

MICHIGAN COMMUNITY FOUNDATION ACT

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Senate Bill 102 as passed by the Senate
Sponsor: Sen. Wayne Schmidt
House Committee: Local Government
Senate Committee: Local Government
Complete to 3-27-16

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

UPDATED 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.

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 397.82—public libraries.

The Proposed Act

- SB 102 would define "community foundation" as an organization that meets 12 certain criteria; this definition would replace the definition referenced in the existing statutes. (The definition used in the statutes being repealed was a reference to a definition in the Income Tax Act, and that definition was repealed in 2011.)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** 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.

A school board or intermediate school board that transfers property to a community foundation under the proposed act could not impose a restriction on the property that prevents it from being used for any lawful public education purposes.

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:

According to the bill's sponsor, the bill is meant to allow municipalities, school districts, and libraries more flexibility in the management of proceeds from the sale of donated property. Under current law, if a township is donated land and subsequently sells the land, the proceeds can only be invested in treasury bills and/or certificates of deposit (which generally offer low rates of return). The bill would allow the municipality to transfer the proceeds of the sale to a community foundation, benefit from the foundation's professional investment management, while still using the proceeds (and presumably, investment gains) for their intended purpose.

Community foundations are independent nonprofit 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.

FISCAL IMPACT:

The bill will have no fiscal impact.

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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.