the officer, auditor of state, or the auditor of state's appointee, within the same period, shall notify the attorney general in writing of the reason why legal action has not been taken. The attorney general or the attorney general's assistant may appear in any action on behalf of the public office and may, either in conjunction with, or independent of the officer, auditor of state, or auditor of state's appointee, prosecute an action to final determination. The attorney general may bring the action in any case where the officer, auditor of state, or auditor of state's appointee fails to do so within one hundred twenty days after the audit report has been filed.

(E) The provisions of this section apply to public money deposited into a fund or account of a covered organization on or after the effective date of this section.

Sec. 117.30. Where an audit report made of any office of an officer receiving a report pursuant to section 117.27 of the Revised Code sets forth that public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money due has not been collected, or that any public property has been converted or misappropriated, or where an audit report, accounting, or investigation sets forth that a public office has placed or deposited public money into a fund or account of a covered organization that has failed to adhere to any regulation or reporting required by the Internal Revenue Code, as defined by section 5747.01 of the Revised Code, or any regulation adopted thereunder, a certified copy of the report, accounting, or investigation findings shall be filed with the attorney general. Within one hundred twenty days after receiving the copy, the attorney general may institute appropriate legal action in the proper court on behalf of the public office.

Sec. 117.36. The civil actions provided for in this chapter may be entertained, heard, and determined by any court having jurisdiction of the amount involved or having jurisdiction to afford the remedy prayed for, notwithstanding the absence of any other law authorizing such civil actions to be filed by the governor, the attorney general, ~~or~~ the officer receiving a report pursuant to section 117.27 of the Revised Code, or the auditor of state or the auditor of state's appointee pursuant to section 117.281 of the Revised Code. In any action it is sufficient for the plaintiff to allege in the petition so much of the factual information contained in the report of the auditor of state as relates to the claim or action against the defendant therein and that the amount claimed against the defendant is unpaid. The plaintiff is not required to state separately and number in ~~his~~the plaintiff's petition any separate causes of action, or the factual findings of the report, upon whatever claims or circumstances based, since they are deemed to constitute a single cause of action; nor is ~~he~~the plaintiff required to set forth any other or further factual matter relating to ~~his~~the claim or action. A certified copy of any portion of the report containing factual information is prima-facie evidence in determining the truth of the allegations of the petition.

Sec. 1715.51. As used in sections 1715.51 to ~~1715.59~~ 1715.71 of the Revised Code:

(A) "Charitable purpose" means any purpose the achievement of which is beneficial to the community, including the relief of poverty, the advancement of education or religion, the promotion of health, and the promotion of a governmental purpose.

(B) "Institution" means any of the following:

(1) A person, other than an individual, organized and operated exclusively for charitable purposes;

(2) A governmental organization to the extent that it

holds funds exclusively for a charitable purpose;

(3) A trust that had both charitable and noncharitable interests and the noncharitable interests have terminated.

(C) "Institutional fund" means a fund that is held by an institution exclusively for charitable purposes. "Institutional fund" does not include any of the following:

(1) ~~Program related~~ Program-related assets;

(2) A fund held for an institution by a trustee that is not an institution;

(3) A fund in which a beneficiary that is not an institution has an interest other than an interest that may arise upon a violation of or the failure of the purposes of the fund.

(D) "Endowment fund" means an institutional fund or any part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. "Endowment fund" does not include assets that an institution designates as an endowment fund for its own use.

(E) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(F) "Non-private endowment fund" means an endowment fund held by a non-private institution.

(G) "Non-private institution" means an institution that is not a private institution, private college, or private university, including any institution incorporated under Chapter 1713. of the Revised Code.

(H) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, governmental organization, or any other legal or commercial entity.

~~(G)~~ (I) "~~Program related~~ Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

~~(H)~~ (J) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 1715.60. The donor who establishes a non-private endowment fund may appoint a representative to oversee the use, management, investment, and appropriation of that non-private endowment fund.

Sec. 1715.61. (A) A non-private institution shall not make any transfer between a donor-restricted non-private endowment fund and any other fund, including an institutional fund, unless at least one of the following applies:

(1) The gift instrument expressly permits transfers between the non-private endowment fund and another fund.

(2) The establishing donor of the non-private endowment fund consents in a record.

(3) The gift instrument is modified pursuant to section 1715.55 of the Revised Code to permit transfers between the endowment fund and another fund.

(B) The establishing donor of a non-private endowment fund to a non-private institution or a representative appointed pursuant to section 1715.60 of the Revised Code may submit to the charitable law section of the office of the attorney general a written notice of concern if the donor or representative has a reasonable belief that the non-private institution has violated division (A) of this section.

Sec. 1715.62. A non-private institution has discretion over the use of any funds in a non-private endowment fund that are not donor-restricted, provided that the non-private institution makes publicly available an accurate, complete, and clear accounting of the amount of such funds expended and the purpose for their expenditure.

Sec. 1715.63. (A) Beginning on the first day of January following the effective date of this section, a non-private institution that manages and invests a donor-restricted non-private endowment fund, the value of which exceeds five million dollars, shall annually prepare and file with the office of the attorney general and the non-private institution's governing board, or equivalent body, a report that contains all of the following information:

(1) The market value of the non-private endowment fund;

(2) The non-private institution's investment asset allocation;

(3) The non-private institution's spending policy;

(4) The non-private institution's spending rate with respect to the non-private endowment fund;

(5) Annual appropriations to the non-private endowment fund;

(6) Deficits for the non-private endowment fund;

(7) Material deviations from donor restrictions;

(8) Any suspension or override of investment or spending policies.

(B) The establishing donor of a non-private endowment fund to a non-private institution or a representative appointed pursuant to section 1715.60 of the Revised Code may submit to the charitable law section of the office of the attorney general a written notice of concern if the donor or representative has a reasonable belief that the non-private institution is not in compliance with the charitable purpose or endowment obligations of the non-private endowment fund or a restriction contained in a gift instrument regarding the use, management, or investment of the non-private endowment fund.

Sec. 1715.64. (A) Beginning on the first day of January following the effective date of this section, and at least once during each five-year period thereafter, a non-private institution that manages and invests a non-private endowment fund shall conduct a sustainability review and produce a written report with its details, findings, and conclusions. The sustainability review shall do both of the following:

(1) Contain all of the same information required for the annual report under section 1715.63 of the Revised Code;

(2) Evaluate all of the following:

(a) Compliance with the non-private institution's fiduciary duties;

(b) Compliance with the donor's intent;

(c) Compliance with prudence standards;

(d) The duration and preservation of the non-private endowment fund;

(e) The purposes of the institution and the non-private endowment fund;

(f) General economic conditions;

(g) The possible effect of inflation or deflation;

(h) The expected total return from income and the appreciation of investments;

(i) Other resources of the non-private institution;

(j) The investment policy of the non-private institution.

(B) A non-private institution that manages and invests a non-private endowment fund shall submit to the attorney general a written summary of each sustainability review conducted under division (A) of this section.

(C) A non-private institution that manages and invests a non-private endowment fund shall retain and make available to the public the written report created pursuant to division (A) of this section. The non-private institution shall redact confidential or personal identifying information in the publicly available written report.

(D) The establishing donor of a non-private endowment fund to a non-private institution or a representative appointed pursuant to section 1715.60 of the Revised Code may submit to the charitable law section of the office of the attorney general a written notice of concern if the donor or representative has a reasonable belief that the non-private endowment fund is unsustainable based on the sustainability review produced by the non-private institution.

Sec. 1715.65. (A)(1) The appropriate court, upon application of a non-private institution or the attorney general, shall modify the endowment obligations of a non-private endowment fund or a restriction contained in a gift instrument regarding the use, management, or investment of a non-private endowment fund if the sustainability review conducted pursuant to section 1715.64 of the Revised Code concludes that the endowment obligations or restriction are, or will become, unsustainable under the charitable purpose of the non-private endowment fund. To the extent practicable, any modification made under this section shall be done in accordance with the donor's probable intention.

(2) The court, upon application of a non-private institution or the attorney general, may modify the charitable purpose of a non-private endowment fund if the sustainability review conducted pursuant to section 1715.64 of the Revised Code concludes that the specific charitable purpose is, or will become, unsustainable. Any modification shall be made in a manner consistent with the charitable purposes expressed in the gift instrument.

(B) The attorney general is a necessary party to and shall be served with process in all proceedings pertaining to an application under this section.

(C) In making a modification pursuant to division (A) of this section, the court shall modify the obligations of the non-private endowment fund, charitable purpose, or restriction contained in the gift instrument to the least extent necessary to ensure the non-private endowment fund's sustainability. If a non-private endowment fund expires upon a given date or upon the occurrence of a specified condition, any modification shall be made with the purpose of sustaining the non-private endowment fund only until the occurrence of that date or condition.

(D) Nothing in this section requires a court to modify the endowment obligations of a non-private endowment fund, charitable purpose, or restriction contained in a gift instrument when the non-private endowment fund is not perpetual under the terms of the gift instrument.

Sec. 1715.66. The attorney general has sole authority to enforce the provisions of sections 1715.60 to 1715.71 of the Revised Code.

Sec. 1715.67. (A) The attorney general shall review any notice of concern submitted by a donor or representative appointed under section 1715.61, 1715.63, or 1715.64 of the Revised Code and conduct an investigation to determine whether any of the following applies to a non-private institution or non-private endowment fund identified in the notice of concern:

(1) The non-private institution is not in compliance with the charitable purpose or endowment obligations of the non-private endowment fund or a restriction contained in a gift instrument regarding the use, management, or investment of the non-private endowment fund.

(2) The non-private institution has violated division (A) of section 1715.61 of the Revised Code.

(3) The non-private endowment fund is unsustainable.

(B) Upon receipt of a report submitted in accordance with section 1715.63 or 1715.64 of the Revised Code, the attorney general may conduct an investigation as described in division (A) of this section.

(C) In any investigation conducted pursuant to this section, the attorney general may administer oaths, adduce evidence, and request the production of any book, document, record, or other relevant matter.

Sec. 1715.68. (A)(1) The attorney general shall issue a notice of noncompliance to a non-private institution if the attorney general determines through an investigation conducted pursuant to section 1715.67 of the Revised Code that either of the following apply to the non-private institution:

(a) The non-private institution is not in compliance with the charitable purpose or endowment obligations of the non-private endowment fund or a restriction contained in a gift instrument regarding the use, management, or investment of the non-private endowment fund.

(b) The non-private institution has violated division (A) of section 1715.61 of the Revised Code.

(2) The attorney general shall issue a notice of unsustainability to a non-private institution if the attorney general determines through an investigation conducted pursuant to section 1715.67 of the Revised Code that a non-private endowment fund held by that non-private institution is unsustainable.

(B) The attorney general shall clearly explain in a notice issued under division (A)(1) or (2) of this section the manner in which the institution is in noncompliance or in which the non-private endowment fund is unsustainable.

(C) When a notice of noncompliance is issued, the attorney general shall require the non-private institution to submit a corrective action plan to the attorney general. In the notice, the attorney general shall indicate the form and manner in which the corrective action plan is to be submitted and clearly specify the date by which the non-private institution is required to submit the plan. The date that is specified shall not be less than thirty days after the notice is sent.

(D) If a non-private institution has misused or improperly appropriated any portion of a non-private endowment fund, the attorney general shall require, as part of the corrective action plan, that the misused or misappropriated funds be repaid to the non-private endowment fund.

(E) A non-private institution that receives a notice of noncompliance shall submit to the attorney general a corrective action plan in the form and manner indicated, and by the date specified, in the notice. In the plan, the non-private institution shall provide a detailed description of the corrective action the non-private institution will take to address each instance of noncompliance identified by the attorney general. The non-private institution shall specify the date by which it will complete the corrective action. The date that is specified shall not be more than ninety days after the plan is submitted.

(F) A corrective action plan is subject to review and approval by the attorney general. After the attorney general reviews and approves the plan, the attorney general shall monitor and evaluate the non-private institution's compliance with the plan.

(G) A non-private institution that complies with and completes a corrective action plan in accordance with this section is not subject to a civil action under section 1715.69 of the Revised Code regarding the noncompliance or violation remedied by the corrective action.

(H) A non-private institution that receives a notice of unsustainability shall, within ninety days, apply to a court of competent jurisdiction for a modification of the obligations of the non-private endowment fund, charitable purpose, or restriction contained in the gift instrument regarding the use, management, or investment of the non-private endowment fund in accordance with section 1715.65 of the Revised Code.

Sec. 1715.69. If a non-private institution has not completed a corrective action plan in accordance with section 1715.68 of the Revised Code within one hundred twenty days after the attorney general sends a notice under section 1715.68 of the Revised Code, the attorney general shall file a complaint in a court of competent jurisdiction seeking any or all of the following:

(A) An order requiring the repayment of all misused or misappropriated funds to the non-private endowment fund;

(B) Injunctive relief ordering compliance with a non-private endowment fund's charitable purpose, endowment obligations, or restrictions contained in the gift instrument;

(C) Graduated corrective measures, as determined by the court, to supplement the corrective action plan;

(D) A temporary injunction limiting discretionary endowment spending;

(E) Enhanced reporting, as determined by the court;

(F) Other appropriate relief, as determined by the court.

Sec. 1715.70. Nothing in sections 1715.60 to 1715.71 of the Revised Code shall be construed to create or modify criminal liability under the laws of this state.

Sec. 1715.71. Sections 1715.60 to 1715.70 of the Revised Code apply only to non-private endowment funds established on and after the effective date of this section.

Section 2. That existing sections 117.30, 117.36, and 1715.51 of the Revised Code are hereby repealed.