

# SENATE BILL No. 412

March 31, 2009, Introduced by Senator KUIPERS and referred to the Committee on Judiciary.

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.

1 (d) The uniform **PRUDENT** management of institutional funds act.  
2 ~~, 1976 PA 157, MCL 450.1201 to 450.1210.~~

3 (e) The career development and distance learning act, **2002 PA**  
4 **36, MCL 390.1571 TO 390.1579.**

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

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

14 (a) Have perpetual duration.

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

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

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

26 (e) Elect or appoint officers, employees, and other agents of  
27 the corporation, prescribe their duties, fix their compensation and

1 the compensation of directors, and indemnify corporate directors,  
2 officers, employees, and agents.

3 (f) Purchase, receive, take by grant, gift, devise, bequest,  
4 or otherwise, lease, or otherwise acquire, own, hold, improve,  
5 employ, use, and otherwise deal in and with, real or personal  
6 property, or an interest therein—**IN REAL OR PERSONAL PROPERTY**,  
7 wherever situated, either absolutely or in trust and without  
8 limitation as to amount or value.

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

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

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

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

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

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

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

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

22           (o) Cease its corporate activities and dissolve.

23           (p) Conduct its affairs, carry on its operations, and have  
24 offices and exercise the powers granted by this act in any  
25 jurisdiction within or without the United States, and, in the case  
26 of a corporation the purpose or purposes of which require the  
27 transaction of business, the receipt and payment of money, the care

1 and custody of property, and other incidental business matters,  
2 transact such business, receive, collect, and disburse such money,  
3 and engage in such other incidental business matters as are  
4 naturally or properly within the scope of its articles.

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

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

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

24 (4) Any nonprofit power corporation ~~which~~ **THAT** is authorized  
25 to furnish electric service may construct, maintain, and operate  
26 its lines along, over, across, or under any public places, streets,  
27 and highways, and across or under the waters in this state, with

1 all necessary erections and fixtures. A nonprofit power corporation  
 2 may exercise the power of eminent domain, in the manner provided by  
 3 ~~Act No. 87 of the Public Acts of 1980, as amended, being sections~~  
 4 ~~213.51 to 213.77 of the Michigan Compiled Laws~~ **THE UNIFORM**  
 5 **CONDEMNATION PROCEDURES ACT, 1980 PA 87, MCL 213.51 TO 213.75.** As a  
 6 condition to the exercise of any of these powers, nonprofit  
 7 corporations ~~shall be~~ **ARE** subject to the jurisdiction of the  
 8 Michigan public service commission pursuant to ~~Act No. 106 of the~~  
 9 ~~Public Acts of 1909, as amended, being sections 460.551 to 460.559~~  
 10 ~~of the Michigan Compiled Laws~~ **1909 PA 106, MCL 460.551 TO 460.559,**  
 11 ~~Act No. 419 of the Public Acts of 1919, as amended, being sections~~  
 12 ~~460.51 to 460.62 of the Michigan Compiled Laws~~ **1919 PA 419, MCL**  
 13 **460.54 TO 460.62,** and ~~Act No. 3 of the Public Acts of 1939, as~~  
 14 ~~amended, being sections 460.1 to 460.8 of the Michigan Compiled~~  
 15 ~~Laws~~ **1939 PA 3, MCL 460.1 TO 460.11.**

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

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

1 ~~shall control~~ **THE 2 ACTS, THE UNIFORM PRUDENT MANAGEMENT OF**  
2 **INSTITUTIONAL FUNDS ACT CONTROLS.**

3       Sec. 541. (1) A director or an officer shall discharge the  
4 duties of that position in good faith and with ~~that~~ **THE** degree of  
5 diligence, care, and skill ~~which~~ **THAT** an ordinarily prudent person  
6 would exercise under similar circumstances in a like position. In  
7 discharging the duties, a director or an officer, when acting in  
8 good faith, may rely upon the opinion of counsel for the  
9 corporation, upon the report of an independent appraiser selected  
10 with reasonable care by the board, or upon financial statements of  
11 the corporation represented to the director or officer as correct  
12 by the president or the officer of the corporation ~~having~~ **WHO HAS**  
13 charge of its books or account, or as stated in a written report by  
14 an independent public or certified public accountant or firm of  
15 accountants fairly to reflect the financial condition of the  
16 corporation.

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

25       (3) If the corporation's articles of incorporation contain a  
26 provision authorized under section 209(c), ~~then~~ a volunteer  
27 director of the corporation ~~shall~~ **IS** only ~~be~~ personally liable for

1 monetary damages for a breach of fiduciary duty as a director to  
2 the corporation, its shareholders, or its members to the extent set  
3 forth in the provision.

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

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

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

20 of the 95th Legislature is enacted into law.