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## SCHOOL GIFTS TO EDUCATIONAL FOUNDATIONS

### House Bill 5786 (Substitute H-1) First Analysis (10-4-00)

**Sponsor: Rep. Scott Shackleton**  
**Committee: Education**

#### ***THE APPARENT PROBLEM:***

Earlier in this legislation session, Public Act 231 of 2000 was enacted in order to allow school districts to transfer financial gifts to community foundations. (The act, enrolled House Bill 5351, went into effect on June 27, 2000.) During testimony on that legislation, it became apparent that school districts were unable to invest the financial gifts they received in ways they could most productively accrue interest and investment income. See *BACKGROUND INFORMATION* below.

Since the enactment of Public Act 231 of 2000, some school district superintendents report their desire to recommend that school boards transfer gifts that a school district has received to an educational foundation, rather than to a community foundation. For example, a gift made to the Sault Ste. Marie Public Schools establishes a scholarship in the name of a noted educator and community leader, Sam Dubow. The school district would like to have the scholarship administered by the educational foundation already established at Lake Superior State University. Under the current law, the educational foundation is not considered to be a community foundation, so the transfer of the gift is not allowed.

In order to draw a distinction between the two kinds of foundations under the law, and to allow school district officials to transfer their financial gifts to either or both, legislation has been proposed.

#### ***THE CONTENT OF THE BILL:***

House Bill 5786 would amend the Revised School Code to establish the procedures for school boards of both local school districts and intermediate school districts to follow in order to transfer a gift to an educational foundation. Currently school districts can transfer gifts to community foundations, and the bill would provide for identical procedures when a gift is transferred to an educational foundation.

Gift Transfer with Conditions. Under the bill, a school board could receive a gift of real or personal property for school purposes, and a school board could also transfer the gift, or the proceeds from that gift, to an educational foundation. If a gift was subject to any condition or limitation, then the transfer to the foundation's fund would have to incorporate an identical or substantially similar condition or limitation. However, if there were no conditions or limitations on the gift, then the school board in its transfer would have to impose conditions or limitations on the use of the gift, so that it was used for one or more school purposes, as specified under the code.

Gift Return. An educational foundation would be required to return a transferred gift to the school board if: a) the educational foundation was liquidated; or, b) the educational foundation substantially violated any condition, limitation, or requirement on the gift. [A community foundation would be required to return a transferred gift for these reasons, and also if the community foundation failed to meet all of the requirements for certification as a community foundation under the Income Tax Act of 1967.]

Donor Advisory Board. Unless waived by the school board transferring the gift, an educational foundation would be required to establish a donor advisory board for a gift before the school board transferred it. The donor advisory board would be required to include at least one representative of the school board transferring the gift. The donor advisory board would be required to: monitor the foundation's compliance with any conditions and limitations on the gift; and, make recommendations to the foundation for the use of the gift.

Previous Gift Transfers Ratified. Under the bill, a transfer of a gift made in accordance with these provisions but one that occurred before the effective date of the bill would be ratified and confirmed, and the transfer would be considered valid as if it had been made under the bill.

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Definitions. House Bill 5786 would define “educational foundation” to mean a foundation organized and operated to assist the functions of a school district, intermediate school district, community college, or state public university. Further, the bill specifies that “condition, limitation, or requirement” would not include a material restriction or condition that violates the Code of Federal Regulations (CFR), or that restricts a community foundation’s or an educational foundation’s inherent power of modification which are described in the code.

Finally, the bill specifies that it would be known and could be cited as the “Sam Dubow Scholarship Law”.

MCL 380.15a and 380.602a

### ***BACKGROUND INFORMATION:***

Community Foundations and Public Act 231 of 2000. Public Act 231 went into effect on June 27, 2000. According to committee testimony at the time, there are times when estates are settled and public school systems receive gifts from families and individuals, made from wills and bequests. Usually the gifts are made to be perpetual, with only the income from the gift used for the donor’s goal. That goal might be offering a scholarship to a high school graduate; support for a children’s reading program; the purchase of technological equipment; or, assistance with an athletic program.

Testimony offered by the Council of Michigan Foundations when House Bill 5351 was considered indicated that the growth of permanent endowment funds had been limited by the investment instruments available to public school systems under Public Act 20 of 1943 (MCL 129.91 et al.), the act that governs the investment of surplus funds for political subdivisions. As a result, permanent endowment funds sometimes were not able to be invested in ways that maintained the buying power of the original gift, and they failed to produce the level of income needed to fulfill the donor’s specified goal.

The organization also testified that in the last eight years there has been a dramatic growth in the development of community foundations in Michigan. According to the Council of Michigan Foundations, every county in Michigan is now served by a community foundation, and the 61 existing foundations and 34 geographic funds have collective assets exceeding \$1.2 billion with annual grant making statewide surpassing \$55 million. The growth of the community foundations has been helped by the State of

Michigan’s individual income and single business tax credits, and by a \$45 million challenge grant from the W. K. Kellogg Foundation to establish permanent youth endowment funds. Under the state’s tax laws, a business making a contribution to a community foundation can receive a tax credit of up to \$5,000 or 10 percent of its liability under the single business tax, whichever is smaller; an individual can receive a credit of 50 percent, up to \$100; and, a family can receive a credit up to \$200.

These nonprofit, tax exempt corporations were designed specifically to receive and invest permanent endowment funds and to award grants from the income of these funds. Consequently, a community foundation’s ability to invest funds is more flexible than is a public school system’s, and it can use a wide array of investment instruments, including the stock market, in order to increase the value of the money.

While officials in a number of school systems had gone forward to transfer gifts to community foundations before the enactment of Public Act 231 of 2000, testimony indicated that many school districts had not because of the uncertainty of the restrictions of Public Act 20 on private gifts. Those public school officials argued that legislation was needed to remove any uncertainty about the appropriateness of making transfers from school districts to community foundations, and the legislature agreed, adopting Public Act 231 of 2000.

### ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

### ***ARGUMENTS:***

#### ***For:***

The partnership with an educational foundation, like a partnership with a community foundation, provides a way to maximize the charitable intent of residents who care for their public schools by leaving a lasting legacy. This legislation will remove any uncertainty about the appropriateness of making transfers between public schools and either, or both, educational foundations or community foundations. Both foundations represent important partners for school systems in the management of endowed gifts. Superintendents and their boards view the local educational and community foundations as appropriate sites to place an endowed gift, knowing that the income will still be used for the donor’s goals, and to meet critical school needs.

***POSITIONS:***

The Department of Education supports the bill. (10-3-00)

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