

Proposed law provides that a trustee shall not be held liable under the provisions of proposed law if he acted in good faith reliance on any of the following:

- (1) A report made by a representative of the special charitable trust.
- (2) A report made by an appraiser selected with reasonable care by the trustees.
- (3) A financial statement or other record represented as accurate by the president or officer in charge of the financial accounts or records of the special charitable trust.
- (4) A written report by a certified public accountant fairly reflecting the financial condition of the special charitable trust.

Proposed law provides that nothing contained in proposed law shall derogate from the indemnification authorized pursuant to proposed law (R.S. 9:2350).

Proposed law provides that the trustees, officers, employees, or agents of a special charitable trust shall be entitled to reasonable compensation as determined by the trustees for services performed on behalf of the special charitable trust.

Proposed law (R.S. 9:2349.1) provides that a special charitable trust shall comply with the provisions of present law, including but not limited to, restrictions on influencing legislation and participating in political campaign activity, and limitations of substantial activities promoting propaganda.

Proposed law provides that a special charitable trust shall not publish or distribute statements concerning a political campaign regarding any candidate for public office.

Proposed law (R.S. 9:2350) provides that a special charitable trust may indemnify a party to any action or proceeding, including any action by the special charitable trust, and as set forth in present law, in either of the following circumstances:

- (a) The party is a past or present trustee, officer, employee, or agent of the special charitable trust.
- (b) The party is or was serving, at the request of the special charitable trust, as a trustee, officer, employee, or agent of another nonprofit, business or foreign special charitable trust, partnership, joint venture or other enterprise.

Proposed law provides that the trustee, officer, employee, or agent shall be entitled to indemnification of each of the following:

- (a) Expenses, reasonable attorney fees, settlements and judgments, and fines.
- (b) The amounts provided herein shall be reasonably incurred in connection with the action or proceeding.

- (c) He acted in good faith and exercised reasonable care and skill in a manner he believed to be in the best interests of the special charitable trust.
- (d) He had reasonable cause to believe his conduct was lawful.

Proposed law provides that in a criminal action or proceeding by the special charitable trust or its trustees, the indemnification shall be limited to expenses, attorney fees, settlements and judgments, and the estimated cost of the litigation and shall be reasonably incurred in connection with the defense of the action.

Proposed law provides that the trustee shall not be entitled to indemnification if found by a court of competent jurisdiction to be liable for negligence or willful misconduct in the performance of his duty to the special charitable trust. Provides that the court may find based upon the facts and circumstances that, notwithstanding the adjudication of liability, the trustee shall be entitled to indemnification for reasonable expenses as determined by the court.

Proposed law provides that a settlement or judgment, order, conviction, or plea of nolo contendere shall not create a presumption that the person acted in bad faith and not in the best interest of the special charitable trust, or, in a criminal action, had reasonable cause to believe that his conduct was unlawful.

Proposed law provides that a trustee, officer, employee, or agent of a special charitable trust who has prevailed in any action or proceeding, or in defense of any claim shall be entitled to indemnification of actual expenses, and reasonable attorney fees which he incurred.

Proposed law provides that the indemnification pursuant to proposed law, unless ordered by the court, shall be made by the special charitable trust only as authorized and upon a determination that the person met the applicable standard. Provides that the determination shall be made by a majority vote of a quorum consisting of trustees who were not parties to the action or proceeding, or by independent legal counsel, if a quorum of trustees is not obtainable or if directed by a quorum of disinterested trustees.

Proposed law provides that the expenses incurred in defense of an action or proceeding may be paid by the special charitable trust in advance of the final disposition if authorized by the trustees in the manner provided in proposed law, upon receipt of an undertaking by or on behalf of the trustee, officer, employee, or agent to repay such amount unless determined that he is entitled to indemnification by the special charitable trust as authorized in proposed law.

Proposed law provides that the indemnification provided by proposed law shall not be deemed exclusive of any rights the person otherwise may be entitled by law, agreement, by-laws, or authorization of disinterested trustees, both, acting in his official capacity or in another capacity while holding office.

Proposed law provides that the indemnification shall continue to a person who is no longer a trustee, officer, employee, or agent and shall inure to the benefit of his heirs and legal representative.

Proposed law provides that a special charitable trust may procure liability insurance on behalf of a past or present trustee, officer, employee, or agent of the special charitable trust, or a person who is or was serving at the request of a special charitable trust as a trustee, officer, employee, or agent of another nonprofit, business or foreign corporation, partnership, joint venture or other enterprise, acting in a prudent manner in the performance of his duties, notwithstanding the indemnification provided by a special charitable trust authorized under the provisions of proposed law.

Proposed law (R.S. 9:2350.1) provides that a special charitable trust may be subject to indemnification, reimbursement claims, assumption of obligations, and liabilities of another entity to incentivize donations or contributions to the special charitable trust. Proposed law provides that this provision shall be broadly construed.

Proposed law (R.S. 9:2350.2) provides for application of other code provisions whenever the provisions of proposed law are silent.

Proposed law provides that the application of other code provisions shall not be applied in a contradictory manner to proposed law, nor to invalidate a trust authorized pursuant to proposed law, to adversely affect the tax-exempt status of a special charitable trust, nor to prevent any tax deduction for contributions to the trust.

Proposed law provides that notwithstanding any provision to the contrary, a special charitable trust shall be subject to the provisions of the La. Uniform Prudent Management of Institutional Funds Act.

Proposed law provides that a special charitable trust shall be considered an "institution" for purposes of present law and the trust assets shall not be considered funds "held for an institution by a trustee that is not an institution" pursuant to present law although the special charitable trust has "individuals" as trustees.

Proposed law provides that unless the trust provides otherwise, the trustees of a special charitable trust may amend the provisions of the trust. The trust may require court approval for an amendment to any provision of the trust.

Proposed law (R.S. 9:2792.1.1) provides that a person who serves as a trustee or officer of a special charitable trust qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code, and who is compensated for such services shall not be individually liable for any act or omission resulting in damage or injury, arising out of the exercise of his judgment in the formation and implementation of policy while acting as a trustee or officer of the special charitable trust, or arising out of the management of the affairs of the special charitable trust, provided he was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by his willful or wanton misconduct.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 9:2348-2350.2 and 9:2792.1.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Changes the threshold amount in which a special charitable trust may be created from \$1 billion to \$50 million.