

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1338

INTRODUCER: Senator Burton

SUBJECT: Charitable Giving

DATE: February 9, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1338 creates the “Safeguarding Endowment Gifts Act,” which provides legal recourse to individual charitable donors when their giving restrictions are not followed by a recipient charitable organization according to an endowment agreement. An aggrieved donor must notify the charity of the issue. If the issue is unresolved after 90 days, the donor may file an action to enforce the endowment agreement. The court may determine an appropriate remedy but may not order that the donated property be returned to the donor. A charity unsure about its obligations regarding a donor restriction may ask the court for clarification.

Additionally, the bill creates the “Charity Protection Act,” which prohibits a state agency or state official from imposing any annual filing or reporting requirements on an organization regulated or specifically exempted from regulation under ch. 496, F.S., which are more burdensome than the requirements authorized by Florida law.

The bill provides an effective date of July 1, 2026.

II. Present Situation:

Charitable Giving – In General

Charitable giving is common in society, as is the tendency of donors to want to limit the use of their donation to a particular use. The United States leads the world in charitable giving as a percentage of GDP.¹ Limiting the use of donated property according to the donor’s intent has long been a feature of the common law on trusts and is a primary focus of the state as it encourages charitable giving.² Some of that common law has been codified in Florida.

¹ Philanthropy Roundtable, *Statistics on U.S. Generosity*, <https://www.philanthropyroundtable.org/almanac/statistics-on-u-s-generosity/> (last visited February 5, 2026).

² Section 736.1210, F.S.

The Florida Trust Code

A trust is allowed to be created for a charitable purpose.³ The settlor of a trust expresses that intent and purpose in the terms of the trust.⁴ The settlor of the trust may enforce the terms of the trust.⁵ Where judicial modification of the terms of a trust is allowed, the court must do so in a manner that best conforms to the intent of the settlor.⁶ A court reforming the terms of the trust or modifying the terms of a trust must follow the intent of the settlor.⁷ The intent of the settlor is the primary focus when determining the legal effect of a trust.⁸ Honoring the settlor's intent effectuates the state intent to preserve, foster, and encourage giving to charitable institutions.⁹

Part XII of the Florida Trust Code implies that a charitable trust must follow the donor's intent by regulating the power of the trustee to amend the trust instrument¹⁰ and the power of a circuit court to allow deviation from the donor's intent.¹¹ Florida has rejected the "benefit-of-the-beneficiary" test.¹²

The Florida Uniform Prudent Management of Institutional Funds Act (FUPMIFA)¹³

The FUPMIFA applies to a nonprofit corporation. It governs how a charitable institution in Florida can manage, invest, and spend donor restricted endowment funds. The act is based on the Prudent Management of Institutional Funds Act created by the Uniform Law Commission. The uniform act has been adopted by 49 states.¹⁴

The uniform act provides guidance and authority to charitable organizations concerning the management and investment of funds held by those organizations, and imposes additional duties on those who manage and invest charitable funds. These duties provide additional protection for charities and protects the interests of donors who want to see their contributions used wisely.¹⁵

While the act gives significant guidance on the investment and management of funds, there is relatively little regulation of whether a fund is fulfilling the charitable purpose for which it was created. The act requires consent of the donor to release or modify a restriction on the use of the

³ Section 736.0405(1), F.S.

⁴ Section 736.0103(24), F.S.

⁵ Section 736.0405(3), F.S.

⁶ Section 736.04115(2)(a), F.S.

⁷ Sections 736.0415 and 736.0416, F.S.

⁸ Section 736.1101, F.S.

⁹ Section 736.1210, F.S.

¹⁰ Section 736.1206, F.S.

¹¹ Section 736.1207, F.S.

¹² Chapter 2018-35, Laws of Fla.

¹³ Section 617.2104, F.S.

¹⁴ Uniform Law Commission, *Prudent Management of Institutional Funds Act*, <https://www.uniformlaws.org/committees/community-home?communitykey=043b9067-bc2c-46b7-8436-07c9054064a3> (last visited Feb. 5, 2026).

¹⁵ *Prefatory Note*, Uniform Prudent Management of Institutional Funds Act.

gift,¹⁶ allows limited modification where consent is unavailable,¹⁷ and provides for modification by the circuit court in limited circumstances.¹⁸

III. Effect of Proposed Changes:

The Safeguarding Endowment Gifts Act

SB 1338 creates s. 496.432, F.S., to be entitled the “Safeguarding Endowment Gifts Act (Act).” A legislative finding is provided that the Act is necessary to provide legal recourse to individual charitable donors when their giving restrictions are not followed by a recipient charitable organization according to an endowment agreement.

The bill creates the following definitions:

- “Charitable organization” means an organization organized and operated exclusively for religious, charitable, scientific, literary, educational, testing for public safety or other specified purpose and that is tax exempt from federal income tax as an entity described in s. 501(c)(3) of the Internal Revenue Code.
- “Donor” means an individual or entity that has made a contribution of property or money to an existing endowment fund or a new endowment fund of a charitable organization or of a charitable trust pursuant to the terms of an endowment agreement that may include donor-imposed restrictions or conditions governing the use of the contribution.
- “Donor-imposed restriction” means a written statement within an endowment agreement which specifies requirements for the management or use of endowment funds.
- “Endowment agreement” means a written agreement between a charitable organization and a donor or between a charitable trust and a donor regarding the contribution made by the donor and accepted by the charitable organization or the charitable trust, which agreement may include donor-imposed restrictions or other conditions governing the use of the contribution.
- “Endowment fund” means an institutional fund or part thereof, which 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.
- “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.
- “Legal representative” means the administrator or executor of a person’s estate; a surviving spouse if a court judgement has settled the accounts of the estate; or a person designated in an endowment agreement, whether or not born at the time of such designation, to act in place of a party to the agreement for all matters expressed in the agreement and all of the actions it contemplates, including, but not limited to, interpreting, performing, and enforcing the agreement and defending its validity.
- “Property” means real property, personal property, or money, cryptocurrency, stocks, bonds, or any other asset or financial instrument.

¹⁶ Section 617.2104(6)(a), F.S.

¹⁷ Section 617.2104(6)(b), F.S.

¹⁸ Sections 617.2104(6)(d) and (6)(e), F.S.

Except where specifically required or authorized by federal or state law, a charitable organization that accepts a contribution pursuant to a written donor-imposed restriction may not violate the terms of that restriction without potential penalty.

If a charitable organization violates a donor-imposed restriction contained in an endowment agreement, the donor, or the donor's legal representative, must notify the charitable organization of the breach. If not cured within 90 days, the donor may file a complaint to enforce the agreement. The bill creates a 6-year statute of limitations for the filing of a complaint. The complaint may be filed in a court of general jurisdiction in the county where a charitable organization named as a party has its principal office or principal place of carrying out its charitable purpose, or in a court of the United States whose district includes such county. The complaint may be filed regardless of whether the endowment agreement expressly reserves a right to sue or enforce the agreement, and it may not seek a judgement awarding damages to the donor or donor representative.

If a charitable organization is unable to fulfill a term in the endowment agreement, the charitable organization is required to notify the donor, or the donor's legal representative, within 30 days after discovering it is unable to fulfill the terms and offer an alternative solution that closely matches the initial term in the endowment agreement.

A charitable organization may obtain a judicial declaration of the rights and duties expressed in an endowment agreement containing donor restrictions as to all of the actions the endowment agreement contemplates, including, but not limited to, the interpretation, performance, or enforcement of the agreement, and a determination of its validity. However, the charitable organization must seek a judicial declaration in any suit brought under the Act, or by filing a complaint.

If the court determines that a charitable organization violated a donor-imposed restriction in an endowment agreement, the court may order one or more remedies consistent with the charitable purposes expressed in the endowment agreement. The court is prohibited from ordering the return of the donated funds to the donor or the donor's legal representative.

The bill clarifies that the Act does not do any of the following:

- Affect the authority of the Attorney General to enforce any restriction in an endowment agreement;
- Limit the application of the judicial power of *cy pres*;¹⁹ or
- Alter the right of an institution to modify a restriction on the management, investment, purpose, or use of an endowment fund in a manner permitted by the endowment agreement and by the Florida Uniform Prudent Management of Institutional Funds Act.²⁰

¹⁹ Section 736.0413, F.S., authorizes courts to apply the doctrine of “*cy pres*” if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve or wasteful. The doctrine may be applied to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes. The judicial doctrine of “*cy pres*” comes from the Old French “*cy près comme possible*,” meaning “as near as possible.” See Christopher J. Ryan, Jr. (2023), *An Historical and Empirical Analysis of the Cy- près Doctrine*, ACTEC Law Journal, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4176994 (last visited Jan. 27, 2026).

²⁰ Section 617.2104, F.S., is the Florida Uniform Prudent Management of Institutional Funds Act and provides a framework for managing and investing institutional funds. The term “institutional fund” means a fund held by an institution exclusively

The bill provides that if any provision of the Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared severable.

The Charity Protection Act

The bill creates s. 496.433, F.S., entitled the “Charity Protection Act (CPA).” A legislative finding is provided that the CPA is necessary to minimize burdens on the charitable sector and to create a grantmaking environment centered on effectiveness and fiscal impact on charitable organizations.

Except where specifically required or authorized by federal law, the CPA prohibits a state agency or state official from imposing any annual filing or reporting requirements on an organization regulated or specifically exempted from regulation under ch. 496, F.S., which are more burdensome than the requirements authorized by Florida law.

The CPA does not apply to state grants or contracts or to fraud investigations, and it does not restrict enforcement actions against specific nonprofit organizations.

The bill provides an effective date of July 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

for charitable purposes, but the term does not include: (1) 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 could arise upon violation or failure of the purposes of the fund; or (4) a fund managed or administered by the State Board of Administration pursuant to its constitutional statutory authority.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

If a charitable organization violates a donor-imposed restriction in an endowment agreement, a donor (or the donor's legal representative) may file a complaint, and the court may order remedies consistent with the charitable purposes expressed in the endowment agreement.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

It is unclear why the bill places the restrictions created in section 1 of the bill into chapter 496, F.S. That chapter regulates the act of soliciting funds for a charitable purpose. Section 1 of the bill regulates corporations that are governed by chapter 617, F.S. The Legislature may wish to amend the bill to place section 1 into chapter 617, F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 496.432, and 496.433.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.