

## 2011 DRAFTING REQUEST

### Assembly Amendment (AA-AB224)

Received: 10/17/2011

Received By: tkuczens

Wanted: As time permits

Companion to LRB:

For: Dean Knudson (608) 266-1526

By/Representing: Nick

May Contact:

Drafter: tkuczens

Subject: Education - libraries  
Education - school boards

Addl. Drafters:

Extra Copies: pg

Submit via email: YES

Requester's email: Rep.Knudson@legis.wi.gov

Carbon copy (CC:) to: tracy.kuczenski@legis.wisconsin.gov

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Provide greater specificity about charitable organizations that may receive donations and impose restrictions on distribution of donations by the charitable organizations

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#### Instructions:

See attached

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	tkuczens 10/17/2011	wjackson 10/17/2011	rschluet 10/17/2011	_____	ggodwin 10/17/2011		
	tkuczens 10/18/2011	jdye 10/18/2011		_____			
/1			rschluet 10/18/2011	_____	lparisi 10/18/2011	lparisi 10/18/2011	

FE Sent For:

<END>

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/? /P1	tkuczens 10/17/2011	10/18/11 wjackson 10/17/2011	rschlue 10/17/2011	_____	ggodwin 10/17/2011		

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For: Dean Knudson (608) 266-1526

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Provide greater specificity about charitable organizations that may receive donations and impose restrictions on distribution of donations by the charitable organizations

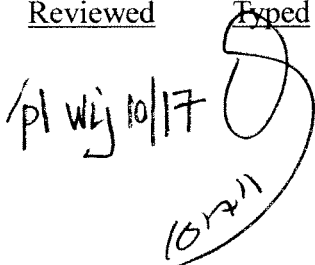
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**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tkuczens	pl wlj 10/17		_____	_____		
FE Sent For:				<END>			

AB 224

10-17-11

T. case from Rep Knudson

prepare an amendment that

- defines the charitable organization as a 501(c)(3) that is dedicated to investment pooling and has expertise in investing. (community foundation)
- require the library board and school board to retain authority over spending decisions of disbursements from fund/transferred assets
  - \* the only option the community foundation has when "spending" assets is to give asset back to the library board / school board
- require library board and school board to ~~retain~~ ~~retain~~ use funds consistent with trust investments.

## Standards & Effective Practices for Community Foundations

[Home](#) > [National Standards for U.S. Community Foundations](#) > [Standard II. Part E.](#)

### **A community foundation's governing body retains variance power by which it may modify any restriction or condition on the distribution, if circumstances warrant.**

*Mission, Structure and Governance - Standard II. Part E.*

<a href="#">The Standard</a>	<a href="#">Methodologies</a>	<a href="#">Examples</a>	<a href="#">Current Practice Assessment</a>	<a href="#">Key Design Elements</a>	<a href="#">Monitoring &amp; Evaluation</a>	<a href="#">Other Resources</a>
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#### **The Standard**

A community foundation's governing body retains variance power by which it may modify any restriction or condition on the distribution, if circumstances warrant.

#### **Underlying Rationale**

Retaining and exercising the variance power insures that the donors' interest in the community is efficiently executed and continues to remain relevant to that community's changing needs and opportunities. As well, the variance power is consistent with Internal Revenue Services regulations.

#### **Potential Outcomes**

1. The application of funds remains relevant to changing community conditions.
2. Donors will be attracted to the notion that their gifts will always be protected from obsolescence.

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Please note that these materials were collected prior to the passage of the Pension Protection Act of 2006 so do not necessarily reflect the recent changes in the law. As always, these documents should only be used as a reference in developing your own documents with advice from legal counsel where appropriate. For more information on the Pension Protection Act of 2006, see [www.cof.org/hr4](http://www.cof.org/hr4).

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Wij d-note  
RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY AMENDMENT ,**  
**TO 2011 ASSEMBLY BILL 224**

10/17/11  
TODAY

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 2, line 1: delete that line and substitute:

3 "SECTION 1e. 43.58 (7) (b) of the statutes is renumbered 43.58 (7) (b) 2. and  
4 amended to read:".

5 ✓ 2. Page 2, line 2: after "(b)" insert "2."

6 ✓ 3. Page 2, line 7: after "or may" insert "subject to subd. 3.".

7 ✓ 4. Page 2, line 7: delete "charitable" and substitute "charitable".

8 ✓ 5. Page 2, line 8: delete lines 8 to 12 and substitute <sup>g</sup> "organization, described  
9 in section 501 (c) (3) of the Internal Revenue Code and exempt from federal income  
10 tax under section 501 (a) of the Internal Revenue Code, the purpose of which is  
11 providing financial or material support to the public library community foundation."

1

6. Page <sup>3</sup>~~2~~, line 2: after that line insert:

2

"SECTION 1m. 43.58 (7) (b) 1. of the statutes is created to read:

3

43.58 (7) (b) 1. In this paragraph, "community foundation" means 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.

9

SECTION 1s. 43.58 (7) (b) 3. of the statutes is created to read:

10

43.58 (7) (b) 3. A library board may pay or transfer a gift, bequest, or

11

endowment to a community foundation only if <sup>the</sup> library board and the community foundation agree, in writing and at the time of the payment or transfer of the gift, bequest, or endowment, to each of the following:

13

14

a. The community foundation agrees to make disbursements from ~~and of~~ the gift, bequest, or endowment to the library board upon the written request of the library board.

STET

17

b. The library board retains control over the manner in which any disbursement made under subd. 3. a. is used.

19

c. The library board exercises its rights over the use of each disbursement made under subd. 3. a. in accordance with the law applicable to trust investments and the provisions of this chapter." ✓

22

✓ 7. Page 3, line 3: delete that line and substitute:

23

"SECTION 2e. 118.27 of the statutes is renumbered 118.27 (2) and amended to read:"

24



that line and substitute (f)

Please  
Fix  
Comp.

Score  
Comma

- 1 ✓ 8. Page 3, line 4: delete "~~118.27 Gifts and grants.~~" and substitute "118.27
- 2 (2) " 118.27 (2) The school board of a district may receive, accept, "
- 3 9. Page 3, line 4: after "accept" insert "e"
- 4 ✓ 10. Page 3, line 5: <sup>delete</sup> after "securities" insert "a" "securities" and
- 5 11. Page 3, line 18: after "control" insert ".,"
- 6 ✓ 12. Page 3, line 13: after "or may" insert ", subject to sub. (3)."
- 7 ✓ 13. Page 3, line 13: delete the material beginning with "charitable" and
- 8 ending with "grant" on line 18 and substitute "community foundation".
- 9 # Page 3, line 18: delete "control" and substitute "control, "
- 10 14. Page 3, line 19: after that line insert:

"SECTION 2m. 118.27 (1) of the statutes is created to read:

11 118.27  
118.27 (1) In this section, "community foundation" means a charitable  
 12 organization, described in section 501 (c) (3) of the Internal Revenue Code and  
 13 exempt from federal income tax under section 501 (a) of the Internal Revenue Code,  
 14 dedicated to encouraging and assisting charitable activities and enterprises in a  
 15 designated community in this state and having expertise in finance, fund  
 16 development, and grantmaking.

SECTION 2s. 118.27 (3) of the statutes is created to read:

18 118.27 (3) A school board may transfer a gift or grant to a community  
 19 foundation only if the school board and the community foundation agree, in writing  
 20 and at the time of the transfer of the gift or grant, to each of the following:

21 (a) The community foundation agrees to make disbursements from ~~and of~~ the  
 22 gift or grant to the school board upon the written request of the school board.

STET

1 (b) The school board retains control over the manner in which any  
2 disbursement made under par. (a) is used.

3 (c) The school board exercises its rights over the use of each disbursement made  
4 under par. (a) in accordance with the law applicable to trust investments.”.

5 ✓15. Page 3, line 20: delete that line and substitute:

6 “SECTION 3e. 119.18 (16) of the statutes is renumbered 119.18 (16) (b) and  
7 amended to read:”.

8 ✓16. Page 3, line 21: delete “~~119.18 (16)~~ GIFTS AND GRANTS.” and substitute  
9 “~~119.18 (16)~~ (b)”.

10 ✓17. Page 3, line 21: <sup>delete "accept" and substitute "accept,"</sup> after “accept” insert “and”  
11 ✓18. Page 3, line 22: <sup>delete "securities" and substitute "securities,"</sup> after “securities” insert “and”

12 ✓19. Page 4, line 2: after “or may” insert “, <sup>par. (c),</sup> subject to ~~sub 12~~”.

13 ✓20. Page 4, line 3: delete the material beginning with “charitable” and ending  
14 with “grant” on line 7 and substitute “community foundation”.

15 ✓21. Page 4, line 7: <sup>delete "control" and substitute "control,"</sup> after “control” insert “and”

16 ✓22. Page 4, line 9: after that line insert:

17 “SECTION 3m. 119.18 (16) (a) of the statutes is created to read:  
18 119.18 (16) (a) In this subsection, “community foundation” means a charitable  
19 organization, described in section 501 (c) (3) of the Internal Revenue Code and  
20 exempt from federal income tax under section 501 (a) of the Internal Revenue Code,  
21 dedicated to encouraging and assisting charitable activities and enterprises in a  
22 designated community in this state and having expertise in finance, fund  
23 development, and grantmaking.

Fix Comp.

1           **SECTION 3s.** 119.18 (16) (c) of the statutes is created to read:

2           119.18 **(16)** (c) The board may transfer a gift or grant to a community  
3 foundation only if the board and the community foundation agree, in writing and at  
4 the time of the transfer of the gift or grant, to each of the following:

5           1. The community foundation agrees to make disbursements from and of the  
6 gift or grant to the board upon the written request of the board.

7           2. The board retains control over the manner in which any disbursement made  
8 under subd. 1. is used.

9           3. The board exercises its rights over the use of each disbursement made under  
10 subd. 1. in accordance with the law applicable to trust investments." ✓

11

(END)

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBa1628/?dn

TKK:f:...

WJ

Date

Representative Knudson:

This draft modifies ss. 43.58 (7) (b), 118.27, and 119.18 (16) to permit a public library, school board of a public school, and the board of school directors of the schools of a city of the 1st class to transfer a gift, bequest, or endowment to a community foundation under certain circumstances. Community foundations are defined in this amendment as:

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 gift or grant may be transferred to a community foundation by a library board or school board 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.

*board*  
It is possible that the proposed language requiring a written agreement between the library 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.

Tracy K. Kuczenski  
Legislative Attorney  
Phone: (608) 266-9867  
E-mail: [tracy.kuczenski@legis.wisconsin.gov](mailto:tracy.kuczenski@legis.wisconsin.gov)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa1628/P1dn  
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.

Tracy K. Kuczenski  
Legislative Attorney  
Phone: (608) 266-9867  
E-mail: [tracy.kuczenski@legis.wisconsin.gov](mailto:tracy.kuczenski@legis.wisconsin.gov)

**Kuczenski, Tracy**

---

**From:** Rep.Knudson  
**Sent:** Tuesday, October 18, 2011 9:00 AM  
**To:** LRB.Legal; Kuczenski, Tracy  
**Subject:** RE: Draft review: LRB 11a1628/P1 Topic: Provide greater specificity about charitable organizations that may receive donations and impose restrictions on distribution of donations by the charitable organizations

Please prepare for introduction as is.

Thanks

STATE REPRESENTATIVE

**DEAN KNUDSON**

30TH ASSEMBLY DISTRICT

P.O. Box 8952 • Madison, WI 53708-8952

(608) 266-1526 • Fax: (608) 282-3630

Toll-Free: (888) 529-0030

30th District Phone: (715) 690-9225

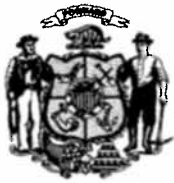
Rep.Knudson@legis.wi.gov

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**From:** LRB.Legal  
**Sent:** Monday, October 17, 2011 4:54 PM  
**To:** Rep.Knudson  
**Subject:** Draft review: LRB 11a1628/P1 Topic: Provide greater specificity about charitable organizations that may receive donations and impose restrictions on distribution of donations by the charitable organizations

**Following is the PDF version of draft LRB 11a1628/P1 and drafter's note.**





State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa1628/PT1

TKK:wlj:rs

RMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~  
ASSEMBLY AMENDMENT,  
TO 2011 ASSEMBLY BILL 224

10/18/11

Today (no changes)

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 1: delete that line and substitute:

3 “SECTION 1e. 43.58 (7) (b) of the statutes is renumbered 43.58 (7) (b) 2. and  
4 amended to read:”.

5 **2.** Page 2, line 2: after “(b)” insert “2.”.

6 **3.** Page 2, line 7: after “or may” insert “, subject to subd. 3.”.

7 **4.** Page 2, line 7: delete “charitable” and substitute “charitable”.

8 **5.** Page 2, line 8: delete lines 8 to 12 and substitute “organization, described  
9 in section 501 (e) (3) of the Internal Revenue Code and exempt from federal income  
10 tax under section 501 (a) of the Internal Revenue Code, the purpose of which is  
11 providing financial or material support to the public library community foundation.”.

1           **6.** Page 3, line 2: after that line insert:

2           “**SECTION 1m.** 43.58 (7) (b) 1. of the statutes is created to read:

3           43.58 (7) (b) 1. In this paragraph, “community foundation” means a charitable  
4 organization, described in section 501 (c) (3) of the Internal Revenue Code and  
5 exempt from federal income tax under section 501 (a) of the Internal Revenue Code,  
6 dedicated to encouraging and assisting charitable activities and enterprises in a  
7 designated community in this state and having expertise in finance, fund  
8 development, and grantmaking.

9           **SECTION 1s.** 43.58 (7) (b) 3. of the statutes is created to read:

10           43.58 (7) (b) 3. A library board may pay or transfer a gift, bequest, or  
11 endowment to a community foundation only if the library board and the community  
12 foundation agree, in writing and at the time of the payment or transfer of the gift,  
13 bequest, or endowment, to each of the following:

14           a. The community foundation agrees to make disbursements from and of the  
15 gift, bequest, or endowment to the library board upon the written request of the  
16 library board.

17           b. The library board retains control over the manner in which any  
18 disbursement made under subd. 3. a. is used.

19           c. The library board exercises its rights over the use of each disbursement made  
20 under subd. 3. a. in accordance with the law applicable to trust investments and the  
21 provisions of this chapter.”.

22           **7.** Page 3, line 3: delete that line and substitute:

23           “**SECTION 2e.** 118.27 of the statutes is renumbered 118.27 (2) and amended to  
24 read:”.

1           **8.** Page 3, line 4: delete that line and substitute “118.27 (2) The school board  
2 of a district may receive, accept.”.

3           **9.** Page 3, line 5: delete “securities” and substitute “securities.”.

4           **10.** Page 3, line 13: after “or may” insert “, subject to sub. (3).”.

5           **11.** Page 3, line 13: delete the material beginning with “charitable” and ending  
6 with “grant” on line 18 and substitute “community foundation”.

7           **12.** Page 3, line 18: after “control” insert “.”.

8           **13.** Page 3, line 18: delete “control” and substitute “control.”.

9           **14.** Page 3, line 19: after that line insert:

10           **“SECTION 2m.** 118.27 (1) of the statutes is created to read:

11           118.27 (1) In this section, “community foundation” means a charitable  
12 organization, described in section 501 (c) (3) of the Internal Revenue Code and  
13 exempt from federal income tax under section 501 (a) of the Internal Revenue Code,  
14 dedicated to encouraging and assisting charitable activities and enterprises in a  
15 designated community in this state and having expertise in finance, fund  
16 development, and grantmaking.

17           **SECTION 2s.** 118.27 (3) of the statutes is created to read:

18           118.27 (3) A school board may transfer a gift or grant to a community  
19 foundation only if the school board and the community foundation agree, in writing  
20 and at the time of the transfer of the gift or grant, to each of the following:

21           (a) The community foundation agrees to make disbursements from and of the  
22 gift or grant to the school board upon the written request of the school board.

1 (b) The school board retains control over the manner in which any  
2 disbursement made under par. (a) is used.

3 (c) The school board exercises its rights over the use of each disbursement made  
4 under par. (a) in accordance with the law applicable to trust investments.”.

5 **15.** Page 3, line 20: delete that line and substitute:

6 “**SECTION 3e.** 119.18 (16) of the statutes is renumbered 119.18 (16) (b) and  
7 amended to read:”.

8 **16.** Page 3, line 21: delete “GIFTS AND GRANTS.” and substitute “(b)”.

9 **17.** Page 3, line 21: delete “accept” substitute “accept<sub>s</sub>”.

10 **18.** Page 3, line 22: delete “securities” substitute “securities<sub>s</sub>”.

11 **19.** Page 4, line 2: after “or may” insert “, subject to par. (c)”.

12 **20.** Page 4, line 3: delete the material beginning with “charitable” and ending  
13 with “grant” on line 7 and substitute “community foundation”.

14 **21.** Page 4, line 7: delete “control” substitute “control<sub>s</sub>”.

15 **22.** Page 4, line 9: after that line insert:

16 “**SECTION 3m.** 119.18 (16) (a) of the statutes is created to read:

17 119.18 (16) (a) In this subsection, “community foundation” means a charitable  
18 organization, described in section 501 (c) (3) of the Internal Revenue Code and  
19 exempt from federal income tax under section 501 (a) of the Internal Revenue Code,  
20 dedicated to encouraging and assisting charitable activities and enterprises in a  
21 designated community in this state and having expertise in finance, fund  
22 development, and grantmaking.

23 **SECTION 3s.** 119.18 (16) (c) of the statutes is created to read:

1           119.18 **(16)** (c) The board may transfer a gift or grant to a community  
2 foundation only if the board and the community foundation agree, in writing and at  
3 the time of the transfer of the gift or grant, to each of the following:

4           1. The community foundation agrees to make disbursements from and of the  
5 gift or grant to the board upon the written request of the board.

6           2. The board retains control over the manner in which any disbursement made  
7 under subd. 1. is used.

8           3. The board exercises its rights over the use of each disbursement made under  
9 subd. 1. in accordance with the law applicable to trust investments.”.

10

(END)