

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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TKK:wlj:rs

October 17, 2011

Representative Knudson:

This draft modifies ss. 43.58 (7) (b), 118.27, and 119.18 (16) to permit a board of a public library, school board of a public school, and the board of school directors of the schools of a city of the first class to transfer a gift, bequest, or endowment to a community foundation under certain circumstances. Community foundations are defined in this amendment as:

“a charitable organization, described in section 501 (c) (3) of the Internal Revenue Code and exempt from federal income tax under section 501 (a) of the Internal Revenue Code, dedicated to encouraging and assisting charitable activities and enterprises in a designated community in this state and having expertise in finance, fund development, and grantmaking.”

Under the amendment, a library board or school board may transfer a gift or grant to a community foundation only if, as a condition of transfer, the library board or school board retains control over the manner in which any disbursement made by the community foundation is spent and the library board or school board exercises its rights over the use of the disbursement in accordance with the law applicable to trust investments.

Please review this amendment carefully to ensure that I have accomplished your intent.

As we discussed briefly on the phone today, it is my understanding that federal law requires a community foundation to retain some independent control over the distribution of assets donated to the community foundation. This independent control is known as the variance power, and under that power, a community foundation may modify any restriction or condition on the distribution of assets if circumstances warrant. This level of independent control is what makes community foundations primarily grantmaking institutions; donors, including other charitable organizations, make requests of the community foundation for distribution of the donor's assets that are held by the community foundation, and the board of directors of the community foundation must review and, ultimately, approve those requests to determine that the distribution meets the regulations of the Internal Revenue Code and are compatible with the policies and purposes of the foundation.

It is possible that the proposed language requiring a written agreement between the library board or school board and the community foundation and imposing conditions on disbursements from the community foundation conflict with requirements under federal law relating to the control and distribution of assets held by a community foundation. I thought you should be aware of this issue.

Let me know if you have any questions or wish to make any changes to this amendment.

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