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BILL



ANALYSIS

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Senate Bill 959 (as introduced 5-11-16)
Sponsor: Senator Wayne Schmidt
Committee: Local Government

Date Completed: 11-29-16

CONTENT

The bill would create the "Michigan Community Foundation Act" to repeal, re-enact, and consolidate various provisions relating to a municipality's, school district's, or library's authority to receive certain gifts and to transfer property to a community foundation. The bill would do the following:

- Authorize a municipality, a school board, and a public library to accept certain gifts of property.**
- Authorize those public entities to sell and dispose of the property, when it was no longer needed for its stated purpose.**
- Specify that a municipality, school board, or public library could transfer property to a community foundation.**
- Require a community foundation to which property was transferred to return it to the entity that transferred it if certain conditions occurred.**
- Allow a municipality, school board, or public library transferring property to a community foundation to request that the foundation establish a donor advisory committee, and specify actions the advisory committee could take.**

Repeal of Current Provisions

Sections of various statutes authorize a municipality, the school board of a school district or intermediate school district (ISD), and a public library to accept gifts of real or personal property under certain circumstances, sell and dispose of the property, and transfer property to a community foundation. The bill would repeal those sections (MCL 123.871 & 123.874; 380.15 & 380.602; and 397.381 & 397.382).

That authority would be consolidated in the proposed Act. It also would refer to accepting gifts of intangible personal property, selling or disposing of such property, and transferring it to a community foundation. "Intangible personal property" would mean incorporeal personal property, including cash, proceeds of the sale of real or personal property, deposits in banks or other financial institutions, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt, and choses in action generally. The term would not include State School Aid or another grant from State or Federal resources.

Acceptance of Gifts

A municipality (a city, village, township, or county) could receive, own, and enjoy any gift of real, personal, or intangible personal property, made by grant, devise, or bequest, or in any other manner, for public parks, grounds, cemeteries, public buildings, or other public

purposes, whether made directly or in trust, subject to the conditions, limitations, and requirements provided in the instrument. A gift would not be invalid because of an informality in the instrument evidencing the gift, if the intent could be determined from the instrument, or because it contravened a statute or rule against perpetuities.

All gifts made before the effective date of the proposed Act would be declared valid, though they violated a statute or rule against perpetuities, the same as if the Act had been in effect when the gift was made.

Under similar provisions, a school board of a general powers school district, an ISD, and a public library would be authorized to accept gifts.

Sale/Disposal of Property

Whenever any real, personal, or intangible personal property, held and used for the purpose of a municipality, school board, ISD, or public library by that entity, was no longer needed for its purpose, the property could be sold and disposed of by the municipality, school board, ISD, or public library, at a price and upon terms and conditions as the public entity deemed proper, unless the sale and disposal were inconsistent with the terms and conditions upon which the property was acquired. The proceeds of the property would have to be used and applied for the purpose of the municipality, school board, ISD, or public library.

Transfer of Property

A municipality, school board, ISD, or public library could do either of the following:

- Transfer to a community foundation any gift of intangible personal property, or the proceeds of any gift, received pursuant to the proposed Act.
- Transfer to a community foundation any gift of intangible personal property.

If the gift or intangible personal property to be transferred were not subject to conditions, limitations, or requirements, the transfer would have to be to an endowed or nonendowed component fund within the community foundation that imposed conditions, limitations or requirements on the use of the property for one or more purposes provided in the proposed Act for municipalities, school boards, ISDs, and public libraries, respectively.

If the gift or the intangible personal property to be transferred to a community foundation were subject to conditions, limitations, or requirements, the transfer would have to be to an endowed or nonendowed component fund within the community foundation that incorporated conditions, limitations, or requirements that were substantially similar to those to which the gift or intangible personal property was subject.

A transfer in accordance with the proposed Act that occurred before its effective date would be ratified and confirmed, and the transfer would be considered valid as if it had been made under the Act.

Return of Property

A community foundation to which property was transferred pursuant to the proposed Act would have to return the property to the entity that transferred it if one or more of the following occurred:

- The community foundation failed to meet all of the Act's requirements for certification as a community foundation.
- The community foundation was liquidated.

- The community foundation substantially violated any condition, limitation, or requirement imposed on the property.

Donor Advisory Committee

A municipality, school board, ISD, or public library transferring property to a community foundation pursuant to the proposed Act could request that the community foundation establish a donor advisory committee for the component fund holding the transferred property. The donor advisory committee would have to include a representative of the entity transferring the property and would have advisory rights only with the investment, management, and use of the transferred property at the sole discretion of the community foundation in accordance with the purposes of the component fund holding the transferred property.

The donor advisory committee could do the following:

- Report to the community foundation on whether any condition, limitation, or requirement on the use of the transferred property was being complied with.
- Make recommendations for the use of the transferred property.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.