S T A T E O F N E W Y O R K

7907

2009-2010 Regular Sessions

I N A S S E M B L Y

April 28, 2009

Introduced by M. of A. BING -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, the religious corporations law, the estates, powers and trusts law and the surrogate's court procedure act, in relation to adopting a prudent management of institutional funds standard; and to repeal certain provisions of the not-for-profit corporation law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The not-for-profit corporation law is amended by adding a new article 5-A to read as follows:

ARTICLE 5-A

PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

SECTION 550. SHORT TITLE.
551. DEFINITIONS.
552. STANDARD OF CONDUCT IN MANAGING AND INVESTING AN INSTITUTIONAL FUND.
553. APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION.
554. DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.
555. RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE.
556. REVIEWING COMPLIANCE.
557. APPLICATION TO EXISTING INSTITUTIONAL FUNDS.
558. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

S 550. SHORT TITLE.

THIS ARTICLE MAY BE KNOWN AND MAY BE CITED AS THE "NEW YORK PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT".

S 551. DEFINITIONS.

AS USED IN THIS ARTICLE:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD11125-02-9

(A) "CHARITABLE PURPOSE" MEANS THE RELIEF OF POVERTY, THE ADVANCEMENT OF EDUCATION OR RELIGION, THE PROMOTION OF HEALTH, THE PROMOTION OF A GOVERNMENTAL PURPOSE, OR ANY OTHER PURPOSE THE ACHIEVEMENT OF WHICH IS BENEFICIAL TO THE COMMUNITY.

(B) "ENDOWMENT FUND" MEANS AN INSTITUTIONAL FUND OR PART THEREOF THAT, UNDER THE TERMS OF A GIFT INSTRUMENT, IS NOT WHOLLY EXPENDABLE BY THE INSTITUTION ON A CURRENT BASIS. THE TERM DOES NOT INCLUDE ASSETS THAT AN INSTITUTION DESIGNATES AS AN ENDOWMENT FUND FOR ITS OWN USE.

(C) "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.

(D) "INSTITUTION" MEANS: (1) A PERSON, OTHER THAN AN INDIVIDUAL, ORGANIZED AND OPERATED EXCLUSIVELY FOR CHARITABLE PURPOSES; (2) A GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, TO THE EXTENT THAT IT HOLDS FUNDS EXCLUSIVELY FOR A CHARITABLE PURPOSE; OR (3) A TRUST THAT HAD BOTH CHARITABLE AND NONCHARITABLE INTERESTS, AFTER ALL NONCHARITABLE INTERESTS HAVE TERMINATED.

(E) "INSTITUTIONAL FUND" MEANS A FUND HELD BY AN INSTITUTION EXCLUSIVELY FOR CHARITABLE PURPOSES. THIS TERM SHALL NOT INCLUDE: (1) PROGRAM-RELATED ASSETS; (2) A FUND HELD FOR AN INSTITUTION BY A TRUSTEE THAT IS NOT AN INSTITUTION; OR (3) A FUND IN WHICH A BENEFICIARY THAT IS NOT AN INSTITUTION HAS AN INTEREST, OTHER THAN AN INTEREST THAT COULD ARISE UPON VIOLATION OR FAILURE OF THE PURPOSES OF THE FUND.

(F) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

(G) "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) "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.

S 552. STANDARD OF CONDUCT IN MANAGING AND INVESTING AN INSTITUTIONAL FUND.

(A) SUBJECT TO THE INTENT OF A DONOR EXPRESSED IN A GIFT INSTRUMENT, AN INSTITUTION, IN MANAGING AND INVESTING AN INSTITUTIONAL FUND, SHALL CONSIDER THE CHARITABLE PURPOSES OF THE INSTITUTION AND THE PURPOSES OF THE INSTITUTIONAL FUND.

(B) IN ADDITION TO COMPLYING WITH THE DUTY OF LOYALTY IMPOSED BY LAW OTHER THAN THIS ARTICLE, EACH PERSON RESPONSIBLE FOR MANAGING AND INVESTING AN INSTITUTIONAL FUND SHALL MANAGE AND INVEST THE FUND IN GOOD FAITH AND WITH THE CARE AN ORDINARILY PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES.

(C) IN MANAGING AND INVESTING AN INSTITUTIONAL FUND, AN INSTITUTION:

(1) MAY INCUR ONLY COSTS THAT ARE APPROPRIATE AND REASONABLE IN RELATION TO THE ASSETS, THE PURPOSES OF THE INSTITUTION, AND THE SKILLS AVAILABLE TO THE INSTITUTION; AND

(2) SHALL MAKE A REASONABLE EFFORT TO VERIFY FACTS RELEVANT TO THE MANAGEMENT AND INVESTMENT OF THE FUND.

(D) AN INSTITUTION MAY POOL TWO OR MORE INSTITUTIONAL FUNDS FOR PURPOSES OF MANAGEMENT AND INVESTMENT.

(E) EXCEPT AS OTHERWISE PROVIDED BY A GIFT INSTRUMENT, THE FOLLOWING RULES APPLY:

(1) IN MANAGING AND INVESTING AN INSTITUTIONAL FUND, THE FOLLOWING FACTORS, IF RELEVANT, MUST BE CONSIDERED: (A) GENERAL ECONOMIC CONDI-

TIONS; (B) THE POSSIBLE EFFECT OF INFLATION OR DEFLATION; (C) THE EXPECTED TAX CONSEQUENCES, IF ANY, OF INVESTMENT DECISIONS OR STRATEGIES; (D) THE ROLE THAT EACH INVESTMENT OR COURSE OF ACTION PLAYS WITHIN THE OVERALL INVESTMENT PORTFOLIO OF THE FUND; (E) THE EXPECTED TOTAL RETURN FROM INCOME AND THE APPRECIATION OF INVESTMENTS; (F) OTHER RESOURCES OF THE INSTITUTION; (G) THE NEEDS OF THE INSTITUTION AND THE FUND TO MAKE DISTRIBUTIONS AND TO PRESERVE CAPITAL; AND (H) AN ASSET'S SPECIAL RELATIONSHIP OR SPECIAL VALUE, IF ANY, TO THE CHARITABLE PURPOSES OF THE INSTITUTION.

(2) MANAGEMENT AND INVESTMENT DECISIONS ABOUT AN INDIVIDUAL ASSET MUST BE MADE NOT IN ISOLATION BUT RATHER IN THE CONTEXT OF THE INSTITUTIONAL FUND'S PORTFOLIO OF INVESTMENTS AS A WHOLE AND AS A PART OF AN OVERALL INVESTMENT STRATEGY HAVING RISK AND RETURN OBJECTIVES REASONABLY SUITED TO THE FUND AND TO THE INSTITUTION.

(3) EXCEPT AS OTHERWISE PROVIDED BY LAW OTHER THAN THIS ARTICLE, AN INSTITUTION MAY INVEST IN ANY KIND OF PROPERTY OR TYPE OF INVESTMENT CONSISTENT WITH THIS ARTICLE.

(4) AN INSTITUTION SHALL DIVERSIFY THE INVESTMENTS OF AN INSTITUTIONAL FUND UNLESS THE INSTITUTION REASONABLY DETERMINES THAT, BECAUSE OF SPECIAL CIRCUMSTANCES, THE PURPOSES OF THE FUND ARE BETTER SERVED WITHOUT DIVERSIFICATION.

(5) WITHIN A REASONABLE TIME AFTER RECEIVING PROPERTY, AN INSTITUTION SHALL MAKE AND CARRY OUT DECISIONS CONCERNING THE RETENTION OR DISPOSITION OF THE PROPERTY OR TO REBALANCE A PORTFOLIO, IN ORDER TO BRING THE INSTITUTIONAL FUND INTO COMPLIANCE WITH THE PURPOSES, TERMS, AND DISTRIBUTION REQUIREMENTS OF THE INSTITUTION AS NECESSARY TO MEET OTHER CIRCUMSTANCES OF THE INSTITUTION AND THE REQUIREMENTS OF THIS ARTICLE.

(6) A PERSON THAT HAS SPECIAL SKILLS OR EXPERTISE, OR IS SELECTED IN RELIANCE UPON THE PERSON'S REPRESENTATION THAT THE PERSON HAS SPECIAL SKILLS OR EXPERTISE, HAS A DUTY TO USE THOSE SKILLS OR THAT EXPERTISE IN MANAGING AND INVESTING INSTITUTIONAL FUNDS.

S 553. APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUND; RULES OF CONSTRUCTION.

(A) SUBJECT TO THE INTENT OF A DONOR EXPRESSED IN THE GIFT INSTRUMENT, AN INSTITUTION MAY APPROPRIATE FOR EXPENDITURE OR ACCUMULATE SO MUCH OF AN ENDOWMENT FUND AS THE INSTITUTION DETERMINES IS PRUDENT FOR THE USES, BENEFITS, PURPOSES, AND DURATION FOR WHICH THE ENDOWMENT FUND IS ESTABLISHED. UNLESS STATED OTHERWISE IN THE GIFT INSTRUMENT, THE ASSETS IN AN ENDOWMENT FUND ARE DONOR-RESTRICTED ASSETS UNTIL APPROPRIATED FOR EXPENDITURE BY THE INSTITUTION. IN MAKING A DETERMINATION TO APPROPRIATE OR ACCUMULATE, THE INSTITUTION SHALL ACT IN GOOD FAITH, WITH THE CARE THAT AN ORDINARILY PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES, AND SHALL CONSIDER, IF RELEVANT, THE FOLLOWING FACTORS:

(1) THE DURATION AND PRESERVATION OF THE ENDOWMENT FUND;

(2) THE PURPOSES OF THE INSTITUTION AND THE ENDOWMENT FUND;

(3) GENERAL ECONOMIC CONDITIONS;

(4) THE POSSIBLE EFFECT OF INFLATION OR DEFLATION;

(5) THE EXPECTED TOTAL RETURN FROM INCOME AND THE APPRECIATION OF INVESTMENTS;

(6) OTHER RESOURCES OF THE INSTITUTION; AND

(7) THE INVESTMENT POLICY OF THE INSTITUTION.

(B) TO LIMIT THE AUTHORITY TO APPROPRIATE FOR EXPENDITURE OR ACCUMULATE UNDER PARAGRAPH (A) OF THIS SECTION, A GIFT INSTRUMENT MUST SPECIFICALLY STATE THE LIMITATION.

(C) TERMS IN A GIFT INSTRUMENT DESIGNATING A GIFT AS AN ENDOWMENT, OR A DIRECTION OR AUTHORIZATION IN THE GIFT INSTRUMENT TO USE ONLY "INCOME," "INTEREST," "DIVIDENDS," OR "RENTS, ISSUES, OR PROFITS," OR "TO PRESERVE THE PRINCIPAL INTACT," OR WORDS OF SIMILAR IMPORT:

(1) CREATE AN ENDOWMENT FUND OF PERMANENT DURATION UNLESS OTHER LANGUAGE IN THE GIFT INSTRUMENT LIMITS THE DURATION OR PURPOSE OF THE FUND; AND

(2) DO NOT OTHERWISE LIMIT THE AUTHORITY TO APPROPRIATE FOR EXPENDITURE OR ACCUMULATE UNDER PARAGRAPH (A) OF THIS SECTION.

S 554. DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.

(A) SUBJECT TO ANY SPECIFIC LIMITATION SET FORTH IN A GIFT INSTRUMENT OR IN LAW OTHER THAN THIS ARTICLE, AN INSTITUTION MAY DELEGATE TO AN EXTERNAL AGENT THE MANAGEMENT AND INVESTMENT OF AN INSTITUTIONAL FUND TO THE EXTENT THAT AN INSTITUTION COULD PRUDENTLY DELEGATE UNDER THE CIRCUMSTANCES. AN INSTITUTION SHALL ACT IN GOOD FAITH, WITH THE CARE THAT AN ORDINARILY PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES, IN:

(1) SELECTING AN AGENT;

(2) ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH THE PURPOSES OF THE INSTITUTION AND THE INSTITUTIONAL FUND; AND

(3) PERIODICALLY REVIEWING THE AGENT'S ACTIONS IN ORDER TO MONITOR THE AGENT'S PERFORMANCE AND COMPLIANCE WITH THE SCOPE AND TERMS OF THE DELEGATION.

(B) IN PERFORMING A DELEGATED FUNCTION, AN AGENT OWES A DUTY TO THE INSTITUTION TO EXERCISE REASONABLE CARE TO COMPLY WITH THE SCOPE AND TERMS OF THE DELEGATION.

(C) AN INSTITUTION THAT COMPLIES WITH PARAGRAPH (A) OF THIS SECTION IS NOT LIABLE FOR THE DECISIONS OR ACTIONS OF AN AGENT TO WHICH THE FUNCTION WAS DELEGATED.

(D) BY ACCEPTING DELEGATION OF A MANAGEMENT OR INVESTMENT FUNCTION FROM AN INSTITUTION THAT IS SUBJECT TO THE LAWS OF THIS STATE, AN AGENT SUBMITS TO THE JURISDICTION OF THE COURTS OF THIS STATE IN ALL PROCEEDINGS ARISING FROM OR RELATED TO THE DELEGATION OR THE PERFORMANCE OF THE DELEGATED FUNCTION.

(E) AN INSTITUTION MAY CONTRACT WITH AN AGENT IN RELATION TO DELEGATION UNDER PARAGRAPH (A) OF THIS SECTION AND MAY AUTHORIZE THE PAYMENT OF COMPENSATION FOR SUCH AGENT.

(F) AN INSTITUTION MAY DELEGATE MANAGEMENT AND INVESTMENT FUNCTIONS TO ITS COMMITTEES, OFFICERS, OR EMPLOYEES AS AUTHORIZED BY THE LAWS OF THIS STATE OTHER THAN THIS ARTICLE, AS SET FORTH IN, INTER ALIA, SECTION 514 (DELEGATION OF INVESTMENT MANAGEMENT).

S 555. RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE.

(A) IF THE DONOR CONSENTS IN A RECORD, AN INSTITUTION MAY RELEASE OR MODIFY, IN WHOLE OR IN PART, A RESTRICTION CONTAINED IN A GIFT INSTRUMENT ON THE MANAGEMENT, INVESTMENT, OR PURPOSE OF AN INSTITUTIONAL FUND. A RELEASE OR MODIFICATION MAY NOT ALLOW A FUND TO BE USED FOR A PURPOSE OTHER THAN A CHARITABLE PURPOSE OF THE INSTITUTION.

(B) A COURT OF COMPETENT JURISDICTION, UPON APPLICATION OF AN INSTITUTION, MAY MODIFY A RESTRICTION CONTAINED IN A GIFT INSTRUMENT REGARDING THE MANAGEMENT OR INVESTMENT OF AN INSTITUTIONAL FUND IF THE RESTRICTION HAS BECOME IMPRACTICABLE OR WASTEFUL, IF IT IMPAIRS THE MANAGEMENT OR INVESTMENT OF THE FUND, OR IF, BECAUSE OF CIRCUMSTANCES NOT ANTICIPATED BY THE DONOR, A MODIFICATION OF A RESTRICTION WILL FURTHER THE PURPOSES OF THE FUND. THE INSTITUTION SHALL NOTIFY THE ATTORNEY GENERAL OF THE APPLICATION, AND THE ATTORNEY GENERAL MUST BE GIVEN AN OPPORTUNITY TO BE

HEARD. TO THE EXTENT PRACTICABLE, ANY MODIFICATION MUST BE MADE IN ACCORDANCE WITH THE DONOR'S PROBABLE INTENTION.

(C) IF A PARTICULAR CHARITABLE PURPOSE OR A RESTRICTION CONTAINED IN A GIFT INSTRUMENT ON THE USE OF AN INSTITUTIONAL FUND BECOMES UNLAWFUL, IMPRACTICABLE, IMPOSSIBLE TO ACHIEVE, OR WASTEFUL, THE COURT, UPON APPLICATION OF AN INSTITUTION, MAY MODIFY THE PURPOSE OF THE FUND OR THE RESTRICTION ON THE USE OF THE FUND IN A MANNER CONSISTENT WITH THE CHARITABLE PURPOSES EXPRESSED IN THE GIFT INSTRUMENT. THE INSTITUTION SHALL NOTIFY THE ATTORNEY GENERAL OF THE APPLICATION, AND THE ATTORNEY GENERAL MUST BE GIVEN AN OPPORTUNITY TO BE HEARD.

(D) IF AN INSTITUTION DETERMINES THAT A RESTRICTION CONTAINED IN A GIFT INSTRUMENT ON THE MANAGEMENT, INVESTMENT, OR PURPOSE OF AN INSTITUTIONAL FUND IS UNLAWFUL, IMPRACTICABLE, IMPOSSIBLE TO ACHIEVE, OR WASTEFUL, THE INSTITUTION, SIXTY DAYS AFTER NOTIFICATION TO THE ATTORNEY GENERAL, MAY RELEASE OR MODIFY THE RESTRICTION, IN WHOLE OR PART, IF:

(1) THE INSTITUTIONAL FUND SUBJECT TO THE RESTRICTION HAS A TOTAL VALUE OF LESS THAN THE MAXIMUM AMOUNT, AS DETERMINED UNDER THIS PARAGRAPH;

(2) MORE THAN TEN YEARS HAVE ELAPSED SINCE THE FUND WAS ESTABLISHED; AND

(3) THE INSTITUTION USES THE PROPERTY IN A MANNER CONSISTENT WITH THE CHARITABLE PURPOSES EXPRESSED IN THE GIFT INSTRUMENT.

FOR PURPOSES OF SUBPARAGRAPH (1) OF THIS PARAGRAPH, THE MAXIMUM AMOUNT IS THE GREATER OF (A) ONE HUNDRED THOUSAND DOLLARS AND (B) THE PRODUCT OF ONE HUNDRED THOUSAND DOLLARS AND A FRACTION (I) THE NUMERATOR OF WHICH IS THE CPI-U FOR THE MOST RECENT YEAR FOR WHICH IT HAS BEEN PUBLISHED PRIOR TO THE INCEPTION OF THE SIXTY-DAY NOTIFICATION PERIOD AND (II) THE DENOMINATOR OF WHICH IS THE FINAL CPI-U FOR CALENDAR YEAR TWO THOUSAND EIGHT. FOR THIS PURPOSE, CPI-U MEANS THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND, NEW YORK-NEW JERSEY-CONNECTICUT-PENNSYLVANIA CONSOLIDATED AREA, AS DETERMINED AND PUBLISHED BY THE U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

(E) FOR PURPOSES OF THIS SECTION, AN INSTITUTION MAY APPLY TO THE FOLLOWING COURTS TO RELEASE OR MODIFY A RESTRICTION CONTAINED IN A GIFT INSTRUMENT:

(1) TO THE SUPREME COURT OF THE JUDICIAL DISTRICT WHEREIN THE CORPORATION HAS ITS OFFICE OR PRINCIPAL PLACE OF CARRYING OUT THE PURPOSES FOR WHICH IT WAS FORMED; OR

(2) WHERE THE APPLICABLE GIFT INSTRUMENT IS A WILL, TO THE SURROGATE'S COURT IN WHICH SUCH WILL IS PROBATED.

S 556. REVIEWING COMPLIANCE.

COMPLIANCE WITH THIS ARTICLE SHALL BE DETERMINED IN LIGHT OF THE FACTS AND CIRCUMSTANCES EXISTING AT THE TIME A DECISION IS MADE OR ACTION IS TAKEN, AND NOT RETROSPECTIVELY.

S 557. APPLICATION TO EXISTING INSTITUTIONAL FUNDS.

THIS ARTICLE SHALL APPLY TO INSTITUTIONAL FUNDS EXISTING ON OR ESTABLISHED AFTER THE EFFECTIVE DATE OF THIS ARTICLE. AS APPLIED TO INSTITUTIONAL FUNDS EXISTING ON THE EFFECTIVE DATE OF THIS ARTICLE, THIS ARTICLE SHALL GOVERN ONLY DECISIONS MADE OR ACTIONS TAKEN ON OR AFTER THAT DATE.

S 558. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

THIS ARTICLE MODIFIES, LIMITS, AND SUPERSEDES THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. SECTION 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101 OF THAT ACT,

15 U.S.C. SECTION 7001(A), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103 OF THAT ACT, 15 U.S.C. SECTION 7003(B).

S 2. Subparagraphs 13, 14 and 17 of paragraph (a) of section 102, section 512, paragraphs (c) and (d) of section 513, and section 522 of the not-for-profit corporation law are REPEALED.

S 3. The closing subparagraph of paragraph (a) and paragraph (b) of section 406 of the not-for-profit corporation law, as added by chapter 331 of the laws of 1971, are amended to read as follows:

Except as provided in paragraph (b), this paragraph applies notwithstanding any other provision of the certificate of incorporation or any direction in [an] A GIFT instrument [referred to in section 513 (Administration of assets received for specific purposes)].

(b) Paragraph (a) shall not apply to the extent that it conflicts with any mandatory direction in [an] A GIFT instrument [by which assets referred to in section 513 were transferred to the corporation] EXECUTED prior to the effective date of this section unless such conflicting direction is removed as impracticable under article eight of the estates, powers and trusts law or in any other manner provided by law. The absence of a specific provision in the [section 513 instrument] GIFT INSTRUMENT for the current use of the principal of the fund, or the presence in such an instrument of a provision, as to the principal of a fund, limited to the principal's being held, invested and reinvested, is not such a conflicting mandatory direction.

S 4. Section 406 of the not-for-profit corporation law is amended by adding a new paragraph (e) to read as follows:

(E) FOR PURPOSES OF THIS SECTION, THE TERM GIFT INSTRUMENT SHALL HAVE THE MEANING SET FORTH IN SECTION 551 (DEFINITIONS).

S 5. Paragraph (b) of section 513 of the not-for-profit corporation law, as amended by chapter 690 of the laws of 1978, is amended to read as follows:

(b) Except as may be otherwise permitted under article eight of the estates, powers and trusts law or section [522 (Release of restrictions on use or investment)] 555 (RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE), the governing board shall apply all assets thus received to the purposes specified in the gift instrument AS DEFINED IN SECTION 551 (DEFINITIONS) and to the payment of the reasonable and proper expenses of administration of such assets. The governing board shall cause accurate accounts to be kept of such assets separate and apart from the accounts of other assets of the corporation. Unless the terms of the particular gift instrument provide otherwise, the treasurer shall make an annual report to the members (if there be members) or to the governing board (if there be no members) concerning the assets held under this section and the use made of such assets and of the income thereof.

S 6. Section 514 of the not-for-profit corporation law, as added by chapter 690 of the laws of 1978, is amended to read as follows:

S 514. Delegation of investment management.

(a) Except as otherwise provided by the applicable gift instrument AS DEFINED IN SECTION 551 (DEFINITIONS), the governing board may [(1)] delegate to its committees, officers or employees of the corporation or the fund[, or agents, including investment counsel,] the authority to act in place of the governing board in investment and reinvestment of institutional funds[, (2) contract with independent investment advisors, investment counsel or managers, banks, or trust companies, so to act, and (3) authorize the payment of compensation for investment advisory or

management services, advisors, investment counsel or managers, banks or trust companies, so to act. Each contract pursuant to which authority is so delegated shall provide that it may be terminated by the governing board at any time, without penalty, upon not more than sixty days' notice] AS DEFINED IN SECTION 551 (DEFINITIONS). SECTION 554 (DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS) SHALL GOVERN EXTERNAL DELEGATION BY A GOVERNING BOARD.

(b) The governing board shall exercise the standard of care required by section 717 (Duty of directors and officers) in the selection of persons to whom authority is delegated [or with whom contracts are made] under paragraph (a) of this section and in the continuation or termination of such delegation [or contracts. The governing board shall be relieved of all liability for the investment and reinvestment of institutional funds by, and for the other acts or omissions of, persons to whom authority is so delegated or with whom contracts are so made]. A GOVERNING BOARD THAT COMPLIES WITH SECTION 717 (DUTY OF DIRECTORS AND OFFICERS) IS NOT LIABLE FOR THE DECISIONS OR ACTIONS OF COMMITTEES, OFFICERS OR EMPLOYEES OF THE CORPORATION OR THE FUND TO WHICH THE FUNCTION WAS DELEGATED UNDER PARAGRAPH (A) OF THIS SECTION.

S 7. Paragraph (a) of section 717 of the not-for-profit corporation law, as amended by chapter 690 of the laws of 1978, is amended to read as follows:

(a) Directors and officers shall discharge the duties of their respective positions in good faith and with [that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions] THE CARE AN ORDINARILY PRUDENT PERSON IN A LIKE POSITION WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES. [In the administration of the powers to make and retain investments pursuant to section 512 (Investment authority), to appropriate appreciation pursuant to section 513 (Administration of assets received for specific purposes), and to delegate] THE FACTORS SET FORTH IN SECTION 552(E)(1) (STANDARD OF CONDUCT IN MANAGING AND INVESTING AN INSTITUTIONAL FUND), IF RELEVANT, MUST BE CONSIDERED BY A GOVERNING BOARD DELEGATING investment management of institutional funds pursuant to section 514 (Delegation of investment management)[, a governing board shall consider among other relevant considerations the long and short term needs of the corporation in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions] FOR PURPOSES OF THIS PARAGRAPH, THE TERM INSTITUTIONAL FUND IS DEFINED IN SECTION 551 (DEFINITIONS).

S 8. Paragraphs (c) and (e) of subdivision 1 of section 2-b of the religious corporations law, paragraph (c) as amended by chapter 623 of the laws of 1992, paragraph (e) as added by chapter 690 of the laws of 1978, are amended to read as follows:

(c) The following provisions of the not-for-profit corporation law shall not apply to religious corporations: subparagraphs (7) and (8) of paragraph (a) of section one hundred twelve, section one hundred thirteen, section one hundred fourteen, section two hundred one, section three hundred three, section three hundred four, section three hundred five, section three hundred six, article four except section four hundred one, section five hundred fourteen, that portion of section five hundred [twenty-two (b)] FIFTY-FIVE (B) AND SECTION FIVE HUNDRED FIFTY-FIVE (C) which reads "[The attorney general shall be notified of the application and shall be given an opportunity to be heard] THE INSTITUTION SHALL NOTIFY THE ATTORNEY GENERAL OF THE APPLICATION, AND THE

ATTORNEY GENERAL MUST BE GIVEN AN OPPORTUNITY TO BE HEARD", section six hundred five, section six hundred seven, section six hundred nine, section eight hundred four, article nine except section nine hundred ten, article ten except as provided in section eleven hundred fifteen, section eleven hundred two, and article fifteen except paragraph (c) of section fifteen hundred seven.

(e) No action shall be taken by the trustees of an incorporated Roman Catholic church, or of a Ruthenian Greek Catholic church, under section five hundred [twenty-two] FIFTY-FIVE of the not-for-profit corporation law [(Release of restrictions on use or investment)] (RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT, OR PURPOSE) without the consent of the archbishop or bishop of the diocese to which such church belongs or in case of their absence or inability to act, without the consent of the vicar general or administrator of such diocese.

S 9. Paragraph (e) of section 8-1.1 of the estates, powers and trusts law is amended by adding a new subparagraph 3 to read as follows:

(3) THIS PARAGRAPH SHALL NOT RESTRICT IN ANY MANNER THE ABILITY TO RELEASE OR MODIFY RESTRICTIONS RELATING TO INSTITUTIONAL FUNDS UNDER SECTION 555 OF THE NOT-FOR-PROFIT CORPORATION LAW.

S 10. Paragraph (j) of section 8-1.1 of the estates, powers and trusts law is amended to read as follows:

(j) Whenever a voluntary association or committee has received, by public subscription, a fund for a charitable or benevolent purpose from more than one thousand contributors, a portion of which remains unexpended after the expiration of five years from the time of its receipt, and it appears that a literal compliance with the terms of the subscription is impracticable, the supreme court may make an order directing that such unexpended balance be transferred for administration and application to such domestic corporation as in the judgment of the court will most effectively accomplish the general purpose for which such fund was collected, free from any restriction, limitation or direction upon which the subscription was made; and on the transfer of such fund to the corporation designated in the order, such voluntary association, its officers and trustees, or such committee and its officers shall be fully exonerated and discharged from all liability to account for such fund. THIS PARAGRAPH SHALL NOT RESTRICT IN ANY MANNER THE ABILITY TO RELEASE OR MODIFY RESTRICTIONS RELATING TO INSTITUTIONAL FUNDS UNDER SECTION 555 OF THE NOT-FOR-PROFIT CORPORATION LAW.

S 11. Section 8-1.7 of the estates, powers and trusts law is amended by adding a new paragraph (b) to read as follows:

(B) THIS SECTION SHALL NOT RESTRICT IN ANY MANNER THE APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF ENDOWMENT FUNDS AS SET FORTH IN SECTION 553 OF THE NOT-FOR-PROFIT CORPORATION LAW.

S 12. Subparagraph 1 of paragraph (e) of section 11-2.3 of the estates, powers and trusts law, as added by chapter 609 of the laws of 1994, is amended to read as follows:

(1) the term "trustee" includes a personal representative, trustee, guardian, donee of a power during minority, guardian under article eighty-one of the mental hygiene law, committee of the property of an incompetent person, and conservator of the property of a conservatee, BUT DOES NOT INCLUDE AN INSTITUTIONAL FUND AS DEFINED IN SECTION 551 OF THE NOT-FOR-PROFIT CORPORATION LAW;

S 13. Subdivision 1 of section 2115 of the surrogate's court procedure act, as added by chapter 609 of the laws of 1994, is amended to read as follows:

1. At any time during the administration of a trust and irrespective of the pendency of a particular proceeding, the court with jurisdiction of the trust may review the reasonableness of the costs of a delegation by the trustee under section 11-2.3 of the estates, powers and trusts law AND UNDER SECTION 554 OF THE NOT-FOR-PROFIT CORPORATION LAW.

S 14. This act shall take effect immediately.