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BILL



ANALYSIS

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Senate Bill 102 (as enacted)
Sponsor: Senator Wayne Schmidt
Senate Committee: Local Government
House Committee: Local Government

PUBLIC ACT 41 of 2017

Date Completed: 5-24-17

CONTENT

The bill enacts 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 Act does the following:

- **Authorizes a municipality, a school board, and a public library to accept certain gifts of property, including intangible personal property.**
- **Authorizes those public entities to sell and dispose of the property, when it is no longer needed for its stated purpose.**
- **Allows a municipality, school board, or public library to transfer property to a community foundation.**
- **Requires a community foundation to which property is transferred to return it to the entity that transferred it if certain conditions occur.**
- **Allows 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 may take.**
- **Provides that a school board, municipality, or public library that transfers property to a community foundation may not prohibit, or impose any deed restriction prohibiting, the property from being used for a lawful education purpose (unless approved by the State Board of Education, in the case of a school board).**

The Act will take effect on August 21, 2017.

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 repeals those sections (MCL 123.871 & 123.874; 380.15 & 380.602; and 397.381 & 397.382).

That authority is consolidated in the Michigan Community Foundation Act, which also refers to accepting gifts of intangible personal property, selling or disposing of such property, and transferring it to a community foundation. "Intangible personal property" means 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 does not include State School Aid or another grant from State or Federal resources.

The Act applies to community foundations with assets of at least \$5.0 million. (The repealed provisions apply to foundations with assets of at least \$10.0 million.)

Acceptance of Gifts

A municipality (a city, village, township, or county) may 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 will not be invalid because of an informality in the instrument evidencing the gift, if the intent can be determined from the instrument, or because it contravenes a statute or rule against perpetuities. All gifts made before the effective date of the Act are declared valid, though they violate a statute or rule against perpetuities, the same as if the Act had been in effect when the gifts were made.

In addition, a school board of a general powers school district and an intermediate school board of an ISD are authorized to accept gifts made for school or ISD purposes under the Revised School Code. A public library is authorized to accept gifts for the library, subject to any conditions or limitations in the instrument of gift.

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, is no longer needed for its purpose, the municipality, school board, ISD, or public library may sell and dispose of the property at a price and upon terms and conditions as the public entity deems proper, unless the sale and disposal are inconsistent with the terms and conditions upon which the property was acquired. The proceeds of the property must 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 may do either of the following:

- Transfer any gift of intangible personal property, or the proceeds of any gift, received under the 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 conditions, limitations, or requirements, the transfer must be to an endowed or nonendowed component fund within the community foundation that imposes conditions, limitations, or requirements on the use of the property for one or more purposes provided in the 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 was subject to conditions, limitations, or requirements, the transfer must be to an endowed or nonendowed component fund within the community foundation that incorporates conditions, limitations, or requirements that are substantially similar to those to which the gift or intangible personal property was subject.

The Act ratifies and confirms a transfer in accordance with the Act that occurred before its effective date, and states that the transfer is considered valid as if it had been made under the Act.

Return of Property

A community foundation to which property is transferred under the Act must return the property to the entity that transferred it if one or more of the following occur:

- The community foundation fails to meet all of the Act's requirements for certification as 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, ISD, or public library transferring property to a community foundation under the Act may request the community foundation to establish a donor advisory committee for the component fund holding the transferred property. The committee must include a representative of the entity transferring the property and 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 may do the following:

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

Use of Property for Public Education Purpose

A school board or ISD board that transfers property to a community foundation may not prohibit, or impose any deed restriction prohibiting property sold or transferred by the board from being used for any lawful public education purpose, unless approved by the State Board of Education.

A municipality or public library that transfers property to a community foundation may not prohibit, or impose any deed restriction prohibiting, property sold or transferred by the board from being used for any lawful public education purpose

MCL 123.901-123.907

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will 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.