

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 102

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.

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

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

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

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

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

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

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

18 (x) Maintains continually at least 1 part-time or full-time
19 employee.

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

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

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

1 (c) "Condition, limitation, or requirement" does not include a
2 material restriction or condition that violates 26 CFR 1.170A-9 or
3 that restricts a community foundation's inherent power of
4 modification described in 26 CFR 1.170A-9.

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

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

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

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

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

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

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

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

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

26 (4) Whenever any property, real, personal, or intangible
27 personal, now or hereafter held and used for the purpose of a

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

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

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

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

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

1 provided in section 5 for municipalities, school boards,
2 intermediate school boards, and public libraries, respectively.

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

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

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

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

20 (b) The community foundation is liquidated.

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

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

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

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

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

13 (7) A school board or intermediate school board that transfers
14 property to a community foundation pursuant to this act shall not
15 impose any deed restriction prohibiting, or otherwise prohibit,
16 property sold or transferred by the school board or intermediate
17 school board from being used for any lawful public education
18 purpose unless approved by the state board of education created by
19 section 3 of article VIII of the state constitution of 1963. A
20 municipality or public library that transfers property to a
21 community foundation pursuant to this act shall not impose any deed
22 restriction prohibiting, or otherwise prohibit, property sold or
23 transferred by the municipality or public library from being used
24 for any lawful public education purpose.

25 Enacting section 1. (1) Sections 1 and 4 of 1913 PA 380, MCL
26 123.871 and 123.874, are repealed.

27 (2) Sections 15 and 602 of the revised school code, 1976 PA

1 451, MCL 380.15 and 380.602, are repealed.

2 (3) 1921 PA 136, MCL 397.381 to 397.382, is repealed.

3 Enacting section 2. This act takes effect 90 days after the
4 date it is enacted into law.