



House Office Building, 9 South  
Lansing, Michigan 48909  
Phone: 517/373-6466

## COMMUNITY FOUNDATIONS; TRIBAL COMMUNITY COLLEGES

House Bill 5351 as enrolled  
Public Act 231 of 2000  
Second Analysis (6-28-00)

Sponsor: Rep. Terry Geiger  
House Committee: Education  
Senate Committee: Education

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

As family estates are settled, there are times public school systems receive gifts from families and individuals that are made from wills and bequests. Usually the gifts are made to be perpetual, with only the income from the gift used for the donor's goal. That goal might be offering a scholarship to a high school graduate; support for a children's reading program; the purchase of technological equipment; or, assistance with an athletic program.

According to testimony offered by the Council of Michigan Foundations, the growth of permanent endowment funds has been limited by the investment instruments available to public school systems under Public Act 20 of 1943 (MCL 129.91 et al.), the act that governs the investment of surplus funds for political subdivisions. As a result, permanent endowment funds sometimes are not able to be invested in ways that maintain the buying power of the original gift, and they fail to produce the level of income needed to fulfill the donor's specified goal.

In the last eight years there has been a dramatic growth in the development of community foundations in Michigan. See *BACKGROUND INFORMATION* below. These nonprofit, tax exempt corporations are designed specifically to receive and invest permanent endowment funds and to award grants from the income of these funds. The community foundation's ability to invest funds is more flexible than is a public school system's, since it can use a wide array of investment instruments, including the stock market, in order to increase the value of the money.

While officials in a number of school systems have gone forward to transfer gifts to community foundations, many have not because of the uncertainty of the restrictions of Public Act 20 on private gifts. Those public school officials have argued that legislation is needed to remove any uncertainty about the appropriateness of making transfers from school districts to community foundations.

In another matter, legislation has been proposed to ensure that Michigan's sole tribal community college, which serves Indians and some non-Indians from its Upper Peninsula site on the Bay Mills tribal lands west of Sault Ste. Marie, is able to participate with public schools to cooperate in offering new educational resources, such as the virtual high school, to its students.

### ***THE CONTENT OF THE BILL:***

House Bill 5351 would amend the Revised School Code to establish the procedures for school boards of both local school districts and intermediate school districts to follow in order to transfer a gift to a community foundation. (These portions of the bill are identical to House Bill 4959 as it passed the House on 11-3-99.) The bill also would permit a federally chartered, tribally controlled educational institution to participate with public schools in delivering new educational technologies and resources.

Gift Transfer with Conditions. Under the bill, a school board could receive a gift of real or personal property for school purposes, and a school board could also transfer the gift, or the proceeds from that gift, to a community foundation. If a gift was subject to any condition or limitation, then the transfer to the foundation's fund would have to incorporate an identical or substantially similar condition or limitation. However, if there were no conditions or limitations on the gift, then the school board in its transfer would have to impose conditions or limitations on the use of the gift, so that it was used for one or more school purposes, as specified under the code.

Gift Return. A community foundation would be required to return a transferred gift to the school board if the community foundation failed to meet all of the requirements for certification as a community foundation under the Income Tax Act of 1967, if it was

House Bill 5351 (6-28-00)

liquidated, or if it substantially violated any conditions or limitations on the gift.

Donor Advisory Board. Unless waived by the school board transferring the gift, a community foundation would be required to establish a donor advisory board for a gift before the school board transferred it. The donor advisory board would be required to include at least one representative of the school board transferring the gift. The donor advisory board would be required to: monitor the foundation's compliance with any conditions and limitations on the gift; and, make recommendations to the foundation for the use of the gift.

Previous Gift Transfers Ratified. Under the bill, a transfer of a gift made in accordance with these provisions but one 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 under the bill.

Definitions. House Bill 5351 would define "community foundation" to mean that term as defined in the Income Tax Act of 1967. Further, the bill specifies that "condition, limitation, or requirement" would not include a material restriction or condition that violates the Code of Federal Regulations (CFR), or that restricts a community foundation's inherent power of modification which is described in the code. The bill also would specify that "gift" does not include state school aid or another grant from state or federal sources.

Federal tribally controlled community colleges. Finally, House Bill 5351 would allow a federal tribally controlled community college board to provide college level courses or participate in other activities under the code, subject to the following requirements: a) the members of the board of the federal tribally controlled community college would have to execute the constitutional oath of office as public officers of the state of Michigan; b) the board of the college would have to certify to the state Department of Education that the members of the board would act as a public educational body or officers of this state, and subject only to the constitution and laws of this state, in exercising the powers or carrying out the functions, and that their functions are under the exclusive control of the state; and c) a member of the board of the federal tribally controlled community college acting as a public officer under this section would be subject to removal or suspension by the superintendent of public instruction for violating the provisions of this section.

The bill would not authorize the use of any funds appropriated for a community college district established under the Community College Act.

MCL 380.15, 380.602, and 380.1475

### ***BACKGROUND INFORMATION:***

According to the Council of Michigan Foundations, every county in Michigan is now served by a community foundation, and the 61 existing foundations and 34 geographic funds have collective assets exceeding \$1.2 billion with annual grant making statewide surpassing \$55 million. The growth of the community foundations has been helped by the State of Michigan's individual income and single business tax credits, and by a \$45 million challenge grant from the W. K. Kellogg Foundation to establish permanent youth endowment funds. Under the state's tax laws, a business making a contribution to a community foundation can receive a tax credit of up to \$5,000 or 10 percent of its liability under the single business tax, whichever is smaller; an individual can receive a credit of 50 percent, up to \$100; and, a family a credit up to \$200.

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency notes that the bill has no state or local fiscal impact. (3-10-00)

### ***ARGUMENTS:***

#### ***For:***

The partnership with a community foundation provides a way to maximize the charitable intent of residents who care for their public schools by leaving a lasting legacy. Further, the legislation will remove any uncertainty about the appropriateness of making transfers between public schools and community foundations. Community foundations represent important partners for school systems in the management of endowed gifts. Superintendents and their boards view the local community foundation as an appropriate site to place an endowed gift, knowing that the income will still be used for the donor's goals, and to meet critical school needs.

#### ***For:***

Bay Mills Community College is Michigan's sole tribal community college. An accredited institution, it uses tribal resources and federal funds to provide educational services to tribal members and non-members. This legislation would allow, but not

require, the federally chartered institution to participate with public schools in delivering new educational resources, such as distance learning courses offered electronically through the virtual high school. Because Indian tribes are not under the control of state government, there has been a question as to whether the community college can participate in state education programs. In order to participate, this legislation would require the members of the Bay Mills Community College board, but not the members of the Tribal Council, to take the state constitutional oath of office, and to certify their compliance with state law. In carrying out functions under state law, the board members would then be bound by state law and could not assert tribal law or tribal sovereignty.

Analyst: J. Hunault

---

■ 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.