

SUBSTITUTE FOR  
SENATE BILL NO. 412

A bill to amend 1982 PA 162, entitled  
"Nonprofit corporation act,"  
by amending sections 124, 261, 501, and 541 (MCL 450.2124,  
450.2261, 450.2501, and 450.2541), section 124 as amended by 2002  
PA 33 and section 541 as amended by 1987 PA 170.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 124. (1) This act does not modify the requirements of the  
2 following:

3           (a) The supervision of trustees for charitable purposes act,  
4 1961 PA 101, MCL 14.251 to 14.266.

5           (b) 1965 PA 169, MCL 450.251 to 450.253.

6           (c) The charitable organizations and solicitations act, 1975  
7 PA 169, MCL 400.271 to 400.294.

8           (d) The uniform **PRUDENT** management of institutional funds act.  
9 ~~, 1976 PA 157, MCL 450.1201 to 450.1210.~~

10           (e) The career development and distance learning act, **2002 PA**

1 36, MCL 390.1571 TO 390.1579.

2 (2) A corporation subject to ~~any~~ 1 or more of the acts listed  
3 in subsection (1) shall comply with those acts and shall comply  
4 with this act. If there is any inconsistency between those acts and  
5 this act, those acts shall control.

6 Sec. 261. (1) A corporation, subject to any limitation  
7 provided in this act, in any other statute of this state, in its  
8 articles of incorporation, or otherwise by law, ~~shall have~~ **HAS THE**  
9 power in furtherance of its corporate purposes to **DO ANY OF THE**  
10 **FOLLOWING:**

11 (a) Have perpetual duration.

12 (b) Sue and be sued in all courts and participate in actions  
13 and proceedings judicial, administrative, arbitratve, or  
14 otherwise, in ~~like cases as~~ **THE SAME MANNER AS A** natural persons  
15 **PERSON.**

16 (c) Have a corporate seal, and alter the seal, and use it by  
17 causing it or a facsimile to be affixed, impressed, or reproduced  
18 in any other manner.

19 (d) Adopt, amend, or repeal bylaws, including emergency  
20 bylaws, relating to the purposes of the corporation, the conduct of  
21 its affairs, its rights and powers, and the rights and powers of  
22 its shareholders, members, directors, or officers.

23 (e) Elect or appoint officers, employees, and other agents of  
24 the corporation, prescribe their duties, fix their compensation and  
25 the compensation of directors, and indemnify corporate directors,  
26 officers, employees, and agents.

27 (f) Purchase, receive, take by grant, gift, devise, bequest,

1 or otherwise, lease, or otherwise acquire, own, hold, improve,  
2 employ, use, and otherwise deal in and with, real or personal  
3 property, or an interest ~~therein~~**IN REAL OR PERSONAL PROPERTY**,  
4 wherever situated, either absolutely or in trust and without  
5 limitation as to amount or value.

6 (g) Sell, convey, lease, exchange, transfer, or otherwise  
7 dispose of, or mortgage or pledge, or create a security interest  
8 in, any of its property, or an interest ~~therein~~**IN THE PROPERTY**,  
9 wherever situated.

10 (h) Purchase, take, receive, subscribe for, or otherwise  
11 acquire, own, hold, vote, employ, sell, lend, lease, exchange,  
12 transfer, or otherwise dispose of, mortgage, pledge, use, and  
13 otherwise deal in and with, bonds and other obligations, shares or  
14 other securities or interests or memberships issued by others,  
15 whether engaged in similar or different business, governmental, or  
16 other activities, including banking corporations or trust  
17 companies. A corporation organized or conducting affairs in this  
18 state under this act ~~may~~**SHALL** not guarantee or become surety upon  
19 a bond or other undertaking securing the deposit of public money.

20 (i) Make contracts, give guarantees, and incur liabilities,  
21 borrow money at such rates of interest as the corporation may  
22 determine, issue its notes, bonds, and other obligations, and  
23 secure any of its obligations by mortgage or pledge of any of its  
24 property or an interest ~~therein~~**IN THE PROPERTY**, wherever situated.

25 (j) Lend money, invest and reinvest its funds, and take and  
26 hold real and personal property as security for the payment of  
27 funds loaned or invested.

1 (k) Make donations for public welfare or for community fund,  
2 hospital, charitable, educational, scientific, civic, or similar  
3 purposes, and in time of war or other national emergency in aid  
4 thereof ~~OF WAR OR OTHER NATIONAL EMERGENCY~~.

5 (l) Pay pensions, establish and carry out pension, savings,  
6 thrift, and other retirement, incentive, and benefit plans, trusts  
7 and provisions for any of its directors, officers, and employees.

8 (m) Purchase, receive, take, otherwise acquire, own, hold,  
9 sell, lend, exchange, transfer, otherwise dispose of, pledge, use,  
10 and otherwise deal in and with its own shares, bonds, and other  
11 securities.

12 (n) Participate with others in any corporation, business  
13 corporation, partnership, limited partnership, joint venture, or  
14 other association of any kind, or participate with others in any  
15 transaction, undertaking, or agreement ~~which~~ ~~THAT~~ the participating  
16 corporation would have power to conduct by itself, whether or not  
17 the participation involves sharing or delegation of control with or  
18 to others.

19 (o) Cease its corporate activities and dissolve.

20 (p) Conduct its affairs, carry on its operations, and have  
21 offices and exercise the powers granted by this act in any  
22 jurisdiction within or without the United States, and, in the case  
23 of a corporation the purpose or purposes of which require the  
24 transaction of business, the receipt and payment of money, the care  
25 and custody of property, and other incidental business matters,  
26 transact such business, receive, collect, and disburse such money,  
27 and engage in such other incidental business matters as are

1 naturally or properly within the scope of its articles.

2 (q) Have and exercise all powers necessary or convenient to  
3 effect any purpose for which the corporation is formed.

4 (2) A corporation subject to ~~Act No. 157 of the Public Acts of~~  
5 ~~1976, being sections 451.1201 to 451.1210 of the Michigan Compiled~~  
6 ~~Laws, shall have~~ **THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL**  
7 **FUNDS ACT HAS** all powers granted under **BOTH** this act and ~~Act No.~~  
8 ~~157 of the Public Acts of 1976~~ **THAT ACT**. However, in the event of  
9 an inconsistency between ~~this act and Act No. 157 of the Public~~  
10 ~~Acts of 1976, Act No. 157 shall control~~ **THE 2 ACTS, THE UNIFORM**  
11 **PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT CONTROLS**.

12 (3) The corporate existence of all corporations incorporated  
13 before ~~the effective date of this act~~ **JANUARY 1, 1983**, without  
14 capital stock, for religious, benevolent, social, or fraternal  
15 purposes, shall be ~~deemed~~ **CONSIDERED** to be in perpetuity. A  
16 limitation or term fixed in the articles or in the law under which  
17 the corporation originally incorporated ~~shall not be~~ **IS NOT**  
18 effective unless the corporation ~~has~~ affirmatively waived its right  
19 to perpetual existence ~~subsequent to~~ **AFTER** September 18, 1931, by  
20 fixing a definite term of existence by amendment to its articles.

21 (4) Any nonprofit power corporation ~~which~~ **THAT** is authorized  
22 to furnish electric service may construct, maintain, and operate  
23 its lines along, over, across, or under any public places, streets,  
24 and highways, and across or under the waters in this state, with  
25 all necessary erections and fixtures. A nonprofit power corporation  
26 may exercise the power of eminent domain, in the manner provided by  
27 ~~Act No. 87 of the Public Acts of 1980, as amended, being sections~~

1 ~~213.51 to 213.77 of the Michigan Compiled Laws~~ **THE UNIFORM**  
 2 **CONDEMNATION PROCEDURES ACT, 1980 PA 87, MCL 213.51 TO 213.75.** As a  
 3 condition to the exercise of any of these powers, nonprofit  
 4 corporations ~~shall be~~ **ARE** subject to the jurisdiction of the  
 5 Michigan public service commission pursuant to ~~Act No. 106 of the~~  
 6 ~~Public Acts of 1909, as amended, being sections 460.551 to 460.559~~  
 7 ~~of the Michigan Compiled Laws~~ **1909 PA 106, MCL 460.551 TO 460.559,**  
 8 ~~Act No. 419 of the Public Acts of 1919, as amended, being sections~~  
 9 ~~460.51 to 460.62 of the Michigan Compiled Laws~~ **1919 PA 419, MCL**  
 10 **460.54 TO 460.62,** and ~~Act No. 3 of the Public Acts of 1939, as~~  
 11 ~~amended, being sections 460.1 to 460.8 of the Michigan Compiled~~  
 12 ~~Laws~~ **1939 PA 3, MCL 460.1 TO 460.11.**

13       Sec. 501. (1) The business and affairs of a corporation shall  
 14 be managed by its board, except as otherwise provided in this act.  
 15 A director need not be a shareholder or member of the corporation  
 16 unless the articles or bylaws so require. The articles or bylaws  
 17 may prescribe qualifications for directors.

18       (2) The board of a corporation ~~which~~ **THAT** is subject to ~~Act~~  
 19 ~~No. 157 of the Public Acts of 1976, being sections 451.1201 to~~  
 20 ~~451.1210 of the Michigan Compiled Laws, shall have~~ **THE UNIFORM**  
 21 **PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT HAS** the powers  
 22 granted under ~~Act No. 157 of the Public Acts of 1976~~ **BOTH THAT ACT**  
 23 and this act. However, in the event of an inconsistency between  
 24 ~~this act and Act No. 157 of the Public Acts of 1976, Act No. 157~~  
 25 ~~shall control~~ **THE 2 ACTS, THE UNIFORM PRUDENT MANAGEMENT OF**  
 26 **INSTITUTIONAL FUNDS ACT CONTROLS.**

27       Sec. 541. (1) A director or an officer shall discharge the

1 duties of that position in good faith and with ~~that~~ **THE** degree of  
2 diligence, care, and skill ~~which~~ **THAT** an ordinarily prudent person  
3 would exercise under similar circumstances in a like position. In  
4 discharging the duties, a director or an officer, when acting in  
5 good faith, may rely upon the opinion of counsel for the  
6 corporation, upon the report of an independent appraiser selected  
7 with reasonable care by the board, or upon financial statements of  
8 the corporation represented to the director or officer as correct  
9 by the president or the officer of the corporation ~~having~~ **WHO HAS**  
10 charge of its books or account, or as stated in a written report by  
11 an independent public or certified public accountant or firm of  
12 accountants fairly to reflect the financial condition of the  
13 corporation.

14 (2) A director or officer of a corporation subject to the  
15 uniform **PRUDENT** management of institutional funds act, ~~Act No. 157~~  
16 ~~of the Public Acts of 1976, being sections 451.1201 to 451.1210 of~~  
17 ~~the Michigan Compiled Laws,~~ shall be considered **TO BE** in compliance  
18 with this section ~~when~~ **IF** the director or officer complies with  
19 ~~section 7 of Act No. 157 of the Public Acts of 1976~~ **THE UNIFORM**  
20 **PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT** in the administration  
21 of the powers specified in that ~~section~~ **ACT**.

22 (3) If the corporation's articles of incorporation contain a  
23 provision authorized under section 209(c), ~~then~~ a volunteer  
24 director of the corporation ~~shall~~ **IS** only be personally liable for  
25 monetary damages for a breach of fiduciary duty as a director to  
26 the corporation, its shareholders, or its members to the extent set  
27 forth in the provision.

1           (4) If the corporation's articles of incorporation contain a  
2 provision authorized under section 209(d), ~~then~~ a claim for  
3 monetary damages for a breach of a volunteer director's duty to any  
4 person other than the corporation, its shareholders, or its members  
5 shall not be brought or maintained against a ~~THE~~ volunteer  
6 director. ~~Such a~~ **THE** claim shall be brought or maintained instead  
7 against the corporation, which ~~corporation~~ shall be liable for ~~the~~  
8 **ANY** breach of the volunteer director's duty.

9           (5) An action against a director or officer for failure to  
10 perform the duties imposed by this section shall be commenced  
11 within 3 years after the cause of action has accrued, or within 2  
12 years after the time when the cause of action is discovered, or  
13 should reasonably have been discovered, by the complainant,  
14 whichever occurs first.

15           Enacting section 1. This amendatory act does not take effect  
16 unless Senate Bill No. 411

17                           of the 95th Legislature is enacted into law.