

## **Pending Florida legislation would give charities more flexible guidelines**

By **GAIL LIBERMAN**

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While charities badly need money, could your carefully targeted endowment wind up useless?

This is happening too much in Florida, experts say. That's because Florida law often leaves charities unable to spend or invest their funds in situations, such as:

- A donor dies or is disabled, so his or her intent for the funds can't be determined;
- Circumstances change, so that the donor's original intent for funds no longer makes sense;
- The investment market tanks, sending the value of a donor's endowment fund below the amount given.

### **Effective July 1 if adopted**

Florida House Bill 599 and Senate Bill 952 would give charities more flexibility in these situations and others via guidelines to "prudently" spend and invest institutional funds. Florida is one of only three states that have not yet adopted the "Prudent Management of Institutional Funds Act," upon which the two Florida bills are modeled. The other state hold-outs are Pennsylvania and Mississippi. Shepherded by the Chicago-based Uniform Law Commission, the virtually identical Florida House and Senate bills provide for a July 1 effective date, if adopted.

Say a donor gives \$10,000 to a charity to be used for the construction of a new building, but it's not nearly enough to finance a new building. Meanwhile, the donor dies. "Now the \$10,000 can't do anything," House Bill sponsor state Rep. Kathleen C. Passidomo, R-Naples, explains. "Currently, (the charity would) have to go to court."

More flexible guidelines to help deal with situations when the donor's intent can't be ascertained already exist in Florida for educational institutions. Florida's pending legislation would expand those guidelines to the state's entire not-for-profit sector.

Thomas C. Lee Jr., attorney in the Vero Beach office of Gunster, notes that between 2000 and 2002, the stock market dropped between 9 percent and 22 percent annually. This immediately sent endowment funds established during that period under water. Charities were unable to spend from those funds for years. Under current Florida law, a non-educational institution typically can't spend money from an underwater endowment fund — regardless of what the donor wants, he says.

The pending Florida legislation would kill that floor and allow a fund's investment to be sold at a loss and used.

Under the proposed bills, charities, in their spending and investment decisions, would be required to look at a series of specific factors. Among those: Possible effects of inflation and deflation. The duration and preservation of the endowment fund would be a factor required for consideration in a spending decision. Tax consequences, for example, would need to be examined in an investment decision.

### **Uniform law desired**

Jerry Ganz, chief financial officer of the Florida State University Foundation in Tallahassee, says a uniform nationwide law is essential for charities with donors in multiple states. Under the proposed Florida bills, a burden falls on charities to determine what a "prudent" investment and spending policy is.

The Florida State University Foundation, already operating under rules in the proposed bills, has adopted one for potential donors to see and read.

If these bills are adopted, donors would be wise to read a charity's "prudent" investing and spending policy to make sure they're comfortable with it, he suggests.

Donors still must specify to a charity how they want their funds spent and invested, Lee stresses. "That becomes the guiding principle. Emails that go back and forth between a donor and charities become evidence when the donor dies."