

MICHIGAN COMMUNITY FOUNDATION ACT

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Senate Bill 102 (reported from committee as H-1)

Sponsor: Sen. Wayne Schmidt

House Committee: Local Government

Senate Committee: Local Government

Complete to 4-12-17

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 38 of 2017)

BRIEF SUMMARY: Senate Bill 102 would create a new act—the "Michigan Community Foundation Act"—to consolidate in one statute the authority and process for a municipality, school, or library to obtain, sell, or transfer certain gifts and property to a community foundation. It also repeals various sections of law currently dealing with that subject. A more detailed description of the bill follows. The bill would take effect 90 days after enactment.

FISCAL IMPACT: The bill will have no fiscal impact.

THE CONTENT OF THE BILL:

Senate Bill 102 would create a new act—the "Michigan Community Foundation Act"—to consolidate in one statute the authority and process for a municipality, school, or library to obtain, sell, or transfer certain gifts and property to a community foundation. It also repeals various sections of law currently dealing with that subject. The bill would take effect 90 days after enactment. A more detailed description of the bill follows.

Repeal of Current Law

SB 102 would repeal various existing statutes that govern the process for a municipality, school, or library to obtain, sell, or transfer property to a community foundation.

- MCL 123.871 and 123.874—cities, villages, townships, or counties.
- MCL 380.15 and 380.602—school boards and intermediate school boards.
- MCL 397.381 and 397.382—public libraries.

The Proposed Act

- SB 102 would define "community foundation" as an organization that meets 12 specified criteria; this definition would replace the definition referenced in the existing statutes. (The definition used in the statutes that are being repealed was a reference to a definition in the Income Tax Act, and that definition was itself repealed in 2011.) Among other criteria, a community foundation would need to have been in existence for at least 10 years and have assets of at least \$5 million.
- The bill would expand the allowable gifts and property to include "**intangible personal property**" and would define that term as: "*incorporeal personal property, including, but not limited to, 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. Intangible personal property does not include state school aid or another grant from state or federal resources."

Types and Uses of Acceptable Gifts

- A **municipality** could "receive, own, and enjoy any gift of real, personal, or intangible 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 grant, bequest, or other instrument." Gifts made prior to the effective date of this proposed act would be valid, and no gift would be invalid for certain situations.
- A **school board** of a general powers school district and an **intermediate school board** of an intermediate school district could "receive, own, and enjoy a gift of real, personal, or intangible personal property made by grant, devise, or bequest, or in any other manner" so long as the gift is made for school or ISD purposes under sections of the Revised School Code.
- A **public library** could "receive and accept gifts and donations of real, personal, or intangible personal property, for the library, and shall hold, use, and apply the property received for the purposes, in accordance with the provisions, and subject to the conditions and limitations, if any, set forth in the instrument of gift."

Sale of Property

When a municipality, school board, intermediate school board, or public library held any real, personal, or intangible person property, it could judge that the property is no longer needed for its purpose and could sell and dispose of the property. The sale must be consistent with the terms and conditions upon which the property was acquired, and at a price with terms and conditions that the entity deems proper. The proceeds would be used and applied for the purpose of the municipality, school board, intermediate school board, or public library.

Transfer of Property

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

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

If the gift or intangible personal property to be transferred was not subject to a "condition, limitation, or requirement" (subject to federal law), the transfer must be to a "component fund" (defined by federal law) within the community foundation that imposes conditions or limitations on the use of the transferred property for the specific purposes provided in the proposed act for municipalities, school boards, intermediate school boards, and public libraries, respectively.

If the gift or intangible personal property to be transferred was subject to a "condition, limitation, or requirement," the transfer must be to a fund within the community foundation

that incorporates conditions or limitations substantially similar to those to which the gift or intangible personal property was originally subject.

Any transfer in accordance with these transfer provisions that occurred before the effective date of the proposed act is confirmed, and the transfer is considered valid as if it had been made under the new act.

No Restriction on Lawful Public Education Uses

A school board or intermediate school board that transfers property to a community foundation under the proposed act could not impose a deed restriction on the property that prevents it from being used for any lawful public education purposes, unless approved by the State Board of Education. House substitute H-1 extends this provision to municipalities and public libraries; that is, they could not impose any deed restriction prohibiting property transferred to the community foundation from being used for any lawful public education purpose.

Return of Property

A community foundation would have to return property to the original entity that transferred the property if any of the following conditions occur:

- The community foundation failed to meet the requirements in the proposed act's definition of a community foundation.
- The community foundation is liquidated.
- The community foundation substantially violates any condition, limitation, or requirement imposed on the property.

Donor Advisory Committee

A municipality, school board, intermediate school board, or public library that transferred property to a community foundation could request that the community foundation establish a donor advisory committee for the component fund holding the transferred property. The committee would have to include a representative of the entity transferring the property, and would have advisory rights 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 on the use of the transferred property.

BACKGROUND INFORMATION:

Community foundations are independent, tax-exempt, nonprofit charitable institutions that seek to pool resources and donations from within a geographic area and provide resources and grants to organizations that work to improve the area's greater good.¹

¹ <https://www.michiganfoundations.org/ForGoodForEver>

ARGUMENTS:

For:

The bill builds on the success of legislation passed in 1998 and 2000 that allows for the transfer of gifts to community foundations. The transfers foster positive relationships between local units of government, public libraries, school districts, and community foundations that are all working toward shared goals. The transfers allow the local units, libraries, and school districts to access and benefit from the professional investment expertise of community foundation managers, while still using funds for their intended purpose. This bill simply consolidates statutes under one act.

Against:

The bill limits local control by prohibiting the use of a specific deed restriction on property transferred to a community foundation. Municipalities, libraries, and school districts should retain full authority over the use of gifts and property they receive.

Response:

The prohibition on a school board imposing a deed restriction on property sold or transferred from being used for any lawful education purposes, unless approved by the State Board of Education, already exists in the Revised School Code (MCL 380.1260). The extension of the provision to municipalities and libraries simply treats these entities in the same manner—if schools are barred from imposing a restriction, so too should municipalities and libraries. (An issue here is the use of donated property by charter schools).

POSITIONS:

Representatives of the following organizations testified in support of the bill:

- Capitol Region Community Foundation (3-22-17)

Representatives of the following organizations indicated support of the bill:

- Michigan Municipal League (3-29-17)
- Council of Michigan Federations (3-29-17)

A representative of the Michigan Bankers Association indicated a neutral position on the bill (3-29-17).

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