

SUBSTITUTE FOR
SENATE BILL NO. 959

A bill to authorize, facilitate, and regulate the acquisition and disposal of certain property and gifts of certain property by certain entities to community foundations; to validate all transfers made before the enactment of this act; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan community foundation act".

3 Sec. 3. As used in this act:

4 (a) "Community foundation" means an organization that meets
5 all of the following requirements:

6 (i) Has been in existence for at least 10 years.

7 (ii) Has assets of at least \$5,000,000.00.

8 (iii) Qualifies for exemption from federal income taxation
9 under section 501(c)(3) of the internal revenue code, 26 USC

1 501(c)(3).

2 (iv) Supports a broad range of charitable activities within
3 the specific geographic area of this state that it serves, such as
4 a municipality.

5 (v) Maintains an ongoing program to attract new endowment
6 funds by seeking gifts and bequests from a wide range of potential
7 donors in the geographic area served.

8 (vi) Is publicly supported, as defined by 26 CFR 1.170A-9(f).

9 (vii) Meets the requirements for treatment as a single entity
10 under 26 CFR 1.170A-9(f)(11).

11 (viii) Is not an organization described in section 509(a)(3)
12 of the internal revenue code, 26 USC 509(a)(3).

13 (ix) Has an independent governing body representing the
14 general public's interest and that is not appointed by a single
15 outside entity.

16 (x) Maintains continually at least 1 part-time or full-time
17 employee beginning not later than 6 months after the community
18 foundation is incorporated or established.

19 (xi) Is subject to an annual independent financial audit.

20 (xii) For a community foundation that is incorporated or
21 established after January 9, 2001, operates in a county of this
22 state that was not served by a community foundation when the
23 community foundation was incorporated or established or operates as
24 a geographic component of an existing community foundation.

25 (b) "Component fund" means a component part of a community
26 trust as described in 26 CFR 1.170A-9.

27 (c) "Condition, limitation, or requirement" does not include a

1 material restriction or condition that violates 26 CFR 1.170A-9 or
2 that restricts a community foundation's inherent power of
3 modification described in 26 CFR 1.170A-9.

4 (d) "Gift" does not include state school aid or another grant
5 from state or federal sources.

6 (e) "Intangible personal property" means incorporeal personal
7 property including, but not limited to, cash, proceeds of the sale
8 of real or personal property, deposits in banks or other financial
9 institutions, negotiable instruments, mortgages, debts,
10 receivables, shares of stock, bonds, notes, credits, evidences of
11 an interest in property, evidences of debt, and choses in action
12 generally. Intangible personal property does not include state
13 school aid or another grant from state or federal resources.

14 (f) "Municipality" means a city, village, township, county, or
15 a subdivision or instrumentality of any of these entities.

16 (g) "Public library" means a board of education, library
17 commission, or other public corporation empowered to maintain a
18 public library.

19 (h) "School board" and "intermediate school board" mean those
20 terms as defined in the revised school code, 1976 PA 451, MCL 380.1
21 to 380.1852.

22 Sec. 5. (1) A municipality may receive, own, and enjoy any
23 gift of real, personal, or intangible personal property, made by
24 grant, devise, or bequest, or in any other manner, for public
25 parks, grounds, cemeteries, public buildings, or other public
26 purposes, whether made directly or in trust, subject to the
27 conditions, limitations, and requirements provided in the grant,

1 devise, bequest, or other instrument. A gift shall not be invalid
2 because of an informality in the instrument evidencing the gift, if
3 the intent can be determined from the instrument, or by reason of
4 its contravening a statute or rule against perpetuities. All gifts
5 made prior to the effective date of this act, either by grant,
6 devise, or bequest, or in any other manner, are declared valid,
7 though they violate a statute or rule against perpetuities, the
8 same as if this act had been in effect when made.

9 (2) A school board of a general powers school district may
10 receive, own, and enjoy a gift of real, personal, or intangible
11 personal property made by grant, devise, or bequest, or in any
12 other manner, that is made for school purposes under the revised
13 school code, 1976 PA 451, MCL 380.1 to 380.1852. An intermediate
14 school board of an intermediate school district may receive, own,
15 and enjoy a gift of real or personal property made by grant,
16 devise, or bequest, or in any other manner, that is made for
17 intermediate school district purposes under the revised school
18 code, 1976 PA 451, MCL 380.1 to 380.1852.

19 (3) A public library may receive and accept gifts and
20 donations of real, personal, or intangible personal property, for
21 the library, and shall hold, use, and apply the property received
22 for the purposes, in accordance with the provisions, and subject to
23 the conditions and limitations, if any, set forth in the instrument
24 of gift.

25 (4) Whenever any property, real, personal, or intangible
26 personal, now or hereafter held and used for the purpose of a
27 municipality, school board, intermediate school board, or public

1 library by any municipality, school board, intermediate school
2 board, or public library, in the judgment of that municipality,
3 school board, intermediate school board, or public library, is no
4 longer needed for that purpose, that property may be sold and
5 disposed of by the municipality, school board, intermediate school
6 board, or public library unless the sale and disposal are
7 inconsistent with the terms and conditions upon which the property
8 was acquired, at a price and upon terms and conditions as the
9 municipality, school board, intermediate school board, or public
10 library may deem proper, and the proceeds of that property shall be
11 used and applied for the purpose of the municipality, school board,
12 intermediate school board, or public library.

13 Sec. 7. (1) Subject to subsections (2) and (3), a
14 municipality, school board, intermediate school board, or public
15 library may do the following:

16 (a) Transfer any gift of intangible personal property received
17 pursuant to section 5 or the proceeds of any gift received pursuant
18 to section 5 to a community foundation.

19 (b) Transfer any intangible personal property to a community
20 foundation.

21 (2) If the gift or the intangible personal property to be
22 transferred to a community foundation pursuant to this section was
23 not subject to conditions, limitations, or requirements, the
24 transfer shall be to an endowed or nonendowed component fund within
25 the community foundation that imposes conditions, limitations, or
26 requirements on the use of the property for 1 or more purposes
27 provided in section 5 for municipalities, school boards,

1 intermediate school boards, and public libraries, respectively.

2 (3) If a gift or the intangible personal property to be
3 transferred to a community foundation pursuant to this section was
4 subject to conditions, limitations, or requirements, the transfer
5 shall be to an endowed or nonendowed component fund within the
6 community foundation that incorporates conditions, limitations, or
7 requirements that are substantially similar to those to which the
8 gift or intangible personal property was subject.

9 (4) A transfer in accordance with this section that occurred
10 before the effective date of this act is ratified and confirmed,
11 and the transfer is considered valid as if it had been made under
12 this act.

13 (5) A community foundation to which property is transferred
14 pursuant to this act shall return the property to the entity that
15 transferred the property if 1 or more of the following occur:

16 (a) The community foundation fails to meet all of the
17 requirements for certification as a community foundation set forth
18 in section 3.

19 (b) The community foundation is liquidated.

20 (c) The community foundation substantially violates any
21 condition, limitation, or requirement imposed on the property.

22 (6) A municipality, school board, intermediate school board,
23 or public library transferring property to a community foundation
24 pursuant to this act may request that the community foundation
25 establish a donor advisory committee for the component fund holding
26 the transferred property. The donor advisory committee for the
27 component fund that holds the property shall include a

1 representative of the entity transferring the property and have
2 advisory rights only with the investment, management, and use of
3 the transferred property at the sole discretion of the community
4 foundation in accordance with the purposes of the component fund
5 holding the transferred property. The donor advisory committee may
6 do the following:

7 (a) Report to the community foundation on whether any
8 condition, limitation, or requirement on the use of the transferred
9 property is being complied with.

10 (b) Make recommendations for the use of the transferred
11 property.

12 Enacting section 1. (1) Sections 1 and 4 of 1913 PA 380, MCL
13 123.871 and 123.874, are repealed.

14 (2) Sections 15 and 602 of the revised school code, 1976 PA
15 451, MCL 380.15 and 380.602, are repealed.

16 (3) 1921 PA 136, MCL 397.381 to 397.382, is repealed.