MICHIGAN COMMUNITY FOUNDATION ACT
Act 38 of 2017

AN ACT 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.

History: 2017, Act 38, Eff. Aug. 21, 2017.

The People of the State of Michigan enact:

123.901 Short title.

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

History: 2017, Act 38, Eff. Aug. 21, 2017.

123.903 Definitions.

Sec. 3. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) "Intangible personal property" means 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.

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

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

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

History: 2017, Act 38, Eff. Aug. 21, 2017.

123.905 Receipt of property by municipality, school board; intermediate school board, or public library; sale; disposal; use of proceeds.

Sec. 5. (1) A municipality 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,

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

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

(3) A public library may 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.

(4) Whenever any property, real, personal, or intangible personal, now or hereafter held and used for the purpose of a municipality, school board, intermediate school board, or public library by any municipality, school board, intermediate school board, or public library, in the judgment of that municipality, school board, intermediate school board, or public library, is no longer needed for that purpose, that property may be sold and disposed of by the municipality, school board, intermediate school board, or public library unless the sale and disposal are inconsistent with the terms and conditions upon which the property was acquired, at a price and upon terms and conditions as the municipality, school board, intermediate school board, or public library may deem proper, and the proceeds of that property shall be used and applied for the purpose of the municipality, school board, intermediate school board, or public library.

History: 2017, Act 38, Eff. Aug. 21, 2017.

123.907 Transfer of property from municipality, school board, intermediate school board, or public library to community foundation.

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

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

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

(2) If the gift or the intangible personal property to be transferred to a community foundation pursuant to this section was not subject to conditions, limitations, or requirements, the transfer shall 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 1 or more purposes provided in section 5 for municipalities, school boards, intermediate school boards, and public libraries, respectively.

(3) If a gift or the intangible personal property to be transferred to a community foundation pursuant to this section was subject to conditions, limitations, or requirements, the transfer shall 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.

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

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

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

(b) The community foundation is liquidated.

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

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

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

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

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

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