OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

S.B. 368
136th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Roegner

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SUMMARY

Endowment agreement enforcement

- Provides that the Attorney General (AG) is a necessary party to enforce the express terms of an endowment agreement ("agreement").
- Defines "endowment agreement" ("agreement") as a gift instrument signed by a benefactor and by a state institution of higher education ("state institution") or another institution whose corporate purpose is to benefit a state institution and receives, holds, or administers charitable property transfers for such state institution, amongst other obligations.
- Allows a benefactor or benefactor representative ("representative") to notify the AG's Charitable Law Section in writing if a state institution violates a restriction contained in an agreement on the management, investment, spending, or purpose of the endowment fund ("fund").
- Allows the AG to enforce the interests of the beneficiaries of an agreement by filing a complaint for breach or to obtain a declaratory judgment of rights and duties expressed in the agreement and as to all of the actions it contemplates.
- Allows a benefactor or a representative, if, within 180 days of the AG receiving notice, the AG has not obtained full compliance, to file a complaint for breach of an agreement or to obtain a declaratory judgment.
- Provides guidance on what relief a benefactor or a representative complaint may seek and that an agreement need not expressly reserve a right to sue or enforce to file a complaint nor does action by the AG need to occur.

- Allows an institution that is party to an agreement, or the state institution receiving benefit from an agreement, to obtain a declaratory judgment of rights and duties expressed in an agreement.
- Requires the institution to seek a declaratory judgment in response to a complaint brought under the bill's provisions.
- Requires every complaint authorized under the bill to be filed in a court of competent jurisdiction in the county where the state institution receiving the use or benefit of the fund has its principal office.
- Specifies who must be named as parties in a complaint brought pursuant to the bill.
- Provides that a failure to join as a party a benefactor or a representative is not jurisdictional, but the court must afford a benefactor or a representative an opportunity to be heard or to intervene if sought within a reasonable time before the court renders final judgement.
- Clarifies that the interests of a benefactor and a representative are not to be presumed to be the same as those of the AG or state institution administering a fund under an agreement.
- Creates a statute of limitations that prohibits a benefactor or representative from filing a complaint under the bill's provisions if the person filing the complaint discovered the breach more than six years before the filing.
- Extends the six-year statute of limitations by 210 days if, during the sixth year after discovery of the breach, a benefactor or benefactor representative notifies the AG in writing of the breach.
- Applies the bill's provisions to funds established on and after the bill's effective date and funds established before the effective date, but only to breaches occurring on or after the bill's effective date.

DETAILED ANALYSIS

Endowment agreement enforcement

The bill allows a benefactor or a benefactor representative ("representative") to notify, the Charitable Law section of the Ohio Attorney General (AG), in writing, if an institution violated a restriction contained in an endowment agreement ("agreement") on the management, investment, spending, or purpose of the endowment fund ("fund") and grants the AG the power to enforce an agreement's express terms.

The bill defines several terms, as follows:

- "Endowment agreement" ("agreement") means a gift instrument signed by a benefactor and by a state institution of higher education ("state institution") or another institution whose corporate purpose is to benefit an identified state institution and receives, holds,

or administers charitable transfers of property for such state institution, and that contains both of the following obligations:

- The benefactor commits to transfer property to a state institution or to another institution to receive, hold, or administer the property for the use or benefit of a state institution with the consent of the state institution;
- An institution signing the instrument commits that the institution or a state institution will receive, hold, or administer the transferred property as a fund for the use or benefit of a state institution subject to any restrictions on management, investment, spending, or purpose expressed in the instrument.

- "Benefactor" means each person signing an agreement who committed in the agreement to transfer property to an institution with the institution's consent.
- "Benefactor representative" ("representative") means either:
  - A person designated in an agreement, whether or not born or existing at the time of such designation, to act in place of the benefactor for the purpose of resolving disputes about the agreement, including the agreement's validity, interpretation, performance, and enforcement, and any action that the agreement contemplates;
  - If no person is designated in the agreement, the administrator or executor of a benefactor's estate;
  - The bill provides that an institution receiving or administrating property under an agreement or any person designated by such institution for any purpose is not a representative.
- "State institution of higher education" ("state institution") (1) means any state university or college, community college, state community college, university branch established under Ohio's State University laws, or technical college, (2) means also the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Northeast Ohio Medical University, Ohio University, The Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University, and (3) is an "institution" under the bill.

Current law provides the following definitions:

- "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.
- "Endowment fund" ("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, excluding assets that an institution designates as an endowment fund for its own use.
- "Institution" means any of the following:

- A person, other than an individual, organized and operated exclusively for charitable purposes;
- A governmental organization to the extent that it holds funds exclusively for a charitable purpose;
- A trust that had both charitable and noncharitable interests and the noncharitable interests have terminated.[1]

AG enforcement

The bill allows the AG to enforce the interests of an agreement's beneficiaries by:

- Filing a complaint for breach; or
- Obtaining a declaratory judgment of rights and duties expressed in the agreement and as to all of the actions it contemplates, including the interpretation, performance, and enforcement of the agreement and determination of its validity.[2]

Benefactor/representative complaint

If the AG, within 180 days after receiving the benefactor's or representative's notice of a violation, has not obtained full compliance with the restriction and restitution to the fund of property approximately equal to any value lost due to the violation, the bill allows a benefactor or representative to file a complaint for either or both enforcement mechanisms the AG may perform, as described immediately above regarding AG enforcement.[3]

Complaint requirements

The bill applies the following to a benefactor/representative complaint:

- It may be filed regardless of whether the agreement expressly reserves a right to sue or enforce;
- The filing of a complaint by the AG under the bill's provisions is not a requirement for filing a complaint;
- The complaint cannot seek a judgment awarding damages, court costs, attorney's fees, or any other award of money or other property to the plaintiff. It must seek only one or both of the following:
  - Declaratory relief;
  - Equitable relief consistent with the charitable purposes expressed in the agreement and consistent with the charitable purposes of the institution administering the fund

[1] R.C. 109.25(E), 1715.51(A), (B), (F), (G), (H), and (L), and 1715.551; R.C. 3345.011, not in the bill.

[2] R.C. 1715.552.

[3] R.C. 1715.553(A).

under the agreement and the state institution receiving the use or benefit of the fund.[4]

Declaratory judgment for institutions

The bill permits an institution that is a party to an agreement, or the state institution receiving the use or benefit of the fund established through an agreement, to obtain a declaratory judgment of rights and duties expressed in an agreement and as to all of its actions it contemplates, including the interpretation, performance, and enforcement of the agreement and determination of the agreement's validity. The bill makes this mandatory in response to any complaint brought under the bill's provisions.[5]

Filing of the complaint

The bill requires every complaint authorized by the bill's provisions to be filed in a court of competent jurisdiction in the county where the state institution receiving the use or benefit of the fund has its principal office.

The bill directs that every complaint name the following as parties:

- The AG;
- Each institution that signed the agreement or its successor, the state institution receiving the use or benefit of the fund, and any institution that currently holds or administers property subject to the agreement;
- Each benefactor and representative.[6]

Failure to join as a party

The bill provides that the failure to join as a party a benefactor or a representative is not jurisdictional. However, the court must afford a benefactor or a representative an opportunity to be heard or to intervene if sought within a reasonable time before the court renders final judgment.[7]

Presumption of interests

The bill provides that the interest of a benefactor and the interest represented by a representative must not be presumed to be identical with the interest of the AG or a state institution or an institution administering a fund under an agreement.[8]

[4] R.C. 1715.553(B).

[5] R.C. 1715.554.

[6] R.C. 1715.555.

[7] R.C. 1715.556.

[8] R.C. 1715.557.

Deadline to file complaint: statute of limitations

The bill prohibits a benefactor or a representative from filing a complaint authorized by the bill's provisions based on a breach of an agreement if the person filing the complaint discovered the breach more than six years before filing the complaint. The bill, however, makes an exception if, during the sixth year after discovery of the breach, a benefactor or a representative notifies the AG's Charitable Law Section in writing of the breach. In such cases, the deadline to file a complaint is extended automatically by 210 days.[9]

Application of the bill

The bill applies its provisions only to funds established on and after the bill's effective date and funds established before the bill's effective date, but only with respect to breaches of agreements if those breaches occur on or after the bill's effective date.[10]

HISTORY

Action	Date
Introduced	02-23-26

ANSB0368IN-136/ts

[9] R.C. 1715.558.

[10] R.C. 1715.559.