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## TRANSFER GIFT FROM LOCAL UNIT TO COMMUNITY FOUNDATION

**House Bill 5386 (Substitute H-2)**  
**House Bill 5389 (Substitute H-1)**  
**First Analysis (5-20-98)**

**Sponsor: Rep. Kirk A. Profit**  
**Committee: Local Government**

### ***THE APPARENT PROBLEM:***

Legislation has been introduced that would permit a gift of intangible personal property originally made to a local unit of government or to a public library to be transferred to a community foundation. A community foundation is defined in the Income Tax Act as, among other things, an organization that supports a broad range of charitable activities within the specific geographic area that it serves, such as a municipality or county, and that maintains an ongoing program to attract new endowment funds by seeking gifts and bequests from a wide range of potential donors in the area. There has been considerable growth in the number and size of community foundations in recent years, and there are about 60 such foundations engaged in a wide variety of charitable work throughout the state. The advocates for this kind of legislation point out that it will foster cooperation and partnerships between local units (or public libraries) and community foundations to better achieve the purposes intended by donors. Gifts could then be added to the larger endowments of community foundations and invested according to foundation practices, with the earnings to be put to the intended uses.

### ***THE CONTENT OF THE BILLS:***

House Bill 5386 would amend Public Act 380 of 1913 (MCL 123.874), the act regulating the receipt and use of gifts of real or personal property made to local governments, to allow a city, village, township, or county to transfer any gift of intangible personal property received under the act, or the proceeds of a gift, to a community foundation. If a gift received by a local government was subject to conditions or limitations, the transfer would have to be to a component fund within the community foundation that would incorporate the conditions or limitations of the gift. If the gift was made without conditions, such a transfer to a community foundation would have to be made to a component fund within the community

foundation that restricted the use of the gift to those uses allowed under Public Act 380 of 1913, which include economic and community development purposes, public parks, grounds, cemeteries, public buildings, or other public purposes. The bill specifies that a transfer of a gift in accordance with the provisions of the bill that occurred before the effective date of the bill would be ratified and confirmed, and the transfer would be considered valid as if it had been made after the effective date of the bill.

Similarly, House Bill 5389 would amend Public Act 136 of 1921 (MCL 397.381), which authorizes public corporations empowered to maintain public libraries to acquire and dispose of library property, to allow a board of education, library commission, or other public entity that maintains a public library to transfer a gift (other than a federal or state grant) of intangible personal property, or the proceeds from such a gift, to a community foundation. As in House Bill 5386, a transfer of a gift would be subject to any condition placed on the gift, and pre-existing transfers would be ratified.

Under both bills, a community foundation would have to return a transferred gift if 1) it failed to meet all of the requirements for certification as a community foundation under the Income Tax Act; 2) it was liquidated; or 3) it substantially violated any condition, limitation, or requirement imposed on the gift.

Also, both bills would require a community foundation to establish a donor advisory board before receiving a gift under the bill. The advisory board would have to include at least one representative of the entity transferring the gift, and its duties would be to determine that any condition, limitation, or requirement on the use of the gift was complied with and to make recommendations for the use of the transferred gift. The entity transferring the gift could waive the establishment of a donor advisory board.

House Bills 5386 and 5389 (5-20-98)

**FISCAL IMPLICATIONS:**

There is no information at present.

**ARGUMENTS:**

**For:**

Sometimes gifts made to local units of government or to libraries could be put to better use if transferred to a community foundation. The bills would simply permit that transfer, subject to conditions aimed at ensuring that the original intentions of the donor are honored. This would encourage public bodies and community foundations to form positive cooperative relationships to achieve shared goals. The legislation would also permit gifts to be invested as part of the endowments of community foundations. Further, the bills would ratify transfers that have already occurred.

**Against:**

Some people remain concerned that the transfer of a gift could be contrary to the intent of the donor. Donors may well have been aware of the existence of a regional community foundation and nevertheless made the donation not to the foundation but to the local unit of government or the public library. Is it then acceptable to transfer the gift? Moreover, foundations are not run by elected boards, nor are they subject to the kind of accountability that public bodies are.

**Response:**

It should be noted that the local unit (or public library) would have to agree to transfer a gift, and could insist on the establishment of a donor advisory board to oversee the proper use of a gift.

**POSITIONS:**

The Council of Michigan Foundations has indicated support for the bills. (5-12-98)

The Michigan Municipal League has indicated support for House Bill 5386. (5-12-98)

Analyst: C. Couch

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.