SPECIFIC LANDS AND LAND USES

A. FOSTER CARE, HOMES FOR THE AGED, DAY CARE, AND RELATED FACILITIES

MENTAL HEALTH CODE (EXCERPT)
Act 258 of 1974

330.1153 Rules for placement of mentally ill or developmentally disabled adults into community based dependent living settings or programs; rules for certification of specialized programs; inspection of facility; inspection report and certification, denial of certification, revocation, or certification with limited terms; reinspection; notice; contracts; licensure or placement pending promulgation of rules. Sec. 153. (1) Subject to section 114a, the department shall promulgate rules for the placement of adults who have serious mental illness or developmental disability into community based dependent living settings by department agencies, community mental health services programs, and by agencies under contract to the department or to a community mental health services program. The rules shall include, but not be limited to, the criteria to be used to determine a suitable placement and the specific agencies responsible for making decisions regarding a placement.

(2) Subject to section 114a, the department shall promulgate rules for the certification of specialized programs offered in an adult foster care facility to individuals with serious mental illness or developmental disability. The rules shall provide for an administrative appeal to the department of a denial or limitation of the terms of certification under chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws.

(3) Upon receipt of a request from an adult foster care facility for certification of a specialized program, the department shall inspect the

facility to determine whether the proposed specialized program conforms with the requirements of this section and rules promulgated under this section. The department shall provide the department of social services with an inspection report and a certification, denial of certification, revocation, or certification with limited terms for the proposed specialized program. The department shall reinspect a certified specialized program not less than once biennially and notify the department of social services in the same manner as for the initial certification. In carrying out this subsection, the department may contract with a community mental health services program or any other agency.

(4) This section does not prevent licensure of an adult foster care facility or the placement of individuals with serious mental illness or developmental disability into community based dependent living settings pending the promulgation by the department of rules under subsection (1) or (2).

History: Add. 1986, Act 256, Imd. Eff. Dec. 9, 1986 ;-- Am. 1995, Act 290, Eff. Mar. 28, 1996
Admin Rule: R 330.1001 et seq. of the Michigan Administrative Code.

PUBLIC HEALTH CODE (EXCERPTS)
Act 368 of 1978
Part 213
HOMES FOR THE AGED

333.21301 Definitions and principles of construction.
Sec. 21301. Article 1 contains general definitions and principles of construction applicable to all articles in this code and part 201 contains definitions applicable to this part.

History: 1978, Act 368, Eff. Sept. 30, 1978
Compiler's Notes: For transfer of powers and duties of the division of health facility licensing and certification in the bureau of health systems, division of federal support services, and the division of emergency medical services, with the exception of the division of managed care and division of health facility development, from the department of public health to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.For transfer of powers and duties of the bureau of health services from the department of consumer and industry services to the director of the department of community health by Type II

transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 368

333.21307 Exemptions.

Sec. 21307. This part does not authorize the medical supervision, regulation, or control of the remedial care or treatment of residents in a home for the aged operated for the adherents of a bona fide church or religious denomination who rely on treatment by prayer or spiritual means only in accordance with the creed or tenets of that church or denomination. The residents, personnel, or employees, other than food handlers, of the home are not required to submit to a medical or physical examination.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.21311 License required; use of “home for aged” or similar term or abbreviation; minimum age for admission; waiver of age limitation; documentation; determination by director.

Sec. 21311. (1) A home for the aged shall be licensed under this article.

(2) “Home for the aged” or a similar term or abbreviation shall not be used to describe or refer to a health facility or agency unless the health facility or agency is licensed as a home for the aged by the department under this article.

(3) Except as otherwise provided in this subsection, a home for the aged shall not admit an individual under 60 years of age. Upon the request of a home for the aged and subject to subsection (4), the director shall waive the age limitation imposed by this subsection if the individual, the individual's guardian or other legal representative, if appointed, and the owner, operator, and governing body of the home for the aged, upon consultation with the individual's physician, agree on each of the following:

(a) The home for the aged is capable of meeting all of the individual's medical, social, and other needs as determined in the individual's plan of service.

(b) The individual will be compatible with the other residents of that home for the aged.

(c) The placement in that home for the aged is in the best interests of the individual.

(4) The owner, operator, and governing body of the home for the aged shall submit, with its request for a waiver, documentation to the director that supports each of the points of agreement necessary under subsection (3). Within 5 days after receipt of the information required under this subsection, the director shall determine if that documentation collectively substantiates each of the points of agreement necessary under subsection (3) and approve or deny the waiver. If denied, the director shall send a written notice of the denial and the reasons for denial to the requesting party.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 1984, Act 311, Eff. Mar. 29, 1985 ;-- Am. 2004, Act 74, Imd. Eff. Apr. 21, 2004
Popular Name: Act 368

333.21313 Owner, operator, and governing body of home for aged; responsibilities and duties generally.

Sec. 21313. (1) The owner, operator, and governing body of a home for the aged are responsible for all phases of the operation of the home and shall assure that the home maintains an organized program to provide room and board, protection, supervision, assistance, and supervised personal care for its residents.

(2) The owner, operator, and governing body shall assure the availability of emergency medical care required by a resident.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.21321 Bond required.

Sec. 21321. (1) Before issuance of a license under this article, the owner, operator, or governing body of the applicant shall give a bond with a surety approved by the department. The bond shall insure the department

for the benefit of the residents. The bond shall be conditioned that the applicant do all of the following:

(a) Hold separately and in trust all resident funds deposited with the applicant.

(b) Administer the funds on behalf of a resident in the manner directed by the depositor.

(c) Render a true and complete account to the resident, the depositor, and the department when requested.

(d) Account, on termination of the deposit, for all funds received, expended, and held on hand.

(2) The bond shall be in an amount equal to not less than 1-1/4 times the average balance of resident funds held during the prior year. The department may require an additional bond or permit filing of a bond in a lower amount, if the department determines that a change in the average balance has occurred or may occur. An applicant for a new license shall file a bond in an amount which the department estimates as 1-1/4 times the average amount of funds which the applicant, upon issuance of the license, is likely to hold during the first year of operation.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.21325 Removal of resident from home for the aged; conditions.
Sec. 21325. If a resident of a home for the aged is receiving care in the facility in addition to the room, board, and supervised personal care specified in section 20106(3), as determined by a physician, the department shall not order the removal of the resident from the home for the aged if both of the following conditions are met:

(a) The resident, the resident's family, the resident's physician, and the owner, operator, and governing body of the home for the aged consent to the resident's continued stay in the home for the aged.

(b) The owner, operator, and governing body of the home for the aged commit to assuring that the resident receives the necessary additional services.

History: Add. 2000, Act 437, Imd. Eff. Jan. 9, 2001
Popular Name: Act 368

333.21331 Licensee considered consumer of tangible personal property.

Sec. 21331. A licensee of a home for the aged operated for profit is considered to be the consumer, and not the retailer, of tangible personal property purchased and used or consumed in operation of the home.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.21332 Home for the aged; influenza vaccination.

Sec. 21332. A home for the aged shall offer each resident, or shall provide each resident with information and assistance in obtaining, an annual vaccination against influenza in accordance with the most recent recommendations of the advisory committee on immunization practices of the federal centers for disease control and prevention, as approved by the department of community health.

History: Add. 2000, Act 437, Imd. Eff. Jan. 9, 2001
Popular Name: Act 368

333.21333 Smoking policy.

Sec. 21333. (1) A home for the aged licensed under this article shall adopt a policy regulating the smoking of tobacco on the home for the aged premises.

(2) A home for the aged policy governing smoking shall at a minimum provide that:

(a) Upon admission each resident or person responsible for the resident's admission shall be asked if there is a preference for placement with smokers or nonsmokers.

(b) Smoking by residents shall be restricted to private rooms, rooms shared with other smokers only, or other designated smoking areas.

(c) Visitors shall not be permitted to smoke in rooms or wards occupied by residents who do not smoke.

(d) Visitors shall be permitted to smoke only in designated areas.

(e) Staff shall be permitted to smoke in designated areas only.

(f) Staff shall not be permitted to smoke in residents' rooms or while performing their duties in the presence of residents.

(g) Eating areas shall have sections for smokers and nonsmokers.

(h) Cigarettes, cigars, and pipe tobacco shall not be sold or dispensed within the licensed facility except as provided for by the owner or governing board.

(i) A sign indicating that smoking is prohibited in the facility except in designated areas shall be posted at each entrance to the facility. Each designated smoking area shall be posted as such by sign.

(3) A home for the aged licensed under this article shall retain a copy of the smoking policy which will be available to the public upon request.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.21335 Requirement of emergency generator system in home for the aged.
Sec. 21335. (1) Except as provided under subsection (2), a home for the aged seeking a license or a renewal of a license under this article shall have, at a minimum, an emergency generator system that during an interruption of the normal electrical supply is capable of both of the following:

(a) Providing not less than 4 hours of service.

(b) Generating enough power to provide lighting at all entrances and exits and to operate equipment to maintain fire detection, alarm, and extinguishing systems, telephone switchboards, heating plant controls, and other critical mechanical equipment essential to the safety and welfare of the residents, personnel, and visitors.

(2) A home for the aged that is licensed under this article on the effective date of the amendatory act that added this section is not required to comply with subsection (1) until that home for the aged undergoes any major building modification. As used in this section, "major building modification" means an alteration of walls that creates a new architectural configuration or revision to the mechanical or electrical systems that significantly revises the design of the system or systems. Major building modification does not include normal building maintenance, repair, or replacement with equivalent components or a change in room function.

(3) A home for the aged that is exempt from compliance under subsection (2) shall notify the local medical control authority and the local law enforcement agency that it does not have an emergency generator on site. Until a home for the aged undergoes any major building modification as provided under subsection (2), a home for the aged that is exempt from compliance under subsection (2) shall file with the department a copy of the home for the aged's written policies and procedures and existing plans or agreements for emergency situations, including in the event of an interruption of the normal electrical supply.

(4) A home for the aged that fails to comply with this section is subject to a civil penalty of not more than $2,000.00 for each violation. Each day a violation continues is a separate offense and shall be assessed a civil penalty of not less than $500.00 for each day during which the failure continues.

History: Add. 2004, Act 397, Eff. Apr. 15, 2005
Popular Name: Act 368

Part 217
NURSING HOMES

333.21701 Meanings of words and phrases; general definitions and principles of construction.

Sec. 21701. (1) For purposes of this part, the words and phrases defined in sections 21702 to 21703 have the meanings ascribed to them in those sections.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code and part 201 contains definitions applicable to this part.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 1978, Act 493, Eff. Mar. 30, 1979
Compiler's Notes: For transfer of powers and duties of the division of health facility licensing and certification in the bureau of health systems, division of federal support services, and the division of emergency medical services, with the exception of the division of managed care and division of health facility development, from the department of public health to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.For transfer of powers and duties of the bureau of health services from the department of consumer and industry services to the director of the department of community health by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 368

333.21702 Definitions; D to P.

Sec. 21702. (1) “Discharge” means the voluntary or involuntary movement of a patient out of a nursing home regardless of the individual's destination or reason for the movement.

(2) “Full-time” means being usually present in the nursing home or conducting or participating in activities directly related to the nursing home during the normal 40-hour business week.

(3) “Involuntary transfer” means a transfer not agreed to in writing by the patient or, in the case of a plenary guardianship, by the patient's legal guardian.

(4) “Medicaid” means the program for medical assistance established under title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, and 1396i to 1396u, and administered by the department of social services under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.119b of the Michigan Compiled Laws.

(5) “Medical reasons” means a medical justification for either of the following:

(a) The transfer or discharge of a patient in accord with the written orders of the attending physician that is written into the patient's clinical record by the physician in the progress notes.

(b) The transfer or discharge of a patient who is a medicaid recipient due to a change in level of care required by the patient and the fact that the nursing home or nursing care facility is not certified to provide the needed level of care.

(6) “Medicare” means that term as defined in section 2701.

(7) “Modification of a license” means an action by the department to alter the number of beds, the levels of care, the portions of the physical plant that may be operated or maintained by a licensee in a particular nursing home, or to restrict the nursing home from engaging in activity that violates this article or a rule promulgated under this article.

(8) “Negative case action” means an action taken by the department of social services to deny an application for medical assistance, cancel medical assistance, or reduce medical assistance coverage.

(9) “Nonpayment” means:

(a) Failure to collect from the patient or any other source the full amount of the facility charges to a nonmedicaid patient based on a written contract signed on or after that patient's admission to the facility.

(b) Failure to collect a medicaid patient's stipulated contribution toward his or her care.

(10) “Private pay rate” means the amount charged by a nursing home for the care of a patient who is not entitled to state or federal benefits for that patient's nursing home care.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 1994, Act 73, Imd. Eff. Apr. 11, 1994
Popular Name: Act 368

333.21703 Definitions; P to W.

Sec. 21703. (1) “Patient” means a person who receives care or services at a nursing home.

(2) “Patient's representative” means a person, other than the licensee or an employee or person having a direct or indirect ownership interest in the nursing home, designated in writing by a patient or a patient's guardian for a specific, limited purpose or for general purposes, or, if a written designation of a representative is not made, the guardian of the patient.

(3) “Relocation” means the movement of a patient from 1 bed to another or from 1 room to another within the same nursing home or within a certified distinct part of a nursing home.

(4) “Transfer” means the movement of a patient from 1 nursing home to another nursing home or from 1 certified distinct part of a nursing home to another certified distinct part of the same nursing home.

(5) “Welfare” means, with reference to a patient, the physical, emotional, or social well-being of a patient in a nursing home, including a patient awaiting transfer or discharge, as documented in the patient's clinical record by a licensed or certified health care professional.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21707 Prescribing course of medical treatment; limitations on authority.

Sec. 21707. (1) The course of medical treatment provided to a patient in a nursing home shall be prescribed by the patient's physician.

(2) This part does not:

(a) Authorize the supervision, regulation, or control of the practice of any method of healing.

(b) Authorize the medical supervision, regulation, or control of the remedial care or nonmedical nursing care of patients in a nursing home operated for the adherents of a bona fide church or religious denomination who rely upon treatment by prayer or spiritual means only in accordance with the creed or tenets of that church or denomination. The residents, patients, personnel, or employees, other than food handlers, of the home are not required to submit to a medical or physical examination. However, the nursing home shall be inspected and licensed under laws pertaining to fire, safety, sanitation, and building construction.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21711 License required; prohibited terms or abbreviations; license for formal or informal nursing care services; exception.

Sec. 21711. (1) A nursing home shall be licensed under this article.

(2) “Nursing home”, “nursing center”, “convalescent center”, “extended care facility”, or a similar term or abbreviation shall not be used to describe or refer to a health facility or agency unless the health facility or agency is licensed as a nursing home by the department under this article.

(3) A person shall not purport to provide formal or informal nursing care services of the kind normally provided in a nursing home without obtaining a license as provided in this article. This subsection does not

apply to a hospital or a facility created by Act No. 152 of the Public Acts of 1885, as amended, being sections 36.1 to 36.12 of the Michigan Compiled Laws.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21712 Name of nursing home; change in name; prohibited terms; rehabilitation services.
Sec. 21712. (1) A nursing home shall use the name that appears on the license for its premises. A nursing home shall not change its name without the approval of the department.

(2) A nursing home shall not use the terms “hospital” or “sanitarium” or a term conveying a meaning that is substantially similar to those terms in the name of the nursing home. However, a nursing home may use the term “health center” or “health care center” or “rehabilitation center” or a term conveying a meaning substantially similar to those terms as long as those terms do not conflict with the terms prohibited by this subsection.

(3) If a nursing home uses the term “rehabilitation center” in its name as allowed under subsection (2), the nursing home shall have the capacity to provide rehabilitation services that include, at a minimum, all of the following:

(a) Physical therapy services.

(b) Occupational therapy services.

(c) Speech therapy services.

(4) A nursing home shall not include in its name the name of a religious, fraternal, or charitable corporation, organization, or association unless the corporation, organization, or association is an owner of the nursing home.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 2001, Act 273, Imd. Eff. Jan. 11, 2002
Popular Name: Act 368

333.21713 Owner, operator, and governing body of nursing home; responsibilities and duties generally.
Sec. 21713. The owner, operator, and governing body of a nursing home licensed under this article:

(a) Are responsible for all phases of the operation of the nursing home and quality of care rendered in the home.

(b) Shall cooperate with the department in the enforcement of this article and require that the physicians and other personnel working in the nursing home and for whom a license or registration is required be currently licensed or registered.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.21715 Programs of planned and continuing nursing and medical care required; nurses and physicians in charge; expiration of subsection (1)(a); nature and scope of services.
Sec. 21715. (1) A nursing home shall provide:

(a) A program of planned and continuing nursing care under the charge of a registered nurse in a skilled facility and a licensed practical nurse with a registered nurse consultant in an intermediate care facility. This subdivision shall expire December 31, 1979.

(b) A program of planned and continuing medical care under the charge of physicians.

(2) Nursing care and medical care shall consist of services given to individuals who are subject to prolonged suffering from illness or injury or who are recovering from illness or injury. The services shall be within the ability of the home to provide and shall include the functions of medical care such as diagnosis and treatment of an illness; nursing care

via assessment, planning, and implementation; evaluation of a patient's health care needs; and the carrying out of required treatment prescribed by a physician.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21716 Nursing home; influenza vaccination.

Sec. 21716. A nursing home shall offer each resident, or shall provide each resident with information and assistance in obtaining, an annual vaccination against influenza in accordance with the most recent recommendations of the advisory committee on immunization practices of the federal centers for disease control and prevention, as approved by the department of community health.

History: Add. 2000, Act 437, Imd. Eff. Jan. 9, 2001
Popular Name: Act 368

333.21717 Individuals excluded from nursing home; exception; approval of area and program.

Sec. 21717. An individual shall not be admitted or retained for care in a nursing home who requires special medical or surgical treatment, or treatment for acute mental illness, mental retardation, communicable tuberculosis, or a communicable disease, unless the home is able to provide an area and a program for the care. The department shall approve both the area and the program, except for the programs providing treatment for mental illness and mental retardation which shall be approved by the department of mental health.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.21718 Conditions of skilled nursing facility certification and participation in title 19 program; exception; exemption.

Sec. 21718. (1) Except as provided in subsections (3) and (4), as a condition of skilled nursing facility certification and participation in the title 19 program of the social security act, 42 U.S.C. 1396 to 1396k, a nursing home shall be concurrently certified for and give evidence of

active participation in the title 18 program of the social security act, 42 U.S.C. 1395 to 1395qq. A nursing facility that is not concurrently certified for the title 18 program on the effective date of this section shall make application for concurrent certification not later than its next application for licensure and certification. A failure to make application shall result in the skilled nursing facility being decertified or refused certification as a provider in the title 19 program. Nursing home or nursing care facility participation in the title 18 program under the requirements for concurrent certification shall be effective not later than the beginning of the first accounting year following the home's or facility's title 18 certification.

(2) As a condition of skilled nursing facility certification, a nursing home shall obtain concurrent certification under title 19 of the social security act, 42 U.S.C. 1396 to 1396k, for each bed which is certified to provide skilled care under title 18 of the social security act, 42 U.S.C. 1395 to 1395qq. Skilled care certification shall not be renewed unless the requirements of this subsection are met.

(3) An exception may be made from the requirements of subsection (1) for a nursing facility that is currently certified as a skilled nursing facility by the director for title 19 participation but has been determined, after making application, to be ineligible for title 18 certification by the secretary of the United States department of health, education, and welfare.

(4) A home or facility, or a distinct part of a home or facility, certified by the director as a special mental retardation or special mental illness nursing home or nursing care facility shall be exempt from the requirements of subsection (1).

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21719 Immediate access to acute care facilities.
Sec. 21719. A nursing home shall not be licensed under this part unless the nursing home has formulated, and is prepared to implement, insofar

as possible, a plan to provide immediate access to acute care facilities for the emergency care of patients.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21720 Nursing home administrator required.
Sec. 21720. (1) The department shall not license a nursing home under this part unless that nursing home is under the direction of a nursing home administrator licensed under article 15.

(2) Each nursing home having 50 beds or more shall have a full-time licensed nursing home administrator. If a nursing home changes nursing home administrators, the nursing home immediately shall notify the department of the change.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 2001, Act 139, Imd. Eff. Oct. 26, 2001
Popular Name: Act 368

333.21720a Director of nursing; nursing personnel; effective date of subsection (1); natural disaster or other emergency.
Sec. 21720a. (1) A nursing home shall not be licensed under this part unless that nursing home has on its staff at least 1 registered nurse with specialized training or relevant experience in the area of gerontology, who shall serve as the director of nursing and who shall be responsible for planning and directing nursing care. The nursing home shall have at least 1 licensed nurse on duty at all times and shall employ additional registered and licensed practical nurses in accordance with subsection (2). This subsection shall not take effect until January 1, 1980.

(2) A nursing home shall employ nursing personnel sufficient to provide continuous 24-hour nursing care and services sufficient to meet the needs of each patient in the nursing home. Nursing personnel employed in the nursing home shall be under the supervision of the director of nursing. A licensee shall maintain a nursing home staff sufficient to provide not less than 2.25 hours of nursing care by employed nursing care personnel per patient per day. The ratio of patients to nursing care personnel during a

morning shift shall not exceed 8 patients to 1 nursing care personnel; the ratio of patients to nursing care personnel during an afternoon shift shall not exceed 12 patients to 1 nursing care personnel; and the ratio of patients to nursing care personnel during a nighttime shift shall not exceed 15 patients to 1 nursing care personnel and there shall be sufficient nursing care personnel available on duty to assure coverage for patients at all times during the shift. An employee designated as a member of the nursing staff shall not be engaged in providing basic services such as food preparation, housekeeping, laundry, or maintenance services, except in an instance of natural disaster or other emergency reported to and concurred in by the department. In a nursing home having 30 or more beds, the director of nursing shall not be included in counting the minimum ratios of nursing personnel required by this subsection.

(3) In administering this section, the department shall take into consideration a natural disaster or other emergency.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21720b Agreement with county community mental health program.

Sec. 21720b. A nursing home shall not be licensed under this part unless that nursing home has entered into an agreement with the county community mental health program, if available, that will service the mental health needs of the patients of the nursing home.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21721 Bond required.

Sec. 21721. (1) Before issuance or renewal of a nursing home license under this article, the owner, operator, or governing body of the nursing home shall give a bond and provide evidence of a patient trust fund in an amount consistent with subsection (2) and with the surety the department approves. The bond shall be conditioned that the applicant shall hold separately in the trust fund all patients' funds deposited with the

applicant, shall administer the funds on behalf of the patient in the manner directed by the depositor, shall render a true and complete account to the patient not less than once each 3 months, to the depositor when requested, and to the department of public health and the department of social services, when requested. Upon termination of the deposit, the applicant shall account for all funds received, expended, and held on hand. The bond shall insure the department of public health, for the benefit of the patients.

(2) The bond shall be in an amount equal to not less than 1-1/4 times the average balance of patient funds held during the previous year. The department may require an additional bond, or permit the filing of a bond in a lower amount, if the department determines a change in the average balance has occurred or may occur. An applicant for a new license shall file a bond in an amount which the department estimates as 1-1/4 times the average amount of patient funds which the applicant, upon the issuance of the license, is likely to hold during the first year of operation.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21723 Individual responsible for receiving complaints and conducting investigations; posting information in nursing home; communication procedure; information posted on internet website; nursing home receiving medicaid reimbursement.
Sec. 21723. (1) A nursing home shall post in an area accessible to residents, employees, and visitors the name, title, location, and telephone number of the individual in the nursing home who is responsible for receiving complaints and conducting complaint investigations and a procedure for communicating with that individual.

(2) An individual responsible for receiving complaints and conducting complaint investigations in a nursing home shall be on duty and on site not less than 24 hours per day, 7 days a week.

(3) The individual described in subsection (2) who receives a complaint, inquiry, or request from a nursing home resident or the resident's surrogate decision maker shall respond using the nursing home's

established procedures pursuant to R 325.20113 of the Michigan administrative code.

(4) To assist the individual described in subsection (2) in performing his or her duties, the department of consumer and industry services shall post on its internet website all of the following information:

(a) Links to federal and state regulations and rules governing the nursing home industry.

(b) The scheduling of any training or joint training sessions concerning nursing home or elderly care issues being put on by the department of consumer and industry services.

(c) A list of long-term care contact phone numbers including, but not limited to, the consumer and industry services complaint hotline, the consumer and industry services nursing home licensing division, any commonly known nursing home provider groups, the state long-term care ombudsman, and any commonly known nursing home patient care advocacy groups.

(d) When it becomes available, information on the availability of electronic mail access to file a complaint concerning nursing home violations directly with the department of consumer and industry services.

(e) Any other information that the department of consumer and industry services believes is helpful in responding to complaints, requests, and inquiries of a nursing home resident or his or her surrogate decision maker.

(5) A nursing home receiving reimbursement pursuant to the medicaid program shall designate 1 or more current employees to fulfill the duties and responsibilities outlined in this section. This section does not constitute a basis for increasing nursing home staffing levels. As used in this subsection, “medicaid” means the program for medical assistance created under title XIX of the social security act, chapter 53, 49 Stat.

620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6, and 1396r-8 to 1396v.

History: Add. 2002, Act 11, Imd. Eff. Feb. 19, 2002
Popular Name: Act 368

333.21731 Licensee considered consumer of tangible personal property.

Sec. 21731. A licensee of a nursing home operated for profit is considered to be the consumer, and not the retailer, of the tangible personal property purchased and used or consumed in the operation of the home.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.21733 Smoking policy.

Sec. 21733. (1) A nursing home licensed under this article shall adopt a policy regulating the smoking of tobacco on the nursing home premises.

(2) A nursing home policy regulating smoking at a minimum shall provide that:

(a) Upon admission each patient or person responsible for the patient's admission shall be asked if there is a preference for placement with smokers or nonsmokers.

(b) Smoking by patients shall be restricted to private rooms, rooms shared with other smokers only, or other designated smoking areas.

(c) Visitors shall not be permitted to smoke in rooms or wards occupied by patients who do not smoke.

(d) Visitors shall be permitted to smoke only in designated areas.

(e) Staff shall be permitted to smoke in designated areas only.

(f) Staff shall not be permitted to smoke in patients' rooms or while performing their duties in the presence of patients.

(g) Eating areas shall have sections for smokers and nonsmokers.

(h) Cigarettes, cigars, and pipe tobacco shall not be sold or dispensed within the nursing home except as provided for by the owner or governing board.

(i) A sign indicating that smoking is prohibited in the nursing home except in designated areas shall be posted at each entrance to the nursing home. Each designated smoking area shall be posted as such by sign.

(3) A nursing home licensed under this article shall retain a copy of the smoking policy which will be available to the public upon request.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21734 Nursing home; bed rails; provisions; guidelines; liability.
Sec. 21734. (1) Notwithstanding section 20201(2)(l), a nursing home shall give each resident who uses a hospital-type bed or the resident's legal guardian, patient advocate, or other legal representative the option of having bed rails. A nursing home shall offer the option to new residents upon admission and to other residents upon request. Upon receipt of a request for bed rails, the nursing home shall inform the resident or the resident's legal guardian, patient advocate, or other legal representative of alternatives to and the risks involved in using bed rails. A resident or the resident's legal guardian, patient advocate, or other legal representative has the right to request and consent to bed rails for the resident. A nursing home shall provide bed rails to a resident only upon receipt of a signed consent form authorizing bed rail use and a written order from the resident's attending physician that contains statements and determinations regarding medical symptoms and that specifies the circumstances under which bed rails are to be used. For purposes of this subsection, “medical symptoms” includes the following:

(a) A concern for the physical safety of the resident.

(b) Physical or psychological need expressed by a resident. A resident's fear of falling may be the basis of a medical symptom.

(2) A nursing home that provides bed rails under subsection (1) shall do all of the following:

(a) Document that the requirements of subsection (1) have been met.

(b) Monitor the resident's use of the bed rails.

(c) In consultation with the resident, resident's family, resident's attending physician, and individual who consented to the bed rails, periodically reevaluate the resident's need for the bed rails.

(3) The department of consumer and industry services shall develop clear and uniform guidelines to be used in determining what constitutes each of the following:

(a) Acceptable bed rails for use in a nursing home in this state. The department shall consider the recommendations of the hospital bed safety work group established by the United States food and drug administration, if those are available, in determining what constitutes an acceptable bed rail.

(b) Proper maintenance of bed rails.

(c) Properly fitted mattresses.

(d) Other hazards created by improperly positioned bed rails, mattresses, or beds.

(4) The department of consumer and industry services shall develop the guidelines under subsection (3) in consultation with the long-term care work group. An individual representing manufacturers of bed rails, 2 residents or family members, and an individual with expertise in bed rail

installation and use shall be added to the long-term care work group for purposes of this subsection. The department shall consider as part of its report to the legislature the recommendations of the hospital bed safety work group established by the United States food and drug administration, if those recommendations are available at the time of the submission of the report. Not later than 6 months after the effective date of the amendatory act that added this section, the department of consumer and industry services shall submit its report to the legislature. The department may delay submission of its report by up to 3 months so that its report may reflect the recommendations of the hospital bed safety work group established by the United States food and drug administration.

(5) A nursing home that complies with subsections (1) and (2) and the guidelines developed under this section in providing bed rails to a resident is not subject to administrative penalties imposed by the department based solely on providing the bed rails. Nothing in this subsection precludes the department from citing specific state or federal deficiencies for improperly maintained bed rails, improperly fitted mattresses, or other hazards created by improperly positioned bed rails, mattresses, or beds.

(6) The department of consumer and industry services shall consult with representatives of the nursing home industry to expeditiously develop interim guidelines on bed rail usage that are to be used until the department develops the guidelines required under subsection (4).

History: Add. 2000, Act 437, Imd. Eff. Jan. 9, 2001
Popular Name: Act 368

333.21735 Requirement of emergency generator system in nursing home.

Sec. 21735. (1) A nursing home licensed under this article shall have, at a minimum, an emergency generator system that complies with existing state and federal law, including state and federal rules and regulations.

(2) A nursing home that fails to comply with this section is subject to a civil penalty as provided under existing state and federal law, including state and federal rules and regulations.

History: Add. 2004, Act 397, Eff. Apr. 15, 2005
Popular Name: Act 368

333.21741 Rules.

Sec. 21741. (1) The department of public health, after seeking advice and consultation from the department of social services, appropriate consumer and professional organizations, and concerned agencies, shall promulgate rules to implement and administer this part.

(2) Initial rules proposed under this part shall be submitted to a public hearing not later than 6 months after this section is enacted into law.

(3) In addition to the rules prescribed in section 20171, rules for nursing homes shall include the establishment of standards relating to:

(a) Complaint procedures.

(b) Discharges and transfers.

(c) Emergency procedures.

(d) Medical audit procedures.

(e) Patients' rights.

(f) Standards of patient care to be provided in nursing homes.

(g) Training, educational, and competency requirements of nursing home personnel other than licensed personnel.

(h) Utilization and quality control review procedures.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21743 Disclosures; public inspection.
Sec. 21743. (1) In addition to public records subject to disclosure under section 20175, the following information is subject to disclosure from the department of public health or the department of social services:

(a) Ownership of nursing homes, ownership of buildings occupied by nursing homes, and the names and addresses of suppliers and the ownership of suppliers of goods and services to nursing homes required to be reported under section 20142.

(b) Records of license and certification inspections, surveys, and evaluations of nursing homes, other reports of inspections, surveys, and evaluations of patient care, and reports concerning a nursing home prepared pursuant to titles 18 and 19 of the social security act, 42 U.S.C. 1395 to 1396k.

(c) Cost and reimbursement reports submitted by a nursing home, reports of audits of nursing homes, and other public records concerning costs incurred by, revenues received by, and reimbursement of nursing homes.

(d) Complaints filed against a nursing home and complaint investigation reports. A complaint or complaint investigation report shall not be disclosed to a person other than the complainant or complainant's representative before it is disclosed to a nursing home under section 21799a and a complainant's or patient's name shall not be disclosed except as provided in section 21799a.

(2) The department of public health, the department of social services and the nursing home shall respect the confidentiality of a patient's clinical record as provided in section 20175 and shall not divulge or disclose the contents of a record in a manner which identifies a patient, except upon a patient's death to a relative or guardian, or under judicial proceedings. This subsection shall not be construed to limit the right of a patient or a patient's representative to inspect or copy the patient's clinical record.

(3) Confidential medical, social, personal, or financial information identifying a patient shall not be available for public inspection in a manner which identifies a patient.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21744 Professional advice and consultation.
Sec. 21744. The department shall provide to the applicant or licensee professional advice and consultation related to the quality of institutional or agency aspects of health care and services provided by the applicant or licensee.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21751 Emergency petition to place nursing home under control of receiver; appointment of receiver; use of income and assets; major structural alteration; consultation; termination of receivership; accounting; disposition of surplus funds.
Sec. 21751. (1) When the department has concluded a proceeding under sections 71 to 106 of the administrative procedures act of 1969, as amended, being sections 24.271 to 24.306 of the Michigan Compiled Laws, or when the department has suspended or revoked the license of a nursing home, the department, a patient in the facility, or a patient's representative may file an emergency petition with the circuit court to place the nursing home under the control of a receiver if necessary to protect the health or safety of patients in the nursing home. The court may grant the petition upon a finding that the health or safety of the patients in the nursing home would be seriously threatened if a condition existing at the time the petition was filed is permitted to continue.

(2) The court shall appoint as receiver the director of the department of social services, the director of the department of public health, or another state agency or person designated by the director of public health. The receiver appointed by the court shall use the income and assets of the nursing home to maintain and operate the home and to attempt to correct the conditions which constitute a threat to the patients. A major structural

alteration shall not be made to the nursing home, unless the alteration is necessary to bring the nursing home into compliance with licensing requirements.

(3) To assist in the implementation of the mandate of the court, the receiver may request and receive reasonable consultation from the available personnel of the department.

(4) The receivership shall be terminated when the receiver and the court certify that the conditions which prompted the appointment have been corrected, when the license is restored, when a new license is issued, or, in the case of a discontinuance of operation, when the patients are safely placed in other facilities, whichever occurs first.

(5) Upon the termination of the receivership, the receiver shall render a complete accounting to the court and shall dispose of surplus funds as the court directs.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21755 Grounds for refusal to issue license.
Sec. 21755. The department may refuse to issue a license to establish or maintain and operate, or both, a nursing home to an applicant:

(a) Whose occupational, professional, or health agency license has been revoked during the 5 years preceding the date of application.

(b) Whom the department finds is not suitable to operate a nursing home because of financial incapacity or a lack of good moral character or appropriate business or professional experience. As used in this subdivision, “good moral character” means that term as defined in Act No. 381 of the Public Acts of 1974, as amended, being sections 338.41 to 338.47 of the Michigan Compiled Laws.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21757 Provisional license.
Sec. 21757. (1) The department may issue a 1-year provisional license, renewable for not more than 1 additional year, to an applicant whose services are needed in the community but who is temporarily unable to comply with the rules related to the physical plant of the facilities, excluding maintenance problems. At the time a provisional license is granted, specific deadlines for the correction of each physical plant violation shall be established.

(2) A provisional license shall not be issued for a nursing home constructed, established, or changing corporate ownership or management after the effective date of this section unless it is shown that unusual hardship would result to the public or to the applicant for the provisional license and the nursing home was licensed and operating under a prior licensing act for not less than 5 years.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21761 Certification of nondiscrimination; violation of rights; giving preference to members of religious or fraternal institution or organization.
Sec. 21761. (1) In addition to the requirements of section 20152, a licensee shall certify annually to the department, as part of its application for licensure and certification, that all phases of its operation, including its training program, are without discrimination against persons or groups of persons on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or the exercise of rights guaranteed by law, including freedom of speech and association. If the department finds a violation of rights enumerated in this section, the department shall direct the administrator of the nursing home to take the necessary action to assure that the nursing home is, in fact, operated in accordance with the rights listed in this section.

(2) This section shall not be construed to prevent a nursing home operated, supervised, or controlled by a religious or fraternal institution or organization from giving preference to applicants who are members of that religious or fraternal institution or organization.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 1998, Act 88, Imd. Eff. May 13, 1998
Popular Name: Act 368

333.21763 Access to nursing home patients; purposes; requirements; termination of visit; confidentiality; complaint; determination; prohibited entry.

Sec. 21763. (1) A nursing home shall permit a representative of an approved organization, who is known by the nursing home administration to be authorized to represent the organization or who carries identification showing that the representative is authorized to represent the organization, a family member of a patient, or a legal representative of a patient, to have access to nursing home patients for 1 or more of the following purposes:

(a) Visit, talk with, and make personal, social, and legal services available to the patients.

(b) Inform patients of their rights and entitlements, and their corresponding obligations, under federal and state laws by means of the distribution of educational materials and discussion in groups and with individual patients.

(c) Assist patients in asserting their legal rights regarding claims for public assistance, medical assistance, and social services benefits, as well as in all matters in which patients are aggrieved. Assistance may be provided individually or on a group basis and may include organizational activity and counseling and litigation.

(d) Engage in other methods of assisting, advising, and representing patients so as to extend to them the full enjoyment of their rights.

(2) Access as prescribed in subsection (1) shall be permitted during regular visiting hours each day. A representative of an approved organization entering a nursing home under this section promptly shall advise the nursing home administrator or the acting administrator or other available agent of the nursing home of the representative's presence. A representative shall not enter the living area of a patient

without identifying himself or herself to the patient and without receiving the patient's permission to enter. A representative shall use only patient areas of the home to carry out the activities described in subsection (1).

(3) A patient may terminate a visit by a representative permitted access under subsection (1). Communications between a patient and the representative are confidential, unless otherwise authorized by the patient.

(4) If a nursing home administrator or employee believes that an individual or organization permitted access under this section is acting or has acted in a manner detrimental to the health or safety of patients in the nursing home, the nursing home administrator or employee may file a complaint with the task force established under section 20127. Upon receipt of a complaint, department staff shall investigate the allegations made in the complaint. The task force shall make a determination regarding proper resolution of the complaint based on the results of the investigation. Written notification of the task force determination and of recommendations adopted by the task force shall be given to the complainant and the individual or organization against whom the complaint was made.

(5) An individual shall not enter upon the premises of a nursing home for the purpose of engaging in an activity that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes a nursing home employee, patient, or visitor to feel terrorized, frightened, intimidated, threatened, harassed, or molested. This subsection does not prohibit constitutionally protected activity or conduct that serves a legitimate purpose including, but not limited to, activities or conduct allowed under subsection (1).

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 1996, Act 546, Eff. Mar. 31, 1997
Popular Name: Act 368

333.21764 Approval or disapproval of nonprofit corporation rendering assistance without charge; appeal; decision.

Sec. 21764. (1) The director, with the advice of the nursing home task force, shall approve or disapprove a nonprofit corporation which has as 1 of its primary purposes the rendering of assistance, without charge to nursing home patients for the purpose of obtaining access to nursing homes and their patients under section 21763.

(2) Upon receipt of a written application for approval under subsection (1), the director shall notify all persons who have made a written request for notice of applications made under this section.

(3) The director shall approve the organization making the request if the organization is a bona fide community organization or legal aid program, is capable of providing 1 or more of the services listed in section 21763, and is likely to utilize the access provided under section 21763 to enhance the welfare of nursing home patients. The director shall approve or disapprove the organization within 30 days after receiving the application.

(4) A person aggrieved by the decision of the director may appeal the decision to the nursing home task force. A decision of the task force shall be binding on the director.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21765 Policies and procedures; copy of rights enumerated in MCL 333.20201; reading or explaining rights; staff observance of rights, policies, and procedures.

Sec. 21765. (1) A nursing home shall establish written policies and procedures to implement the rights protected under section 20201. The policies shall include a procedure for the investigation and resolution of patient complaints. The policies and procedures shall be subject to approval by the department. The policies and procedures shall be clear and unambiguous, shall be printed in not less than 12-point type, shall be available for inspection by any person, shall be distributed to each patient and representative, and shall be available for public inspection.

(2) Each patient shall be given a copy of the rights enumerated in section 20201 at the time of admission to a nursing home. A patient of a nursing home at the time of the implementation of this section shall be given a copy of the rights enumerated in section 20201 as specified by rule.

(3) A copy shall be given to a person who executes a contract pursuant to section 21766 and to any other person who requests a copy.

(4) If a patient is unable to read the form, it shall be read to the patient in a language the patient understands. In the case of a mentally retarded individual, the rights shall be explained in a manner which that person is able to understand and the explanation witnessed by a third person. In the case of a minor or a person having a legal guardian, both the patient and the parent or legal guardian shall be fully informed of the policies and procedures.

(5) A nursing home shall ensure that its staff is familiar with and observes the rights enumerated in section 20201 and the policies and procedures established under this section.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21765a Certain admission conditions prohibited; enforcement of contract provisions or agreements in conflict with subsections (1) and (2).
Sec. 21765a. (1) A nursing home shall not require an applicant, as a condition of admission, to waive his or her right to benefits under medicare or medicaid, to give oral or written assurance that the applicant is not eligible for medicare or medicaid, or to give oral or written assurance that the applicant will not apply for benefits under medicare or medicaid.

(2) A nursing home shall not require any of the following as a condition of an applicant's admission or a patient's continued residency at that nursing home:

(a) That an applicant or patient remain a private pay patient for a specified period of time before applying for medicaid.

(b) That a person pay on behalf of an applicant or patient the private pay rate for a specified period of time before the applicant or patient applies for medicaid.

(c) That an applicant, patient, or other person make a gift or donation on behalf of that applicant or patient.

(3) As of the effective date of this section, a contract provision or agreement in conflict with subsection (1) or (2), whether made before, on, or after the effective date of this section, is unenforceable.

(4) Not later than 30 days after the effective date of this section, a nursing home that participates in medicaid shall provide written notice to each private pay patient subject to a contract provision or agreement in conflict with subsection (1) or (2) that the contract provision or agreement is no longer a bar to the patient applying for medicaid.

History: Add. 1994, Act 73, Imd. Eff. Apr. 11, 1994
Popular Name: Act 368

333.21766 Written contract.
Sec. 21766. (1) A nursing home shall execute a written contract solely with an applicant or patient or that applicant's or patient's guardian or legal representative authorized by law to have access to those portions of the patient's or applicant's income or assets available to pay for nursing home care, at each of the following times:

(a) At the time an individual is admitted to a nursing home.

(b) At the expiration of the term of a previous contract.

(c) At the time the source of payment for the patient's care changes.

(2) A nursing home shall not discharge or transfer a patient at the expiration of the term of a contract, except as provided in section 21773.

(3) A nursing home shall specifically notify in writing an applicant or patient or that applicant's or patient's guardian or legal representative of the availability or lack of availability of hospice care in the nursing home. This written notice shall be by way of a specific paragraph located in the written contract described in subsection (1) and shall require the applicant or patient or that applicant's or patient's guardian or legal representative to sign or initial the paragraph before execution of the written contract. As used in this subsection, “hospice” means that term as defined in section 20106(4).

(4) A nursing home shall provide a copy of the contract to the patient, the patient's representative, or the patient's legal representative or legal guardian at the time the contract is executed.

(5) For a patient supported by funds other than the patient's own funds, a nursing home shall make a copy of the contract available to the person providing the funds for the patient's support.

(6) For a patient whose care is reimbursed with public funds administered by the department of community health, a nursing home shall maintain a copy of the contract in the patient's file at the nursing home and upon request shall make a copy of the contract available to the department of community health.

(7) The nursing home shall ensure that the contract is written in clear and unambiguous language and is printed in not less than 12-point type. The form of the contract shall be prescribed by the department.

(8) The contract shall specify all of the following:

(a) The term of the contract.

(b) The services to be provided under the contract, including the availability of hospice or other special care, and the charges for the services.

(c) The services that may be provided to supplement the contract and the charges for the services.

(d) The sources liable for payments due under the contract.

(e) The amount of deposit paid and the general and foreseeable terms upon which the deposit will be held and refunded.

(f) The rights, duties, and obligations of the patient, except that the specification of a patient's rights may be furnished on a separate document that complies with the requirements of section 20201.

(9) The nursing home may require a patient's or applicant's guardian or legal representative who is authorized by law to have access to those portions of the patient's or applicant's income or assets available to pay for nursing home care to sign a contract without incurring personal financial liability other than for funds received in his or her legal capacity on behalf of the patient.

(10) A nursing home employee may request the appointment of a guardian for an individual applicant or patient only if the nursing home employee reasonably believes that the individual meets the legal requirements for the appointment of a guardian.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 1994, Act 73, Imd. Eff. Apr. 11, 1994 ;-- Am. 2001, Act 243, Eff. July 1, 2002
Popular Name: Act 368

333.21767 Guardian, trustee, conservator, patient's representative, or protective payee for patient; receipt for money or property of patient; statement of funds.
Sec. 21767. (1) A nursing home, or an owner, administrator, employee, or representative of a nursing home shall not act as guardian, trustee,

conservator, patient's representative, or protective payee for a patient, except as provided in subsection (2).

(2) Subject to the bonding requirements of section 21721, money or other property belonging or due a patient which is received by a nursing home shall be received as trust funds or property, shall be kept separate from the funds and property of the nursing home and other patients, and shall be disbursed only as directed by the patient. A written receipt shall be given to a patient whose money or other property is received by a nursing home. Upon request, but not less than once every 3 months, the nursing home shall furnish the patient a complete and verified statement of the funds or other property received by the nursing home. The statement shall contain the amounts and items received, the sources, the disposition, and the date of each transaction. The nursing home shall furnish a final statement not later than 10 days after the discharge of a patient.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21771 Abusing, mistreating, or neglecting patient; reports; investigation; retaliation prohibited.
Sec. 21771. (1) A licensee, nursing home administrator, or employee of a nursing home shall not physically, mentally, or emotionally abuse, mistreat, or harmfully neglect a patient.

(2) A nursing home employee who becomes aware of an act prohibited by this section immediately shall report the matter to the nursing home administrator or nursing director. A nursing home administrator or nursing director who becomes aware of an act prohibited by this section immediately shall report the matter by telephone to the department of public health, which in turn shall notify the department of social services.

(3) Any person may report a violation of this section to the department.

(4) A physician or other licensed health care personnel of a hospital or other health care facility to which a patient is transferred who becomes aware of an act prohibited by this section shall report the act to the department.

(5) Upon receipt of a report made under this section, the department shall make an investigation. The department may require the person making the report to submit a written report or to supply additional information, or both.

(6) A licensee or nursing home administrator shall not evict, harass, dismiss, or retaliate against a patient, a patient's representative, or an employee who makes a report under this section.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21772 Interference with right to bring action or file complaint prohibited; retaliation prohibited.
Sec. 21772. The owner, administrator, employee, or representative of a nursing home shall not interfere with the right of a person to bring a civil or criminal action or to file a complaint with the department or other governmental agency with respect to the operation of the nursing home, nor discharge, harass, or retaliate against a person who does so or on whose behalf the action is taken.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21773 Involuntary transfer or discharge of patient; notice; form; request for hearing; copy of notice; commencement of notice period; nonpayment; redemption; explanation and discussion; counseling services; prohibition; notice of nonparticipation in state plan for medicaid funding.
Sec. 21773. (1) A nursing home shall not involuntarily transfer or discharge a patient except for 1 or more of the following purposes:

(a) Medical reasons.

(b) The patient's welfare.

(c) The welfare of other patients or nursing home employees.

(d) Nonpayment for the patient's stay, except as prohibited by title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396r-6 and 1396r-8 to 1396v.

(2) A licensed nursing home shall provide written notice at least 30 days before a patient is involuntarily transferred or discharged. The 30-day requirement of this subsection does not apply in any of the following instances:

(a) If an emergency transfer or discharge is mandated by the patient's health care needs and is in accord with the written orders and medical justification of the attending physician.

(b) If the transfer or discharge is mandated by the physical safety of other patients and nursing home employees as documented in the clinical record.

(c) If the transfer or discharge is subsequently agreed to by the patient or the patient's legal guardian, and notification is given to the next of kin and the person or agency responsible for the patient's placement, maintenance, and care in the nursing home.

(3) The notice required by subsection (2) shall be on a form prescribed by the department of consumer and industry services and shall contain all of the following:

(a) The stated reason for the proposed transfer.

(b) The effective date of the proposed transfer.

(c) A statement in not less than 12-point type that reads: “You have a right to appeal the nursing home's decision to transfer you. If you think you should not have to leave this facility, you may file a request for a

hearing with the department of consumer and industry services within 10 days after receiving this notice. If you request a hearing, it will be held at least 7 days after your request, and you will not be transferred during that time. If you lose the hearing, you will not be transferred until at least 30 days after you received the original notice of the discharge or transfer. A form to appeal the nursing home's decision and to request a hearing is attached. If you have any questions, call the department of consumer and industry services at the number listed below."

(d) A hearing request form, together with a postage paid, preaddressed envelope to the department of consumer and industry services.

(e) The name, address, and telephone number of the responsible official in the department of consumer and industry services.

(4) A request for a hearing made under subsection (3) shall stay a transfer pending a hearing or appeal decision.

(5) A copy of the notice required by subsection (3) shall be placed in the patient's clinical record and a copy shall be transmitted to the department of consumer and industry services, the patient, the patient's next of kin, patient's representative, or legal guardian, and the person or agency responsible for the patient's placement, maintenance, and care in the nursing home.

(6) If the basis for an involuntary transfer or discharge is the result of a negative action by the department of community health with respect to a medicaid client and a hearing request is filed with that department, the 21-day written notice period of subsection (2) does not begin until a final decision in the matter is rendered by the department of community health or a court of competent jurisdiction and notice of that final decision is received by the patient and the nursing home.

(7) If nonpayment is the basis for involuntary transfer or discharge, the patient may redeem up to the date that the discharge or transfer is to be made and then may remain in the nursing home.

(8) The nursing home administrator or other appropriate nursing home employee designated by the nursing home administrator shall discuss an involuntary transfer or discharge with the patient, the patient's next of kin or legal guardian, and person or agency responsible for the patient's placement, maintenance, and care in the nursing home. The discussion shall include an explanation of the reason for the involuntary transfer or discharge. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the patient's clinical record.

(9) The nursing home shall provide the patient with counseling services before the involuntary transfer or discharge and the department shall assure that counseling services are available after the involuntary transfer or discharge to minimize the possible adverse effect of the involuntary transfer or discharge.

(10) If a nursing home voluntarily withdraws from participation in the state plan for medicaid funding, but continues to provide services, the nursing home shall not, except as provided in subsection (1), involuntarily transfer or discharge a patient, whether or not the patient is eligible for medicaid benefits, who resided in the nursing home on the day before the effective date of the nursing home's withdrawal from participation. The prohibition against transfer or discharge imposed by this subsection continues unless the patient falls within 1 or more of the exceptions described in subsection (1).

(11) If an individual becomes a patient of a nursing home after the date the nursing home withdraws from participation in the state plan for medicaid funding, the nursing home, on or before the date the individual signs a contract with the nursing home, shall provide to the patient oral and written notice of both of the following:

(a) That the nursing home is not participating in the state plan for medicaid funding.

(b) That the facility may involuntarily transfer or discharge the patient for nonpayment under subsection (1)(d) even if the patient is eligible for medicaid benefits.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 2001, Act 137, Imd. Eff. Oct. 26, 2001
Popular Name: Act 368

333.21774 Involuntary transfer or discharge; request for hearing; informal hearing; decision; burden of proof; procedures; time for leaving facility.

Sec. 21774. (1) A patient subject to involuntary transfer or discharge from a licensed nursing home shall have the opportunity to file a request for a hearing with the department within 10 days following receipt of the written notice of the involuntary transfer or discharge by the nursing home.

(2) The department of public health, when the basis for involuntary transfer or discharge is other than a negative action by the department of social services with respect to a medicaid client, shall hold an informal hearing in the matter at the patient's facility not sooner than 7 days after a hearing request is filed, and render a decision in the matter within 14 days after the filing of the hearing request.

(3) In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge. The hearing shall be in accordance with fair hearing procedures prescribed by rule.

(4) If the department determines that a transfer or discharge is authorized under section 21773, the patient shall not be required to leave the facility before the thirty-fourth day following receipt of the notice required under section 21773(2), or the tenth day following receipt of the department's decision, whichever is later.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21775 Continuation of medicaid funding during appeal, transfer, or discharge period.

Sec. 21775. The department of social services shall continue medicaid funding during the appeal, transfer, or discharge period as provided in section 21774 for those medicaid patients affected by section 21773.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 1994, Act 73, Imd. Eff. Apr. 11, 1994
Popular Name: Act 368

333.21776 Transfer or discharge of patient; plan; counseling services.

Sec. 21776. The licensee, with the approval of the department, shall develop a plan to effectuate the orderly and safe transfer or discharge of a patient. The patient and the patient's family or representative shall be consulted in choosing another facility. The patient shall receive counseling services before the move to minimize the adverse effects of transfer trauma. The department shall assure that counseling will be available if the patient requires counseling after transfer or discharge.
History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21777 Holding bed open during temporary absence of patient; option; title 19 patients.

Sec. 21777. (1) If a patient is temporarily absent from a nursing home for emergency medical treatment, the nursing home shall hold the bed open for 10 days for that patient in the patient's absence, if there is a reasonable expectation that the patient will return within that period of time and the nursing home receives payment for each day during the absent period.

(2) If a patient is temporarily absent from a nursing home for therapeutic reasons as approved by a physician, the nursing home shall hold the bed open for 18 days, if there is a reasonable expectation that the patient will return within that period of time and the nursing home receives payment for each day during the absent period. Temporary absences for therapeutic reasons are limited to 18 days per year.

(3) When a patient's absence is longer than specified under subsection (1) or (2), or both, the patient has the option to return to the nursing home for the next available bed.

(4) For title 19 patients, the department of community health shall continue funding for the temporary absence as provided under subsections (1) and (2) if the nursing home is at 98% or more occupancy except for any bed being held open under subsection (1) or (2).

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 2004, Act 372, Imd. Eff. Oct. 11, 2004
Popular Name: Act 368

333.21781 Posting of license and other information.
Sec. 21781. A licensee shall conspicuously post in an area of its offices accessible to patients, employees, and visitors:

(a) A current license.

(b) A complete copy of the most recent inspection report of the nursing home received from the department.

(c) A description, provided by the department, of complaint procedures established under this act and the name, address, and telephone number of a person authorized by the department to receive complaints.

(d) A copy of a notice of a pending hearing or order pertaining to the nursing home issued by the department or a court under the authority of this article or rules promulgated under this article.

(e) A complete list of materials available for public inspection as required by section 21782.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21782 Retention of documents for public inspection.
Sec. 21782. A licensee shall retain for public inspection:

(a) A complete copy of each inspection report of the nursing home received from the department during the past 5 years.

(b) A copy of each notice of a hearing or order pertaining to the nursing home issued by the department or a court under the authority of this article or rules promulgated under this article after the effective date of this section. The copy of the notice or order shall be retained for not less than 3 years after its date of issuance or not less than 3 years after the date of the resolution of the subject matter of the notice or order, whichever is later.

(c) A description of the services provided by the nursing home and the rates charged for those services and items for which a patient may be separately charged.

(d) A list of the name, address, principal occupation, and official position of each person who, as a stockholder or otherwise, has a proprietary interest in the nursing home as required by section 20142, of each officer and director of a nursing home which is a corporation, and of each trustee or beneficiary of a nursing home which is a trust.

(e) A list of licensed personnel employed or retained by the nursing home.

(f) A copy of the standard form contract utilized under section 21766.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21784 Threatening medical condition; notice; emergency treatment; comfort of patient.

Sec. 21784. If a patient's life is threatened by his or her medical condition, the nursing home shall immediately notify the patient's next of kin, patient's representative, and physician. The nursing home shall secure emergency medical treatment for the patient when the patient's physician is not available. A nursing home shall take all reasonable

measures to ensure the comfort of a patient in the terminal stages of an illness.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21785 Discontinuance of operation; notice; relocation of patients.

Sec. 21785. (1) If a nursing home proposes to discontinue operation, the licensee shall notify the department of public health and the department of social services of the impending discontinuance of operation. The licensee shall notify the patient and the patient's next of kin, patient's representative, and the party executing the contract under section 21766 of the proposed date of the discontinuance. The notice shall be sufficient to make suitable arrangements for the transfer and care of the patient.

(2) The notices required by this section shall be given not less than 30 days before the discontinuance.

(3) The licensee and the department of social services shall be responsible for securing a suitable relocation of a patient who does not have a relative or legal representative to assist in his or her relocation before the discontinuance of operation. The licensee and the department of social services shall keep the department of public health informed of their efforts and activities in carrying out this responsibility. The department of social services shall make available to the licensee and the department of public health assistance necessary to assure the effectiveness of efforts to secure a suitable relocation.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21786 Emergency closing of nursing home.

Sec. 21786. In the case of an emergency closing of a nursing home, or when it is determined by the department that a nursing home is suddenly no longer able to provide adequate patient care, the department shall do both of the following:

(a) Assure that the department of social services has been notified to make arrangements for the orderly and safe discharge and transfer of the patients to another facility.

(b) Place a representative of the department in a facility on a daily basis to do each of the following:

(i) Monitor the discharge of patients to other facilities or locations.

(ii) Ensure that the rights of patients are protected.

(iii) Discuss the discharge and relocation with each patient and next of kin or legal guardian, person, or agency responsible for the patient's placement, maintenance, and care in the facility. The content of the explanation and discussion shall be summarized in writing and shall be made a part of the patient's clinical record.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21787 Michigan public health institute; consultation and contracts.

Sec. 21787. The department may consult and work with the Michigan public health institute created under section 2611 in performing the department's regulatory and disciplinary duties under this article. The department may also contract with the Michigan public health institute for the performance of specific functions required or authorized by this article, if determined necessary by the director of the department.

History: Add. 2000, Act 501, Imd. Eff. Jan. 11, 2001
Popular Name: Act 368

333.21791 Advertising; false or misleading information prohibited.

Sec. 21791. A licensee shall not use false or misleading information in the advertising of a nursing home or its name.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21792 Commission, bonus, fee, or gratuity; violation; penalty.
Sec. 21792. (1) An owner, administrator, employee, or representative of a nursing home shall not pay, or offer to pay, a commission, bonus, fee, or gratuity to a physician, surgeon, organization, agency, or other person for the referral of a patient to a nursing home.

(2) A person shall not offer or give a commission, bonus, fee, or gratuity to an owner, administrator, employee, or representative of a nursing home in return for the purchase of a drug, biological, or any other ancillary services provided for a patient of a nursing home.

(3) An owner, administrator, employee, or representative of a nursing home shall not accept a commission, bonus, fee, or gratuity in return for the purchase of a drug, biological, or any other ancillary services provided for a patient of a nursing home.

(4) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 4 years, or a fine of not more than $30,000.00, or both.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21795 Education and training for unlicensed nursing personnel; criteria; competency examinations; rules.
Sec. 21795. (1) The department, in consultation and with the advice of the Michigan board of nursing and appropriate consumer and professional organizations, shall develop by rule minimum criteria for the education and training for unlicensed nursing personnel in facilities designated in this part.

(2) This section shall not be construed to be a prerequisite for employment of unlicensed nursing personnel in a nursing home.

(3) During the annual licensing inspection the department shall, and during other inspections the department may, conduct random competency examinations to determine whether the requirements of this

section are being met. The department shall promulgate rules to administer this subsection.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21796 Insuring proper licensing of licensed personnel.
Sec. 21796. The nursing home administrator and licensee shall be responsible for insuring that all licensed personnel employed by the nursing home are properly licensed.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21799a Nursing home; violation; complaint; investigation; disclosure; determination; listing violation and provisions violated; copies of documents; public inspection; report of violation; penalty; request for hearing; notice of hearing; "priority complaint" defined.
Sec. 21799a. (1) A person who believes that this part, a rule promulgated under this part, or a federal certification regulation applying to a nursing home may have been violated may request an investigation of a nursing home. The person may submit the request for investigation to the department as a written complaint, or the department shall assist a person in reducing an oral request made under subsection (2) to a written complaint as provided in subsection (2). A person filing a complaint under this subsection may file the complaint on a model standardized complaint form developed and distributed by the department under section 20194(3) or file the complaint as provided by the department on the internet.

(2) The department shall provide a toll-free telephone consumer complaint line. The complaint line shall be accessible 24 hours per day and monitored at a level to ensure that each priority complaint is identified and that a response is initiated to each priority complaint within 24 hours after its receipt. The department shall establish a system for the complaint line that includes at least all of the following:

(a) An intake form that serves as a written complaint for purposes of subsections (1) and (5).

(b) The forwarding of an intake form to an investigator not later than the next business day after the complaint is identified as a priority complaint.

(c) Except for an anonymous complaint, the forwarding of a copy of the completed intake form to the complainant not later than 5 business days after it is completed.

(3) The substance of a complaint filed under subsection (1) or (2) shall be provided to the licensee no earlier than at the commencement of the on-site inspection of the nursing home that takes place in response to the complaint.

(4) A complaint filed under subsection (1) or (2), a copy of the complaint, or a record published, released, or otherwise disclosed to the nursing home shall not disclose the name of the complainant or a patient named in the complaint unless the complainant or patient consents in writing to the disclosure or the investigation results in an administrative hearing or a judicial proceeding, or unless disclosure is considered essential to the investigation by the department. If the department considers disclosure essential to the investigation, the department shall give the complainant the opportunity to withdraw the complaint before disclosure.

(5) Upon receipt of a complaint under subsection (1) or (2), the department shall determine, based on the allegations presented, whether this part, a rule promulgated under this part, or a federal certification regulation for nursing homes has been, is, or is in danger of being violated. Subject to subsection (2), the department shall investigate the complaint according to the urgency determined by the department. The initiation of a complaint investigation shall commence within 15 days after receipt of the written complaint by the department.

(6) If, at any time, the department determines that this part, a rule promulgated under this part, or a federal certification regulation for

nursing homes has been violated, the department shall list the violation and the provisions violated on the state and federal licensure and certification forms for nursing homes. The department shall consider the violations, as evidenced by a written explanation, when it makes a licensure and certification decision or recommendation.

(7) In all cases, the department shall inform the complainant of its findings unless otherwise indicated by the complainant. Subject to subsection (2), within 30 days after receipt of the complaint, the department shall provide the complainant a copy, if any, of the written determination, the correction notice, the warning notice, and the state licensure or federal certification form, or both, on which the violation is listed, or a status report indicating when these documents may be expected. The department shall include in the final report a copy of the original complaint. The complainant may request additional copies of the documents described in this subsection and upon receipt shall reimburse the department for the copies in accordance with established policies and procedures.

(8) The department shall make a written determination, correction notice, or warning notice concerning a complaint available for public inspection, but the department shall not disclose the name of the complainant or patient without the complainant's or patient's consent.

(9) The department shall report a violation discovered as a result of the complaint investigation procedure to persons administering sections 21799c to 21799e. The department shall assess a penalty for a violation, as prescribed by this article.

(10) A complainant who is dissatisfied with the determination or investigation by the department may request a hearing. A complainant shall submit a request for a hearing in writing to the director within 30 days after the mailing of the department's findings as described in subsection (7). The department shall send notice of the time and place of the hearing to the complainant and the nursing home.

(11) As used in this section, “priority complaint” means a complaint alleging an existing situation that involves physical, mental, or emotional abuse, mistreatment, or harmful neglect of a resident that requires immediate corrective action to prevent serious injury, serious harm, serious impairment, or death of a resident while receiving care in a facility.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 2003, Act 3, Imd. Eff. Apr. 22, 2003 ;-- Am. 2004, Act 189, Imd. Eff. July 8, 2004
Popular Name: Act 368

333.21799b Noncompliance; notice of finding; correction notices; hearing; verification of compliance; investigation; action; definitions; annual report; presumption.
Sec. 21799b. (1) If, upon investigation, the department of consumer and industry services finds that a licensee is not in compliance with this part, a rule promulgated under this part, or a federal law or regulation governing nursing home certification under title XVIII or XIX, which noncompliance impairs the ability of the licensee to deliver an acceptable level of care and services, or in the case of a nursing home closure, the department of consumer and industry services shall notify the department of community health of the finding and may issue 1 or more of the following correction notices to the licensee:

(a) Suspend the admission or readmission of patients to the nursing home.

(b) Reduce the licensed capacity of the nursing home.

(c) Selectively transfer patients whose care needs are not being met by the licensee.

(d) Initiate action to place the home in receivership as prescribed in section 21751.

(e) Require appointment at the nursing home's expense of a department approved temporary administrative advisor or a temporary clinical advisor, or both, with authority and duties specified by the department to

assist the nursing home management and staff to achieve sustained compliance with required operating standards.

(f) Require appointment at the nursing home's expense of a department approved temporary manager with authority and duties specified by the department to oversee the nursing home's achievement of sustained compliance with required operating standards or to oversee the orderly closure of the nursing home.

(g) Issue a correction notice to the licensee and the department of community health describing the violation and the statute or rule violated and specifying the corrective action to be taken and the period of time in which the corrective action is to be completed. Upon issuance, the director shall cause to be published in a daily newspaper of general circulation in an area in which the nursing home is located notice of the action taken and the listing of conditions upon which the director's action is predicated.

(2) Within 72 hours after receipt of a notice issued under subsection (1), the licensee shall be given an opportunity for a hearing on the matter. The director's notice shall continue in effect during the pendency of the hearing and any subsequent court proceedings. The hearing shall be conducted in compliance with the administrative procedures act of 1969.

(3) A licensee who believes that a correction notice has been complied with may request a verification of compliance from the department. Not later than 72 hours after the licensee makes the request, the department shall investigate to determine whether the licensee has taken the corrective action prescribed in the notice under subsection (1)(g). If the department finds that the licensee has taken the corrective action and that the conditions giving rise to the notice have been alleviated, the department may cease taking further action against the licensee, or may take other action that the director considers appropriate.

(4) As used in this part, “title XVIII” and “title XIX” mean those terms as defined in section 20155.

(5) The department shall report annually to the house and senate standing committees on senior issues on the number of times the department appointed a temporary administrative advisor, temporary clinical advisor, and temporary manager as described in subsection (1)(e) or (f). The report shall include whether the nursing home closed or remained open. The department may include this report with other reports made to fulfill legislative reporting requirements.

(6) If the department determines that a nursing home's patients can be safeguarded and provided with a safe environment, the department shall make its decisions concerning the nursing home's future operation based on a presumption in favor of keeping the nursing home open.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 2000, Act 437, Imd. Eff. Jan. 9, 2001
Popular Name: Act 368

333.21799c Violations; penalties; computation of civil penalties; paying or reimbursing patient; rules for quality of care allowance formula.

Sec. 21799c. (1) A person who violates 1 of the following sections is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not less than $1,000.00, nor more than $10,000.00, or both:

(a) Section 21711.

(b) Section 21712.

(c) Section 21763(5).

(d) Section 21765a(1) or (2).

(e) Section 21771(1) or (6).

(f) Section 21791.

(2) A person who violates section 21765a(1) or (2) is liable to an applicant or patient in a civil action for treble the amount of actual damages or $1,000.00, whichever is greater, together with costs and reasonable attorney fees.

(3) For the purpose of computing administrative penalties under this section, the number of patients per day is based on the average number of patients in the nursing home during the 30 days immediately preceding the discovery of the violation.

(4) If the department finds a violation of section 20201 as to a particular nursing home patient, the department shall issue an order requiring the nursing home to pay to the patient $100.00, or to reimburse the patient for costs incurred or injuries sustained as a result of the violation, whichever is greater. The department also shall assess the nursing home an administrative penalty that is the lesser of the following:

(a) Not more than $1,500.00.

(b) $15.00 per patient bed.

(5) The department of community health shall promulgate rules for a quality of care allowance formula that is consistent with the recommendations of the fiscal incentives subcommittee to the committee on nursing home reimbursement established pursuant to Act No. 241 of the Public Acts of 1975, as described in the November 24, 1975 interim report, in the December 3, 1975 final report, and the November 24, 1976 report of the committee recommending appropriate changes in the procedures utilized.

(6) The department shall not assess an administrative penalty under subsection (4) for a violation of this part for which a nursing home's reimbursement is withheld under subsection (5).

History: Add. 1978, Act 493, Eff. Mar. 30, 1979 ;-- Am. 1994, Act 73, Imd. Eff. Apr. 11, 1994 ;-- Am. 1996, Act 546, Eff. Mar. 31, 1997
Popular Name: Act 368

333.21799d Collection of civil penalty; noncompliance; order.
Sec. 21799d. A civil penalty assessed under this part shall be collected by the department. If the person or nursing home against whom a civil penalty has been assessed does not comply with a written demand for payment within 30 days, the department shall issue an order to do 1 of the following:

(a) Direct the department of treasury to deduct the amount of the civil penalty from amounts otherwise due from the state to the nursing home and remit that amount to the department.

(b) Add the amount of the civil penalty to the nursing home's licensing fee. If the licensee refuses to make the payment at the time of application for renewal of its license, the license shall not be renewed.

(c) Bring an action in circuit court to recover the amount of the civil penalty.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

333.21799e Penalties and remedies cumulative.
Sec. 21799e. (1) The penalties prescribed by this part or a rule promulgated under this part are cumulative and not exclusive. Neither the department nor any other party is limited to the remedies in this part.

(2) The remedies provided under section 20155 and sections 21799a to 21799d are independent and cumulative. Except as provided in section 21799(c)(5), the use of 1 remedy by a person shall not be considered a bar to the use of other remedies by that person or to the use of any remedy by another person.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979
Popular Name: Act 368

HOUSING-WITH-SERVICES CONTRACT ACT
Act 424 of 2002

AN ACT to provide for standards for contracts involving certain residential and care services; and to provide for remedies.

History: 2002, Act 424, Imd. Eff. June 5, 2002

The People of the State of Michigan enact:

333.26501 Short title.

Sec. 1. This act shall be known and may be cited as the "housing-with-services contract act".

History: 2002, Act 424, Imd. Eff. June 5, 2002

333.26502 Definitions.

Sec. 2. As used in this act:

(a) "Health-related services" means 1 or more of the following:

(i) Nursing services.

(ii) Nursing services delegated to aides or personal care services including, but not limited to, escort services, reminders, and standby assistance related to dressing or grooming.

(iii) Home aide care tasks.

(b) "Housing-with-services establishment" means an establishment regularly providing or offering to provide leased private unit residences accommodating 1 or more adults, and providing or offering to provide for a fee either 1 or more regularly scheduled health-related services or 2 or more regularly scheduled supportive services, whether offered directly by the establishment or by another person by arrangement of the establishment. Housing-with-services establishment does not include an adult foster care facility licensed under the adult foster care facility

licensing act, 1979 PA 218, MCL 400.701 to 400.737, or a health facility or agency licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(c) “Resident” means an individual leasing and residing in a housing-with-services establishment.

(d) “Supportive services” means helping with personal laundry, arranging for medical services, health-related services, social services, or transportation to medical or social services appointments, or providing for at least 1 individual awake and alert in the housing-with-services establishment to contact a service provider in an emergency. Supportive services do not include making referrals or assisting a resident in contacting a service provider of the resident's choice.

History: 2002, Act 424, Imd. Eff. June 5, 2002

333.26503 Contract requirements.

Sec. 3. (1) An establishment shall not function as a housing-with-services establishment for an individual except under a written contract complying with this act.

(2) A contract between a housing-with-services establishment and a resident must be in writing and shall include at least all of the following:

(a) The name, street address, and mailing address of the housing-with-services establishment.

(b) The owner's name and mailing address.

(c) The title and address of the managing agent, whether an owner of a management firm or agency.

(d) The title and business address, if different from the establishment address, of at least 1 individual authorized to accept service of process on behalf of the owner and managing agent.

(e) A statement describing whether the housing-with-services establishment is licensed by a local, state, or federal agency.

(f) The term of the contract described in months or years.

(g) A description of the services the establishment will provide to the resident for the base-rate paid by the resident.

(h) A description of additional services available for an additional fee from the housing-with-services establishment directly or through arrangements with the housing-with-services establishment.

(i) A statement describing the policy of the housing-with-services establishment regarding the outside contracting of services by a resident.

(j) Fee schedules outlining the cost of additional services.

(k) A description of the process through which the contract may be modified, amended, or terminated, including conditions under which a contract may be terminated by the resident or the establishment.

(l) A description of the housing-with-services establishment's complaint resolution process.

(m) The resident's designated representative, if any.

(n) The establishment's referral procedure in the event the contract is terminated.

(o) Billing and payment procedures and requirements.

(3) The housing-with-services establishment shall keep the contracts and related documents executed by the establishment and residents for at least 3 years after the date of termination of each contract. Contracts, or copies of the contracts, for current residents shall be kept at the establishment.

History: 2002, Act 424, Imd. Eff. June 5, 2002

333.26504 Compliance with act and state and local codes.
Sec. 4. (1) A housing-with-services establishment shall comply with this act and shall comply with applicable state and local codes.

(2) This act does not mandate a housing-with-services establishment to provide any of the following:

(a) A minimum core of services.

(b) A specific number of residents.

(c) Physical plant or establishment specifications so long as the housing-with-services establishment is in compliance with applicable state and local codes.

History: 2002, Act 424, Imd. Eff. June 5, 2002

333.26505 Rights or responsibilities not limited.
Sec. 5. Nothing in this act limits a person's rights or responsibilities under any other applicable state housing or renting act.

History: 2002, Act 424, Imd. Eff. June 5, 2002

333.26506 Violation of act; contract as void.
Sec. 6. A contract executed in violation of this act is voidable at the option of the resident. The provisions of this section shall not be used as a means to avoid a resident's payment obligation if the contract is not executed in violation of this act.

History: 2002, Act 424, Imd. Eff. June 5, 2002

333.26507 Licensure requirements of adult foster care facility licensing act or article 17 of public health code not limited.
Sec. 7. Nothing in this act limits a facility's responsibilities or obligations to be licensed under the adult foster care facility licensing act, 1979 PA

218, MCL 400.701 to 400.737, or under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

History: 2002, Act 424, Imd. Eff. June 5, 2002

ADULT FOSTER CARE FACILITY LICENSING ACT
Act 218 of 1979

An act to provide for the licensing and regulation of adult foster care facilities; to provide for the establishment of standards of care for adult foster care facilities; to prescribe powers and duties of the department of social services and other departments; to prescribe certain fees; to prescribe penalties; and to repeal certain acts and parts of acts.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1992, Act 176, Imd. Eff. July 23, 1992

The People of the State of Michigan enact:

400.701 Short title.
Sec. 1. This act shall be known and may be cited as the "adult foster care facility licensing act".

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of adult foster care licensing and child welfare licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.702 Meanings of words and phrases.
Sec. 2. For the purposes of this act, the words and phrases defined in sections 3 to 7 have the meanings ascribed to them in those sections.

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.703 Definitions; A.

Sec. 3. (1) “Adult” means:

(a) A person 18 years of age or older.

(b) A person who is placed in an adult foster care family home or an adult foster care small group home pursuant to section 5(6) or (8) of 1973 PA 116, MCL 722.115.

(2) “Adult foster care camp” or “adult camp” means an adult foster care facility with the approved capacity to receive more than 4 adults to be provided foster care. An adult foster care camp is a facility located in a natural or rural environment.

(3) “Adult foster care congregate facility” means an adult foster care facility with the approved capacity to receive more than 20 adults to be provided with foster care.

(4) “Adult foster care facility” means a governmental or nongovernmental establishment that provides foster care to adults. Subject to section 26a(1), adult foster care facility includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care. Adult foster care facility does not include any of the following:

(a) A nursing home licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(b) A home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(c) A hospital licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(d) A hospital for the mentally ill or a facility for the developmentally disabled operated by the department of community health under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(e) A county infirmary operated by a county department of social services or family independence agency under section 55 of the social welfare act, 1939 PA 280, MCL 400.55.

(f) A child caring institution, children's camp, foster family home, or foster family group home licensed or approved under 1973 PA 116, MCL 722.111 to 722.128, if the number of residents who become 18 years of age while residing in the institution, camp, or home does not exceed the following:

(i) Two, if the total number of residents is 10 or fewer.

(ii) Three, if the total number of residents is not less than 11 and not more than 14.

(iii) Four, if the total number of residents is not less than 15 and not more than 20.

(iv) Five, if the total number of residents is 21 or more.

(g) A foster family home licensed or approved under 1973 PA 116, MCL 722.111 to 722.128, that has a person who is 18 years of age or older placed in the foster family home under section 5(7) of 1973 PA 116, MCL 722.115.

(h) An establishment commonly described as an alcohol or a substance abuse rehabilitation center, a residential facility for persons released

from or assigned to adult correctional institutions, a maternity home, or a hotel or rooming house that does not provide or offer to provide foster care.

(i) A facility created by 1885 PA 152, MCL 36.1 to 36.12.

(5) “Adult foster care family home” means a private residence with the approved capacity to receive 6 or fewer adults to be provided with foster care for 5 or more days a week and for 2 or more consecutive weeks. The adult foster care family home licensee shall be a member of the household, and an occupant of the residence.

(6) “Adult foster care large group home” means an adult foster care facility with the approved capacity to receive at least 13 but not more than 20 adults to be provided with foster care.

(7) “Adult foster care small group home” means an adult foster care facility with the approved capacity to receive 12 or fewer adults to be provided with foster care.

(8) “Aged” means an adult whose chronological age is 60 years of age or older or whose biological age, as determined by a physician, is 60 years of age or older.

(9) “Assessment plan” means a written statement prepared in cooperation with a responsible agency or person that identifies the specific care and maintenance, services, and resident activities appropriate for each individual resident's physical and behavioral needs and well-being and the methods of providing the care and services taking into account the preferences and competency of the individual.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1981, Act 124, Imd. Eff. July 23, 1981 ;-- Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984 ;-- Am. 1984, Act 140, Imd. Eff. June 1, 1984 ;-- Am. 1990, Act 262, Eff. Mar. 28, 1991 ;-- Am. 1991, Act 161, Imd. Eff. Dec. 9, 1991 ;-- Am. 1995, Act 82, Imd. Eff. June 15, 1995 ;-- Am. 1996, Act 194, Eff. Aug. 1, 1996 ;-- Am. 1998, Act 442, Imd. Eff. Dec. 30, 1998
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II

transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.704 Definitions; C to F.

Sec. 4. (1) “Council” means the adult foster care licensing advisory council created in section 8.

(2) “Department” means the family independence agency.

(3) “Developmental disability” means a disability as defined in section 500(h) of Act No. 258 of the Public Acts of 1974, being section 330.1500 of the Michigan Compiled Laws.

(4) “Director” means the director of the department.

(5) “Do-not-resuscitate order” means a document executed pursuant to section 3 of the Michigan do-not-resuscitate procedure act directing that, in the event a resident suffers cessation of both spontaneous respiration and circulation, no resuscitation will be initiated.

(6) “Foster care” means the provision of supervision, personal care, and protection in addition to room and board, for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks for compensation.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1996, Act 194, Eff. Aug. 1, 1996
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.705 Definitions; G to N.
Sec. 5. (1) “Good moral character” means good moral character as defined in Act No. 381 of the Public Acts of 1974, being sections 338.41 to 338.47 of the Michigan Compiled Laws.

(2) “Licensed hospice program” means a health care program that provides a coordinated set of services rendered at home or in an outpatient or institutional setting for individuals suffering from a disease or condition with a terminal prognosis and that is licensed under article 17 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.20101 to 333.22260 of the Michigan Compiled Laws.

(3) “Licensee” means the agency, association, corporation, organization, person, or department or agency of the state, county, city, or other political subdivision, that has been issued a license to operate an adult foster care facility.

(4) “Mental illness” means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(5) “New construction” means a newly constructed facility or a facility that has been completely renovated for use as an adult foster care facility.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984 ;-- Am. 1996, Act 194, Eff. Aug. 1, 1996
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.706 Definitions; P to Q.
Sec. 6. (1) “Personal care” means personal assistance provided by a licensee or an agent or employee of a licensee to a resident who requires

assistance with dressing, personal hygiene, grooming, maintenance of a medication schedule as directed and supervised by the resident's physician, or the development of those personal and social skills required to live in the least restrictive environment.

(2) “Physical disability” means a determinable physical characteristic of an individual that may result from disease, injury, congenital condition of birth, or functional disorder.

(3) “Physical plant” means the structure in which a facility is located and all physical appurtenances to the facility.

(4) “Protection”, subject to section 26a(2), means the continual responsibility of the licensee to take reasonable action to insure the health, safety, and well-being of a resident, including protection from physical harm, humiliation, intimidation, and social, moral, financial, and personal exploitation while on the premises, while under the supervision of the licensee or an agent or employee of the licensee, or when the resident's assessment plan states that the resident needs continuous supervision.

(5) “Provisional license” means a license issued to a facility that has previously been licensed under this act or an act repealed by this act but is temporarily unable to conform to the requirements of a regular license prescribed in this act or rules promulgated under this act.

(6) “Quality of care” means the foster care of residents of a facility and other similar items not related to the physical plant that address themselves to the general physical and mental health, welfare, and well-being of residents.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1996, Act 194, Eff. Aug. 1, 1996 ;-- Am. 1998, Act 442, Imd. Eff. Dec. 30, 1998
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1,

compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.707 Definitions; R to T.

Sec. 7. (1) "Regular license" means a license issued to an adult foster care facility which is in compliance with this act and the rules promulgated under this act.

(2) "Related" means any of the following relationships by marriage, blood, or adoption: spouse, child, parent, brother, sister, grandparent, aunt, uncle, stepparent, stepbrother, stepsister, or cousin.

(3) "Short-term operation" means an adult foster care facility which operates for a period of time less than 6 months within a calendar year.

(4) "Special license" means a license issued for the duration of the operation of an adult foster care facility if the licensee is a short-term operation.

(5) "Specialized program" means a program of services or treatment provided in an adult foster care facility licensed under this act that is designed to meet the unique programmatic needs of the residents of that home as set forth in the assessment plan for each resident and for which the facility receives special compensation.

(6) "Special compensation" means payment to an adult foster care facility to ensure the provision of a specialized program in addition to the basic payment for adult foster care. Special compensation does not include payment received by the adult foster care facility directly from the medicaid program for personal care services for a resident, or payment received under the supplemental security income program under title XVI of the social security act, 42 U.S.C. 1381 to 1383c.

(7) "Supervision" means guidance of a resident in the activities of daily living, including all of the following:

(a) Reminding a resident to maintain his or her medication schedule, as directed by the resident's physician.

(b) Reminding a resident of important activities to be carried out.

(c) Assisting a resident in keeping appointments.

(d) Being aware of a resident's general whereabouts even though the resident may travel independently about the community.

(8) “Temporary license” means a license issued to a facility which has not previously been licensed pursuant to this act or to former Act No. 287 of the Public Acts of 1972.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1986, Act 257, Eff. Mar. 31, 1987
Compiler's Notes: Act 287 of 1972, referred to in this section, was repealed by Act 218 of 1979.For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Admin Rule: R 400.2101 et seq. of the Michigan Administrative Code.

400.708 Adult foster care licensing advisory council; creation; appointment, qualifications, and terms of members; vacancy; compensation; schedule for reimbursement; content and enforcement of rules; conducting business at public meeting; availability of writings to public.

Sec. 8. (1) The adult foster care licensing advisory council is created within the department. The council shall consist of 11 members, appointed by the director. The director shall appoint at least 1 member of the council from appropriate state and local agencies, private or public organizations, adult foster care providers, and residents of adult foster care facilities or their representatives. In appointing the first members of the council, the director shall appoint 3 members for a term of 1 year, 4 for 2 years, and 4 for 3 years. After the initial appointment, members

shall serve 3-year terms. A vacancy shall be filled for the remainder of the unexpired term in the same manner as original appointments are made.

(2) The per diem compensation of the council members and the schedule for reimbursement of travel and other expenses shall be pursuant to the compensation and schedules established by the legislature. The council shall meet not more than once each month. The council shall advise the department on the content of rules and their enforcement.

(3) The business which the council may perform shall be conducted at a public meeting of the council held in compliance with Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

(4) Except as provided in section 12, a writing prepared, owned, used, in the possession of, or retained by the council in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of the adult foster care licensing advisory council from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.709 Administration of act; reports, procedures, inspections, and investigations; advice and technical assistance; consultations; cooperation with other agencies; education of public.

Sec. 9. (1) The department shall administer this act and shall require reports, establish procedures, make inspections, and conduct investigations pursuant to law to enforce the requirements of this act and the rules promulgated under this act.

(2) The department shall provide advice and technical assistance to facilities covered by this act to assist facilities in meeting the requirements of this act and the rules promulgated under this act. The department shall offer consultation, upon request, in developing methods for the improvement of service. The department shall cooperate with other state departments and agencies and local units of government in administering this act.

(3) The department shall provide education to the public regarding the requirements of this act through the ongoing use of mass media and other methods.

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Admin Rule: R 400.11101 et seq. of the Michigan Administrative Code.

400.710 Rules; variance, modification, or change; purposes; restriction; review.

Sec. 10. (1) The department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the areas provided under subsection (4).

(2) The bureau of fire services created in section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b, shall promulgate rules providing for adequate fire prevention and safety in an adult foster care facility licensed or proposed to be licensed for more than 6 adults. The rules shall be promulgated in cooperation with the department and the state

fire safety board and shall provide for the protection of the health, safety, and welfare of the adults residing in a facility. The bureau of fire services shall promulgate the rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A person may request a variance from the application of a rule promulgated pursuant to this subsection by application to the state fire marshal. The state fire marshal may make a variance upon a finding that the variance does not result in a hazard to life or property. The finding shall be transmitted to the person requesting the variance and shall be entered into the records of the bureau of fire services. If the variance requested concerns a building, the finding shall also be transmitted to the governing body of the city, village, or township in which the building is located. The entire state fire safety board shall act as a hearing body in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to review and render decisions on a ruling of the state fire marshal interpreting or applying these rules. After a hearing, the state fire safety board may modify the ruling or interpretation of the state fire marshal if the enforcement of the ruling or interpretation would do manifest injustice and would be contrary to the spirit and purpose of the rules or the public interest. A decision of the state fire safety board to modify or change a ruling of the state fire marshal, shall specify in what manner the modification or change is made, the conditions upon which it is made, and the reasons for the modification or change.

(3) The department of human services shall promulgate rules for the certification of specialized programs offered in an adult foster care facility to a mentally ill or developmentally disabled resident. The rules shall include provision for an appeal of a denial or limitation of the terms of certification to the department pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(4) The rules promulgated by the department under this act shall be restricted to the following:

(a) The operation and conduct of adult foster care facilities.

(b) The character, suitability, training, and qualifications of applicants and other persons directly responsible for the care and welfare of adults served.

(c) The general financial ability and competence of applicants to provide necessary care for adults and to maintain prescribed standards.

(d) The number of individuals or staff required to ensure adequate supervision and care of the adults served.

(e) The appropriateness, safety, cleanliness, and general adequacy of the premises, including maintenance of adequate health standards to provide for the physical comfort, care, protection, and well-being of the adults received and maintenance of adequate fire protection for adult foster care facilities licensed to receive 6 or fewer adults. Rules promulgated in the areas provided by this subdivision shall be promulgated in cooperation with the state fire safety board.

(f) Provisions for food, clothing, educational opportunities, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of adults served.

(g) The type of programs and services necessary to provide appropriate care to each resident admitted.

(h) Provisions to safeguard the rights of adults served, including cooperation with rights protection systems established by law.

(i) Provisions to prescribe the rights of licensees.

(j) Maintenance of records pertaining to admission, progress, health, and discharge of adults. The rules promulgated under this subdivision shall include a method by which a licensee promptly shall notify the appropriate placement agency or responsible agent of any indication that a resident's assessment plan is not appropriate for that resident.

(k) Filing of reports with the department.

(l) Transportation safety.

(5) The rules shall be reviewed by the council not less than once every 5 years.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1986, Act 257, Eff. Mar. 31, 1987 ;-- Am. 2006, Act 201, Imd. Eff. June 19, 2006
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Admin Rule: R 400.1401 et seq.; R 400.1601 et seq.; R 400.2101 et seq.; R 400.11101 et seq.; and R 400.16001 of the Michigan Administrative Code.

400.711 Inspections; visitations; administration and enforcement of rules; reports; final determination as to license; public inspection of reports.

Sec. 11. (1) The director, the director's agent, or personnel of another department or agency, acting at the request of the director, may enter upon the premises of an applicant or licensee at a reasonable time to make inspections, as permitted by applicable law, to determine whether the applicant or licensee is complying with this act and the rules promulgated under this act. On-site inspections may be conducted without prior notice to the adult foster care facility. A health and sanitation inspection of an adult foster care facility shall be conducted upon the request of the department by 1 of the following:

(a) Department staff.

(b) The department of community health.

(c) A local health department.

(2) The department of community health, the bureau of fire services created in section 1b of the fire prevention code, 1941 PA 207, MCL

29.1b, or local authorities, in carrying out this act, may visit an adult foster care facility more often than annually to advise in matters affecting health or fire protection. Inspections shall be made as permitted by law.

(3) An adult foster care facility shall be inspected for fire safety by 1 of the following:

(a) Department staff, if the facility is licensed or proposed to be licensed for 6 or fewer adults. The department may request that a fire safety inspection be performed by or at the direction of the bureau of fire services, for a facility licensed or proposed to be licensed for 6 or fewer adults, if such an inspection would result in the efficient administration of this act.

(b) The bureau of fire services or the designated representative of the bureau of fire services, if the facility is licensed or proposed to be licensed for more than 6 adults. The bureau of fire services shall inspect or have inspected for fire safety an adult foster care facility licensed or proposed to be licensed for 6 or fewer adults upon request by the department. The bureau of fire services may contract with the fire marshal of a city having a population of not less than 1,000,000 to inspect adult foster care facilities licensed or proposed to be licensed for more than 6 adults if the facility is located within that city. The fire marshal of a city shall conduct an inspection in compliance with procedures established and on forms provided by the bureau of fire services.

(4) Except as provided in subsection (3)(b) and section 10(2), the inspector shall administer and enforce the rules promulgated by the department.

(5) Upon receipt of a request from an adult foster care facility for certification of a specialized program for developmentally disabled or mentally ill adults, the department of human services shall inspect the facility to determine whether the proposed specialized program conforms with the requirements of applicable law and rules. The department of

human services shall provide the department with an inspection report and a certification, denial of certification, or certification with limited terms for the proposed specialized program. The department of human services shall reinspect a certified specialized program not less than once biennially. In carrying out this subsection, the department of human services may contract with a county community mental health board or any other agency for services.

(6) Inspection reports required by this section shall be furnished to the department and shall be used in the evaluation for licensing of an adult foster care facility. The department shall consider the reports carefully and may make special consultations if necessary. The department shall be responsible for the final determination of the issuance, denial, or revocation and the temporary or provisional nature of a license issued to an adult foster care facility. A report of the department's findings shall be furnished to the licensee or applicant.

(7) The inspection reports required by this section shall be available for public inspection during reasonable business hours.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1986, Act 257, Eff. Mar. 31, 1987 ;-- Am. 1992, Act 176, Imd. Eff. July 23, 1992 ;-- Am. 2006, Act 201, Imd. Eff. June 19, 2006

Compiler's Notes: For transfer of powers and duties of the fire marshal division programs relating to plan review and construction inspections of schools, colleges, universities, school dormitories, as well as adult foster care, correctional, and health care facilities, from the department of state police to the department of consumer and industry services, see E.R.O. No. 1997-2, compiled at MCL 29.451 of the Michigan Compiled Laws.For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Admin Rule: R 400.1401 et seq.; R 400.1601 et seq.; R 400.2101 et seq.; and R 400.11101 et seq. of the Michigan Administrative Code.

400.712 Keeping and maintaining records and reports; examination and copying of books, records, and reports; confidentiality; inspection of records by resident.

Sec. 12. (1) The department may prescribe appropriate records to be kept and maintained regarding each adult received by a licensee and may require reports, upon forms furnished or approved by the department, setting forth facts or circumstances related to the care of adults received by the licensee.

(2) The department may examine the books, records, and reports of a facility. Members of the department shall be provided reasonable facilities for the thorough examination and copying of the books, records, and reports of the facility.

(3) The records of the residents of a facility which are required to be kept by the facility under this act or rules promulgated under this act shall be confidential and properly safeguarded. These materials shall be open only to the inspection of the director, an agent of the director, another executive department of the state pursuant to a contract between that department and the facility, a party to a contested case involving the facility, or on the order of a court or tribunal of competent jurisdiction. The records of a resident of a facility which are required to be kept by the facility under this act or rules promulgated under this act shall be open to inspection by the resident, unless medically contraindicated, or the guardian of a resident.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1986, Act 257, Eff. Mar. 31, 1987
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Admin Rule: R 400.1401 et seq.; R 400.2101 et seq.; and R 400.11101 et seq. of the Michigan Administrative Code.

400.713 License required; application; form; investigation; on-site evaluation; issuance or renewal of license; disclosures; maximum number of persons; stating type of specialized program; issuance of license to specific person at specific location; transferability of license; sale of facility; notice; items of noncompliance; refusal by department to issue or renew license; conditions; unlicensed facility; violation as misdemeanor; penalty; receipt of completed application; issuance of license within certain time period; inspections; report; "completed application" defined.

Sec. 13. (1) A person, partnership, corporation, association, or a department or agency of the state, county, city, or other political subdivision shall not establish or maintain an adult foster care facility unless licensed by the department.

(2) Application for a license shall be made on forms provided and in the manner prescribed by the department. The application shall be accompanied by the fee prescribed in section 13a.

(3) Before issuing or renewing a license, the department shall investigate the activities and standards of care of the applicant and shall make an on-site evaluation of the facility. On-site inspections conducted in response to the application may be conducted without prior notice to the applicant. Subject to subsections (9), (10), and (11), the department shall issue or renew a license if satisfied as to all of the following:

(a) The financial stability of the facility.

(b) The applicant's compliance with this act and rules promulgated under this act.

(c) The good moral character of the applicant, or owners, partners, or directors of the facility, if other than an individual. Each of these persons shall be not less than 18 years of age.

(d) The physical and emotional ability of the applicant, and the person responsible for the daily operation of the facility to operate an adult foster care facility.

(e) The good moral character of the person responsible for the daily operations of the facility and all employees of the facility. The applicant shall be responsible for assessing the good moral character of the employees of the facility. The person responsible for the daily operation of the facility shall be not less than 18 years of age.

(4) The department shall require an applicant or a licensee to disclose the names, addresses, and official positions of all persons who have an ownership interest in the adult foster care facility. If the adult foster care facility is located on or in real estate that is leased, the applicant or licensee shall disclose the name of the lessor of the real estate and any direct or indirect interest that the applicant or licensee has in the lease other than as lessee.

(5) Each license shall state the maximum number of persons to be received for foster care at 1 time.

(6) If applicable, a license shall state the type of specialized program for which certification has been received from the department.

(7) A license shall be issued to a specific person for a facility at a specific location, is nontransferable, and remains the property of the department. The prohibition against transfer of a license to another location does not apply if a licensee's adult foster care facility or home is closed as a result of eminent domain proceedings, if the facility or home, as relocated, otherwise meets the requirements of this act and the rules promulgated under this act.

(8) An applicant or licensee proposing a sale of an adult foster care facility or home to another owner shall provide the department with advance notice of the proposed sale in writing. The applicant or licensee and other parties to the sale shall arrange to meet with specified department representatives and shall obtain before the sale a determination of the items of noncompliance with applicable law and rules that shall be corrected. The department shall notify the respective parties of the items of noncompliance before the change of ownership, shall indicate that the items of noncompliance shall be corrected as a

condition of issuance of a license to the new owner, and shall notify the prospective purchaser of all licensure requirements.

(9) The department shall not issue a license to or renew the license of a person who has been convicted of a felony under this act or under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r. The department shall not issue a license to or renew the license of a person who has been convicted of a misdemeanor under this act or under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r, for a period of 10 years after the conviction.

(10) If the department has revoked, suspended, or refused to renew a person's license for an adult foster care facility according to section 22, the department may refuse to issue a license to or renew a license of that person for a period of 5 years after the suspension, revocation, or nonrenewal of the license.

(11) The department may refuse to issue a license to or renew the license of an applicant if the department determines that the applicant has a relationship with a former licensee whose license under this act has been suspended, revoked, or nonrenewed under subsection (9) or section 22 or a convicted person to whom a license has been denied under subsection (9). This subsection applies for 5 years after the suspension, revocation, or nonrenewal of the former licensee's license or the denial of the convicted person's license. For purposes of this subsection, an applicant has a relationship with a former licensee or convicted person if the former licensee or convicted person is involved with the facility in 1 or more of the following ways:

(a) Participates in the administration or operation of the facility.

(b) Has a financial interest in the operation of the facility.

(c) Provides care to residents of the facility.

(d) Has contact with residents or staff on the premises of the facility.

(e) Is employed by the facility.

(f) Resides in the facility.

(12) If the department determines that an unlicensed facility is an adult foster care facility, the department shall notify the owner or operator of the facility that it is required to be licensed under this act. A person receiving the notification required under this section who does not apply for a license within 30 days is subject to the penalties described in subsection (13).

(13) Subject to subsection (12), a person who violates subsection (1) is guilty of a misdemeanor, punishable by imprisonment for not more than 2 years or a fine of not more than $50,000.00, or both. A person who has been convicted of a violation of subsection (1) who commits a second or subsequent violation is guilty of a felony, punishable by imprisonment for not more than 5 years or a fine of not more than $75,000.00, or both.

(14) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial or renewal license not later than 6 months after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of this state. If the application is considered incomplete by the department, the department shall notify the applicant in writing or make notice electronically available within 30 days after receipt of the incomplete application, describing the deficiency and requesting additional information. If the department identifies a deficiency or requires the fulfillment of a corrective action plan, the 6-month period is tolled until either of the following occurs:

(a) Upon notification by the department of a deficiency, until the date the requested information is received by the department.

(b) Upon notification by the department that a corrective action plan is required, until the date the department determines the requirements of the corrective action plan have been met.

(15) The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(16) If the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. Failure to issue or deny a license within the time period required under this section does not allow the department to otherwise delay processing an application. The completed application shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of an application based on the fact that the application fee was refunded or discounted under this subsection.

(17) If, on a continual basis, inspections performed by a local health department delay the department in issuing or denying licenses under this act within the 6-month period, the department may use department staff to complete the inspections instead of the local health department causing the delays.

(18) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with human services issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 6-month time period described in subsection (14).

(b) The number of applications requiring a request for additional information.

(c) The number of applications rejected.

(d) The number of licenses not issued within the 6-month period.

(e) The average processing time for initial and renewal licenses granted after the 6-month period.

(19) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state. Beginning October 1, 2005, a completed application does not include a health inspection performed by a local health department.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984 ;-- Am. 1986, Act 257, Eff. Mar. 31, 1987 ;-- Am. 1992, Act 176, Imd. Eff. July 23, 1992 ;-- Am. 1994, Act 150, Imd. Eff. June 7, 1994 ;-- Am. 2004, Act 59, Eff. Aug. 1, 2004 ;-- Am. 2004, Act 281, Imd. Eff. July 23, 2004
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Admin Rule: R 400.1401 et seq.; R 400.2101 et seq.; and R 400.11101 et seq. of the Michigan Administrative Code.

400.713a Fees.
Sec. 13a. (1) Application fees for an individual, partnership, firm, corporation, association, governmental organization, or nongovernmental organization licensed or seeking licensure under this act are as follows:

(a) Application fee for a temporary license:

(i) Family home..... $ 65.00
(ii) Small group home (1-6)..... 105.00
(iii) Small group home (7-12)..... 135.00

(iv) Large group home..... 170.00
(v) Congregate facility..... 220.00
(vi) Camp..... 40.00

(b) Application fee for subsequent licenses:

(i) Family home..... $ 25.00
(ii) Small group home (1-6)..... 25.00
(iii) Small group home (7-12)..... 60.00
(iv) Large group home..... 100.00
(v) Congregate facility..... 150.00
(vi) Camp..... 25.00

(2) Fees collected under this act shall be credited to the general fund of the state to be appropriated by the legislature to the department for the enforcement of this act.

(3) The department shall use a portion of the fees collected to inspect new adult foster care facilities for fiscal year 1991-1992.

History: Add. 1992, Act 176, Imd. Eff. July 23, 1992 ;-- Am. 2004, Act 285, Imd. Eff. July 23, 2004
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.714 Temporary license; issuance of regular license or provisional license; refusal to issue license; temporary license nonrenewable; plan of correction.

Sec. 14. (1) A temporary license shall be issued to an adult foster care facility for the first 6 months of operation if the adult foster care facility has not previously been licensed as an adult foster care facility. At the

end of the first 6 months of operation, the department shall issue a regular license, issue a provisional license, or refuse to issue a license in the manner provided for in section 22. A temporary license shall not be renewed.

(2) Before issuing a temporary license, the department may require an adult foster care facility to submit to the department an acceptable plan of correction for the adult foster care facility. The adult foster care facility shall implement the plan of correction within the time limitations of the temporary license period.

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.715 Temporary license; adult foster care congregate facility.
Sec. 15. (1) The department shall not issue a temporary license to an adult foster care congregate facility, except a facility which is to replace an adult foster care congregate facility licensed on March 27, 1984 and is a new construction; satisfies all applicable state construction code requirements and the fire safety requirements prescribed by section 20; and the bed capacity does not exceed that of the licensed facility which it replaces.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.716 Temporary license; prohibitions.

Sec. 16. (1) Unless the city, village, or township approves a temporary license, a temporary license shall not be granted under this act if the issuance of the license would substantially contribute to an excessive concentration of community residential facilities within a city, village, or township of this state.

(2) A temporary license shall not be granted under this act if the proposed adult foster care facility for more than 6 adults has not obtained zoning approval or obtained a special or conditional use permit if required by an ordinance of the city, village, or township in which the proposed facility is located.

(3) The department shall not issue a temporary license to an adult foster care facility which does not comply with section 16a of Act No. 183 of the Public Acts of 1943, as amended, being section 125.216a of the Michigan Compiled Laws, section 16a of Act No. 184 of the Public Acts of 1943, as amended, being section 125.286a of the Michigan Compiled Laws, and section 3b of Act No. 207 of the Public Acts of 1921, as amended, being section 125.583b of the Michigan Compiled Laws.

(4) This section shall not apply to an applicant who has purchased a facility and the facility, at the time of the purchase, or for 1 year preceding the application, was licensed under this act or an act repealed by this act.

History: 1979, Act 218, Eff. Mar. 27, 1980

Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.717 Provisional license.

Sec. 17. (1) A provisional license may be issued to an adult foster care facility that has previously held a temporary or regular license under this

act or an act repealed by this act. A provisional license may be issued for 6 months if an adult foster care facility is temporarily unable to conform to the requirements of this act for a regular license and may be renewed not more than 2 consecutive times as provided in subsections (2) and (4). The issuance of a provisional license shall be contingent upon the submission to the department of an acceptable plan of correction for the adult foster care facility within the time limitations of the provisional period.

(2) If the provisional license is issued for deficiencies in the physical plant of the adult foster care facility, the provisional license may be renewed for not more than 2 consecutive 6-month terms for the same physical plant deficiencies.

(3) If the provisional license is issued for deficiencies in the quality of care provided in the adult foster care facility, the provisional license is not renewable. If the quality of care deficiencies are corrected and intervening deficiencies of any kind are not incurred, a regular license shall be issued.

(4) If a provisional license has been issued because of deficiencies in both the quality of care and the physical plant of the adult foster care facility, the provisional license may be renewed under subsection (2) if the quality of care deficiencies have been corrected.

(5) The department shall notify the applicant of the reasons for issuing a provisional license and shall designate whether the deficiencies are physical plant deficiencies or quality of care deficiencies.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1992, Act 176, Imd. Eff. July 23, 1992

Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.718 Special license; rules.
Sec. 18. (1) A special license may be issued for the duration of the operation of an adult foster care facility if the applicant is a short-term operation.

(2) The department may promulgate rules regulating the issuance and duration of special licenses.

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.719 Regular license; issuance; validity; application for temporary license; subsection (4) applicable to previously licensed facilities.
Sec. 19. (1) A regular license shall be issued to an adult foster care facility which is in compliance with the requirements of this act and rules promulgated under this act for issuance of a regular license.

(2) A regular license for all adult foster care facilities except adult foster care camps is valid for 2 years after the date of issuance unless revoked as authorized by section 22 or modified to a provisional status based on evidence of noncompliance with this act or the rules promulgated under this act. The license shall be renewed biennially on application and approval.

(3) A regular license for an adult foster care camp is effective for the specific dates of operation not to exceed a 12-month period unless revoked as authorized by section 22 or modified to a provisional status based on evidence of noncompliance with this act or the rules promulgated under this act. The license shall be renewed annually on application and approval.

(4) Any increase beyond 6 in the number of persons to be received for foster care at 1 time in a small group home requires application for a temporary license pursuant to sections 14 and 16. This subsection applies to facilities that have been previously licensed.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1986, Act 257, Eff. Mar. 31, 1987 ;-- Am. 1992, Act 176, Imd. Eff. July 23, 1992
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.720 Certificate of approval from bureau of fire services and department of human services; compliance; denial or certification with limitations; hearing.

Sec. 20. (1) The department shall not issue a temporary, provisional, or regular license to an adult foster care facility with a capacity of more than 6 adults until the facility receives a certificate of approval from the bureau of fire services created in section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b, after compliance with fire safety standards prescribed in rules promulgated by the bureau of fire services pursuant to section 10(2).

(2) The department shall not issue a license to an adult foster care facility indicating approval to operate a specialized program for developmentally disabled adults or mentally ill adults until the facility receives a certificate of approval as required under section 11(5).

(3) A licensee or applicant who is denied a certificate of approval by the bureau of fire services or who is denied or certified with limitations for a specialized program by the department of human services may request a hearing. The hearing shall be conducted by the state fire safety board or the department of human services, as applicable, pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1986, Act 257, Eff. Mar. 31, 1987 ;-- Am. 2006, Act 201, Imd. Eff. June 19, 2006
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.721 Facility licensed on March 27, 1980; compliance with fire safety standards; section inapplicable to installation of smoke and heat detection equipment.

Sec. 21. (1) Except as provided in subsection (2), an adult foster care facility licensed on March 27, 1980 shall be considered to be in compliance with the fire safety standards prescribed in rules promulgated under this act if the facility meets the fire safety standards prescribed in rules promulgated under former Act No. 287 of the Public Acts of 1972 which were in effect on March 27, 1980.

(2) This section does not apply to the installation of smoke and heat detection equipment as required by rules promulgated pursuant to this act.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1986, Act 257, Eff. Mar. 31, 1987
Compiler's Notes: Act 287 of 1972, referred to in this section, was repealed by Act 218 of 1979.For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.722 Denying, suspending, revoking, refusing to renew, or modifying license; grounds; notice; hearing; decision; protest; receiving or maintaining adults requiring foster care as felony; penalty; relocation services; emergency license.

Sec. 22. (1) The department may deny, suspend, revoke, or refuse to renew a license, or modify a regular license to a provisional license, if the licensee falsifies information on the application for license or willfully and substantially violates this act, the rules promulgated under this act, or the terms of the license.

(2) The department may suspend, revoke, or modify a license of an applicant if the department determines that the applicant has a relationship with a former licensee whose license under this act has been suspended, revoked, or nonrenewed under this section or section 13(9) or a convicted person to whom a license has been denied under section 13(9). This subsection applies for 10 years after the suspension, revocation, or nonrenewal of the former licensee's license or the denial of the convicted person's license. As used in this subsection, an applicant has a relationship with a former licensee or convicted person if the former licensee or convicted person is involved with the facility in 1 or more of the following ways:

(a) Participates in the administration or operation of the facility.

(b) Has a financial interest in the operation of the facility.

(c) Provides care to residents of the facility.

(d) Has contact with residents or staff on the premises of the facility.

(e) Is employed by the facility.

(f) Resides in the facility.

(3) A license shall not be denied, suspended, or revoked, a renewal shall not be refused, and a regular license shall not be modified to a provisional license unless the department gives the licensee or applicant written notice of the grounds of the proposed denial, revocation, refusal to renew, or modification. If the licensee or applicant appeals the denial, revocation, refusal to renew, or modification by filing a written appeal with the director within 30 days after receipt of the written notice, the

director or the director's designated representative shall conduct a hearing at which the licensee or applicant may present testimony and confront witnesses. Notice of the hearing shall be given to the licensee or applicant by personal service or delivery to the proper address by registered mail not less than 2 weeks before the date of the hearing. The decision of the director shall be made and forwarded to the protesting party by registered mail not more than 30 days after the hearing. If the proposed denial, revocation, refusal to renew, or modification is not protested within 30 days, the license shall be denied, revoked, refused, or modified.

(4) If the department has revoked, suspended, or refused to renew a license, the former licensee shall not receive or maintain in that facility an adult who requires foster care. A person who violates this subsection is guilty of a felony, punishable by imprisonment for not more than 5 years or a fine of not more than $75,000.00, or both.

(5) If the department has revoked, suspended, or refused to renew a license, relocation services shall be provided to adults who were being served by the formerly licensed facility, upon the department's determination that the adult or his or her designated representative is unable to relocate the adult in another facility without assistance. The relocation services shall be provided by the responsible agency, as defined in administrative rules, or, if the adult has no agency designated as responsible, by the department.

(6) In the case of facilities that are operated under lease with a state department or a community mental health services board, the department may issue an emergency license for a 90-day period to avoid relocation of residents following the revocation, suspension, or nonrenewal of a license, if all of the following requirements are met:

(a) The leased physical plant is in substantial compliance with all licensing requirements.

(b) The applicant for the emergency license is a licensee who is in compliance with all applicable regulations under this act and under

contract with a state department or a community mental health services board to operate the leased physical plant temporarily.

(c) The former licensee's access to the facility according to a lease, sublease, or contract has been lawfully terminated by the owner or lessee of the facility.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1990, Act 262, Eff. Mar. 28, 1991 ;-- Am. 1994, Act 150, Imd. Eff. June 7, 1994 ;-- Am. 2004, Act 59, Eff. Aug. 1, 2004
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.723 Complaint; specifications; resolution of issues; notice; failure to resolve issues; hearing; decision; finality; issuance of license.

Sec. 23. (1) The legislative body of a city, village, or township in which an adult foster care facility is located may file a complaint with the department to have the facility's license denied or revoked pursuant to the procedures prescribed in this act and the rules promulgated under this act. The complaint shall specify those provisions of this act or the rules promulgated under this act with which the facility is not in compliance.

(2) The department shall resolve the issues of a complaint filed pursuant to subsection (1) within 45 days after receipt of the complaint. Notice of the resolution of the issues shall be mailed by registered mail to the complainant and the licensee. Failure of the department to resolve the issues of the complaint within 45 days after receipt of the complaint shall serve as a decision by the department to deny or revoke the facility's license, and the licensee shall be notified pursuant to section 22.

(3) If the decision to deny or revoke the license or the resolution of the issues is protested by written objection of the complainant or licensee to the department within 30 days after the denial or revocation of the

license or the receipt of the notice pertaining to the denial or revocation, the director or the director's designated representative shall conduct a hearing pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, as amended. The decision of the director shall be mailed by registered mail to the complainant and the licensee. If the resolution of the issues by the director is not protested within 30 days after receipt of the notice of the resolution, the resolution by the director is final. The department may issue a license pending the resolution of the matter.

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.724 Request for investigation; providing substance of complaint; disclosures; determining violation; initiation of investigation; findings; written determination or status report; final report; additional copies of documents; reimbursement; informing licensee of findings; public inspection of written determination; hearing; appeal.

Sec. 24. (1) A person who believes that this act or a rule promulgated under this act may have been violated may request an investigation of an adult foster care facility. The request shall be submitted to the department in writing or the department shall assist the person in reducing an oral complaint to writing within 7 days after the oral request is made.

(2) The substance of the complaint shall be provided to the licensee not earlier than at the commencement of the on-site inspection of the adult foster care facility which takes place pursuant to the complaint.

(3) The complaint, a copy of the complaint, or a record published, released, or otherwise disclosed to the adult foster care facility shall not disclose the name of the complainant or an adult resident named in the

complaint unless the complainant or an adult resident consents in writing to the disclosure or the investigation results in an administrative hearing or a judicial proceeding, or unless disclosure is considered essential to the investigation by the department. If disclosure is considered essential to the investigation, the complainant shall be given the opportunity to withdraw the complaint before disclosure.

(4) Upon receipt of a complaint, the department shall determine, based on the allegations presented, whether this act or a rule promulgated under this act has been, is, or is in danger of being violated. The department shall investigate the complaint according to the urgency determined by the department. The initiation of a complaint investigation shall commence within 15 days after receipt of the written complaint by the department.

(5) The department shall inform the complainant of its findings. Within 30 days after the receipt of complaint, the department shall provide the complainant a copy, if any, of the written determination or a status report indicating when these documents may be expected. The final report shall include a copy of the original complaint. The complainant may request additional copies of the documents listed in this subsection and shall reimburse the department for the copies pursuant to established policies and procedures.

(6) The department shall inform the licensee of the department's findings at the same time that the department informs the complainant pursuant to subsection (5).

(7) A written determination concerning a complaint shall be available for public inspection, but the name of the complainant or adult resident shall not be disclosed without the complainant's or adult resident's consent.

(8) A complainant who is dissatisfied with the determination or investigation by the department may request a hearing. A request for a hearing shall be submitted in writing to the director within 30 days after the mailing of the department's findings as described in subsection (5). Notice of the time and place of the hearing shall be sent to the

complainant and the adult foster care facility. A complainant who is dissatisfied with the decision of the director may appeal by filing with the clerk of the court an affidavit setting forth the substance of the proceedings before the department and the errors of law upon which the person relies, and serving the director with a copy of the affidavit. The circuit court of the county in which the complainant resides shall have jurisdiction to hear and determine the questions of fact or law involved in the appeal.

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.725 Appeal to circuit court.

Sec. 25. A person aggrieved by the decision of the director following a hearing under section 22 or 23, within 10 days after receipt of decision, may appeal to the circuit court for the county in which the person resides by filing with the clerk of the court an affidavit setting forth the substance of the proceedings before the department and the errors of law upon which the person relies, and serving the director with a copy of the affidavit. The circuit court shall have jurisdiction to hear and determine the questions of fact or law involved in the appeal. If the department prevails, the circuit court shall affirm the decision of the department; if the licensee, or applicant prevails, the circuit court shall set aside the revocation or order the issuance or renewal of the license.

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care

licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.726 Name or designation of facility.

Sec. 26. (1) An adult foster care facility shall not utilize a name or designation which implies, infers, or leads the public to believe that the facility provides nursing care.

(2) An adult foster care facility shall not include in its name the name of a religious, fraternal, or charitable corporation, organization, or association unless the corporation, organization, or association is an owner of the facility.

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.726a Resident enrolled in licensed hospice program; exception to continuous nursing care requirement for purposes of MCL 400.703(4); do-not-resuscitate order included in assessment plan; protection to resident.

Sec. 26a. (1) A resident of an adult foster care facility who is enrolled in a licensed hospice program is not considered to require continuous nursing care for purposes of section 3(4).

(2) A licensee providing foster care to a resident who is enrolled in a licensed hospice program and whose assessment plan includes a do-not-resuscitate order is considered to be providing protection to the resident for purposes of section 6(4) and the rules promulgated under this act if, in the event the resident suffers cessation of both spontaneous respiration and circulation, the licensee contacts the licensed hospice program.

History: Add. 1996, Act 194, Eff. Aug. 1, 1996
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.726b Adult foster care; description of services to patients or residents with alzheimer's disease; contents; "represents to the public" defined.

Sec. 26b. (1) Beginning not more than 90 days after the effective date of the amendatory act that added this section, an adult foster care large group home, an adult foster care small group home, or an adult foster care congregate facility that represents to the public that it provides inpatient or residential care or services, or both, to persons with Alzheimer's disease or related conditions shall provide to each prospective patient, resident, or surrogate decision maker a written description of the services provided by the home or facility to patients or residents with Alzheimer's disease or related conditions. A written description shall include, but not be limited to, all of the following:

(a) The overall philosophy and mission reflecting the needs of residents with Alzheimer's disease or related conditions.

(b) The process and criteria for placement in or transfer or discharge from a program for residents with alzheimer's disease or related conditions.

(c) The process used for assessment and establishment of a plan of care and its implementation.

(d) Staff training and continuing education practices.

(e) The physical environment and design features appropriate to support the function of residents with Alzheimer's disease or related conditions.

(f) The frequency and types of activities for residents with Alzheimer's disease or related conditions.

(g) Identification of supplemental fees for services provided to patients or residents with Alzheimer's disease or related conditions.

(2) As used in this section, “represents to the public” means advertises or markets the facility as providing specialized Alzheimer's or dementia care services.

History: Add. 2000, Act 476, Imd. Eff. Jan. 11, 2001
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.727 Posting license, inspection report, and other documents; retention of materials for public inspection.
Sec. 27. (1) A licensee operating an adult foster care congregate facility shall conspicuously post all of the following in an area of the facility accessible to residents, employees, and visitors:

(a) A current license.

(b) A complete copy of the most recent inspection report of the facility received from the department.

(c) A description, provided by the department, of complaint procedures established under this act and the name, address, and telephone number of a person authorized by the department to receive complaints.

(d) A complete list of materials available for public inspection which the facility is required to retain under subsection (2).

(2) A licensee operating an adult foster care congregate facility shall retain all of the following for public inspection:

(a) A complete copy of each inspection report of the facility received from the department during the past 5 years.

(b) A description of the services provided by the facility and the rates charged for those services and items for which a resident may be separately charged.

(c) A list of the name, address, and official position of each person having an ownership interest in the facility as required by section 13(4).

(d) A list of personnel employed or retained by the facility.

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.728 Repealed. 1984, Act 40, Imd. Eff. Mar. 26, 1984.

Compiler's Notes: The repealed section pertained to persons not within area of specialization.

400.729 Providing foster care to person related to licensee or licensee's spouse.

Sec. 29. This act shall not prohibit an adult foster care facility from providing foster care to a person related to the licensee or the licensee's spouse for compensation or otherwise. The related person shall be considered in determining the number of residents being cared for in the facility if the person is provided adult foster care services for compensation.

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.730 Injunction.

Sec. 30. The attorney general, on behalf of the department, may seek an injunction against an adult foster care facility in either of the following cases:

(a) The facility is being operated without a license in violation of section 13.

(b) A licensee violates this act or a rule promulgated under this act and the violation may result in serious harm to the residents under care.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1992, Act 176, Imd. Eff. July 23, 1992
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.731 Violation as misdemeanor; prohibited conduct.

Sec. 31. (1) Except as otherwise provided in section 13 or section 22, a person, adult foster care facility, agency, or representative or officer of a corporation, association, or organization who violates this act is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(2) A person convicted of a misdemeanor under this act or under chapter XXA of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.145m to 750.145r of the Michigan Compiled Laws, shall not be involved with an adult foster care facility for a period of 5 years after the conviction in any of the following ways:

(a) Participate in the administration or operation of the facility.

(b) Have a financial interest in the operation of the facility.

(c) Provide care to residents of the facility.

(d) Have contact with residents or staff on the premises of the facility.

(e) Be employed by the facility.

(f) Reside in the facility.

(3) A person convicted of a felony under this act or under chapter XXA of Act No. 328 of the Public Acts of 1931 shall not be involved with an adult foster care facility in any of the following ways:

(a) Participate in the administration or operation of the facility.

(b) Have a financial interest in the operation of the facility.

(c) Provide care to residents of the facility.

(d) Have contact with residents or staff on the premises of the facility.

(e) Be employed by the facility.

(f) Reside in the facility.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1990, Act 262, Eff. Mar. 28, 1991 ;-- Am. 1994, Act 150, Imd. Eff. June 7, 1994

Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II

transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.731a Person sentenced to perform community service.

Sec. 31a. (1) In addition to or as an alternative to imposing a term of imprisonment under this act, the court may sentence the person to perform community service as follows:

(a) If the person is convicted of a felony, community service for not more than 160 days.

(b) If the person is convicted of a misdemeanor, community service for not more than 80 days.

(2) For purposes of this section, community service shall not include activities involving interaction with or care of vulnerable adults.

(3) A person sentenced to perform community service under this section shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

History: Add. 1994, Act 150, Imd. Eff. June 7, 1994

Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.732 Notices required.
Sec. 32. (1) The department shall notify the clerk of the city, village, or township where a proposed adult foster care facility is to be located at least 45 days before the issuance of a license.

(2) The department shall notify the clerk of the city, village, or township of all newly licensed adult foster care facilities within 30 days after the issuance of a license.

(3) The department shall notify the clerk of the city, village, or township of the location of all licensed adult foster care facilities within the boundaries of that city, village, or township within 30 days after receipt of the request.

History: 1979, Act 218, Eff. Mar. 27, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.733 Local ordinances, regulations, or construction codes.
Sec. 33. This act supersedes all local regulations applicable specifically to adult foster care facilities. Local ordinances, regulations, or construction codes regulating institutions shall not be applied to adult foster care large group homes, adult foster care small group homes, or adult foster care family homes. This section shall not be construed to exempt adult foster care facilities from local construction codes which are applicable to private residences.

History: 1979, Act 218, Eff. Mar. 27, 1980
Constitutionality: Section 3b of the City and Village Zoning Act and § 33 of the Adult Foster Care Facility Licensing Act do not violate the Title-Object Clause of the Michigan Constitution. City of Livonia v Department of Social Services, 423 Mich 466; 335 NW2d 473 (1985).
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II

transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.734 Repealed. 1984, Act 40, Imd. Eff. Mar. 26, 1984.

Compiler's Notes: The repealed section pertained to legislative review.

400.734a Repealed. 2006, Act 29, Eff. Apr. 1, 2006.

Compiler's Notes: The repealed section pertained to criminal history check of employee providing direct services.

400.734b Employing or contracting with certain employees providing direct services to residents; prohibitions; criminal history check; exemptions; written consent and identification; conditional employment; use of criminal history record information; disclosure; failure to conduct criminal history check; automated fingerprint identification system database; report to legislature; costs; definitions.

Sec. 34b. (1) In addition to the restrictions prescribed in sections 13, 22, and 31, and except as otherwise provided in subsection (2), an adult foster care facility shall not employ or independently contract with an individual who regularly has direct access to or provides direct services to residents of the adult foster care facility after April 1, 2006 if the individual satisfies 1 or more of the following:

(a) Has been convicted of a relevant crime described under 42 USC 1320a-7.

(b) Has been convicted of any of the following felonies, an attempt or conspiracy to commit any of those felonies, or any other state or federal crime that is similar to the felonies described in this subdivision, other than a felony for a relevant crime described under 42 USC 1320a-7, unless 15 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for

that conviction prior to the date of application for employment or the date of the execution of the independent contract:

(i) A felony that involves the intent to cause death or serious impairment of a body function, that results in death or serious impairment of a body function, that involves the use of force or violence, or that involves the threat of the use of force or violence.

(ii) A felony involving cruelty or torture.

(iii) A felony under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(iv) A felony involving criminal sexual conduct.

(v) A felony involving abuse or neglect.

(vi) A felony involving the use of a firearm or dangerous weapon.

(vii) A felony involving the diversion or adulteration of a prescription drug or other medications.

(c) Has been convicted of a felony or an attempt or conspiracy to commit a felony, other than a felony for a relevant crime described under 42 USC 1320a-7 or a felony described under subdivision (b), unless 10 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or the date of the execution of the independent contract.

(d) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 10 years immediately preceding the date of application for employment or the date of the execution of the independent contract:

(i) A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, the use of a firearm or dangerous weapon that results in a personal injury, or a misdemeanor involving the use of force or violence or the threat of the use of force or violence.

(ii) A misdemeanor under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(iii) A misdemeanor involving criminal sexual conduct.

(iv) A misdemeanor involving cruelty or torture unless otherwise provided under subdivision (e).

(v) A misdemeanor involving abuse or neglect.

(e) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 5 years immediately preceding the date of application for employment or the date of the execution of the independent contract:

(i) A misdemeanor involving cruelty if committed by an individual who is less than 16 years of age.

(ii) A misdemeanor involving home invasion.

(iii) A misdemeanor involving embezzlement.

(iv) A misdemeanor involving negligent homicide.

(v) A misdemeanor involving larceny unless otherwise provided under subdivision (g).

(vi) A misdemeanor of retail fraud in the second degree unless otherwise provided under subdivision (g).

(vii) Any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance unless otherwise provided under subdivision (d), (f), or (g).

(f) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 3 years immediately preceding the date of application for employment or the date of the execution of the independent contract:

(i) A misdemeanor for assault if there was no use of a firearm or dangerous weapon and no intent to commit murder or inflict great bodily injury.

(ii) A misdemeanor of retail fraud in the third degree unless otherwise provided under subdivision (g).

(iii) A misdemeanor under part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided under subdivision (g).

(g) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the year immediately preceding the date of application for employment or the date of the execution of the independent contract:

(i) A misdemeanor under part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the time of conviction, is under the age of 18.

(ii) A misdemeanor for larceny or retail fraud in the second or third degree if the individual, at the time of conviction, is under the age of 16.

(h) Is the subject of an order or disposition under section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

(i) Has been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency according to an investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

(2) Except as otherwise provided in subsection (6), an adult foster care facility shall not employ or independently contract with an individual who has direct access to residents after April 1, 2006 until the adult foster care facility conducts a criminal history check in compliance with subsections (4) and (5). This subsection and subsection (1) do not apply to an individual who is employed by or under contract to an adult foster care facility before April 1, 2006. Beginning April 1, 2009, an individual who is exempt under this subsection shall provide the department of state police a set of fingerprints and the department of state police shall input those fingerprints into the automated fingerprint identification system database established under subsection (12). An individual who is exempt under this subsection is not limited to working within the adult foster care facility with which he or she is employed by or under independent contract with on April 1, 2006. That individual may transfer to another adult foster care facility that is under the same ownership with which he or she was employed or under contract. If that individual wishes to transfer to an adult foster care facility that is not under the same ownership, he or she may do so provided that a criminal history check is conducted by the new facility in accordance with subsection (4). If an individual who is exempt under this subsection is subsequently convicted of a crime or offense described under subsection (1)(a) to (g) or found to be the subject of a substantiated finding described under subsection (1)(i) or an order or disposition described under subsection (1)(h), or is found to have been convicted of a relevant crime described under subsection (1)(a), he or she is no longer exempt and shall be terminated from employment or denied employment.

(3) An individual who applies for employment either as an employee or as an independent contractor with an adult foster care facility and has received a good faith offer of employment or independent contract from

the adult foster care facility shall give written consent at the time of application for the department of state police to conduct an initial criminal history check under this section. The individual, at the time of initial application, shall provide identification acceptable to the department of state police.

(4) Upon receipt of the written consent and identification required under subsection (3), the adult foster care facility that has made a good faith offer of employment or independent contract shall make a request to the department of state police to conduct a criminal history check on the individual and input the individual's fingerprints into the automated fingerprint identification system database, and shall make a request to the relevant licensing or regulatory department to perform a check of all relevant registries established according to federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. The request shall be made in a manner prescribed by the department of state police and the relevant licensing or regulatory department or agency. The adult foster care facility shall make the written consent and identification available to the department of state police and the relevant licensing or regulatory department or agency. If the department of state police or the federal bureau of investigation charges a fee for conducting the initial criminal history check, the charge shall be paid by or reimbursed by the department with federal funds as provided to implement a pilot program for national and state background checks on direct patient access employees of long-term care facilities or providers in accordance with section 307 of the medicare prescription drug, improvement, and modernization act of 2003, Public Law 108-173. The adult foster care facility shall not seek reimbursement for a charge imposed by the department of state police or the federal bureau of investigation from the individual who is the subject of the initial criminal history check. The department of state police shall conduct an initial criminal history check on the individual named in the request. The department of state police shall provide the department with a written report of the criminal history check conducted under this subsection that contains a criminal record. The report shall contain any criminal history record information on the individual maintained by the department of state police.

(5) Upon receipt of the written consent and identification required under subsection (3), if the individual has applied for employment either as an employee or as an independent contractor with an adult foster care facility, the adult foster care facility that has made a good faith offer of employment or independent contract shall comply with subsection (4) and shall make a request to the department of state police to forward the individual's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the individual. An individual described in this subsection shall provide the department of state police with a set of fingerprints. The department of state police shall complete the criminal history check under subsection (4) and, except as otherwise provided in this subsection, provide the results of its determination under subsection (4) and the results of the federal bureau of investigation determination to the department within 30 days after the request is made. If the requesting adult foster care facility is not a state department or agency and if a criminal conviction is disclosed on the written report of the criminal history check obtained under subsection (4) or the federal bureau of investigation determination, the department shall notify the adult foster care facility and the individual in writing of the type of crime disclosed on the written report of the criminal history check obtained under subsection (4) or the federal bureau of investigation determination without disclosing the details of the crime. The notification shall inform the facility or agency and the applicant regarding the appeal process in section 34c. Any charges imposed by the department of state police or the federal bureau of investigation for conducting an initial criminal history check or making a determination under this subsection shall be paid in the manner required under subsection (4).

(6) If an adult foster care facility determines it necessary to employ or independently contract with an individual before receiving the results of the individual's criminal history check required under this section, the adult foster care facility may conditionally employ the individual if both of the following apply:

(a) The adult foster care facility requests the criminal history check required under this section, upon conditionally employing the individual.

(b) The individual signs a written statement indicating all of the following:

(i) That he or she has not been convicted of 1 or more of the crimes that are described in subsection (1)(a) to (g) within the applicable time period prescribed by subsection (1)(a) to (g).

(ii) That he or she is not the subject of an order or disposition described in subsection (1)(h).

(iii) That he or she has not been the subject of a substantiated finding as described in subsection (1)(i).

(iv) The individual agrees that, if the information in the criminal history check conducted under this section does not confirm the individual's statement under subparagraphs (i) to (iii), his or her employment will be terminated by the adult foster care facility as required under subsection (1) unless and until the individual can prove that the information is incorrect.

(v) That he or she understands the conditions described in subparagraphs (i) to (iv) that result in the termination of his or her employment and that those conditions are good cause for termination.

(7) The department shall develop and distribute the model form for the statement required under subsection (6)(b). The department shall make the model form available to adult foster care facilities upon request at no charge.

(8) If an individual is conditionally employed under subsection (6), and the report described in subsection (4) or (5), if applicable, does not confirm the individual's statement under subsection (6)(b)(i) to (iii), the adult foster care facility shall terminate the individual's employment as required by subsection (1).

(9) An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on a statement described in subsection (6)(b)(i) to (iii) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

(10) An adult foster care facility shall use criminal history record information obtained under subsection (4) or (5) only for the purpose of evaluating an individual's qualifications for employment in the position for which he or she has applied and for the purposes of subsections (6) and (8). An adult foster care facility or an employee of the adult foster care facility shall not disclose criminal history record information obtained under this section to a person who is not directly involved in evaluating the individual's qualifications for employment or independent contract. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection (4) or (5) in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both. Upon written request from another adult foster care facility, psychiatric facility or intermediate care facility for people with mental retardation, or health facility or agency that is considering employing or independently contracting with an individual, an adult foster care facility that has obtained criminal history record information under this section on that individual shall, with the consent of the applicant, share the information with the requesting adult foster care facility, psychiatric facility or intermediate care facility for people with mental retardation, or health facility or agency. Except for a knowing or intentional release of false information, an adult foster care facility has no liability in connection with a background check conducted under this section or the release of criminal history record information under this subsection.

(11) As a condition of continued employment, each employee or independent contractor shall do both of the following:

(a) Agree in writing to report to the adult foster care facility immediately upon being arraigned on 1 or more of the criminal offenses listed in

subsection (1)(a) to (g), upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) to (g), upon becoming the subject of an order or disposition described under subsection (1)(h), and upon becoming the subject of a substantiated finding described under subsection (1)(i). Reporting of an arraignment under this subdivision is not cause for termination or denial of employment.

(b) If a set of fingerprints is not already on file with the department of state police, provide the department of state police with a set of fingerprints.

(12) In addition to sanctions set forth in this act, a licensee, owner, administrator, or operator of an adult foster care facility who knowingly and willfully fails to conduct the criminal history checks as required under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $5,000.00, or both.

(13) In collaboration with the department of state police, the department of information technology shall establish an automated fingerprint identification system database that would allow the department of state police to store and maintain all fingerprints submitted under this section and would provide for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective adult foster care facility with which that individual is associated. Information in the database established under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(14) If an individual independently contracts with an adult foster care facility, subsections (1) and (2) do not apply if the contractual work performed by the individual is not directly related to the clinical, health

care, or personal services delivered by the adult foster care facility or if the individual's duties are not performed on an ongoing basis with direct access to residents. This exception includes, but is not limited to, an individual who independently contracts with the adult foster care facility to provide utility, maintenance, construction, or communication services.

(15) The department and the department of state police shall maintain an electronic web-based system to assist the adult foster care facilities required to check relevant registries and conduct criminal history checks of its employees and independent contractors and to provide for an automated notice to the adult foster care facilities for the individuals entered in the system who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding of abuse, neglect, or misappropriation of property.

(16) The department shall submit to the legislature not later than April 1, 2009 a written report regarding the department's plan to continue performing criminal history checks if adequate federal funding is not available to continue performing future criminal history checks.

(17) An adult foster care facility or a prospective employee covered under this section may not be charged for the cost of an initial criminal history check required under this act.

(18) As used in this section:

(a) "Direct access" means access to a resident or resident's property, financial information, medical records, treatment information, or any other identifying information.

(b) "Health facility or agency" means a health facility or agency as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(c) "Independent contract" means a contract entered into by an adult foster care facility with an individual who provides the contracted services independently or a contract entered into by an adult foster care

facility with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the adult foster care facility on behalf of the organization or agency.

(d) "Title XIX" means title XIX of the social security act, 42 USC 1396 to 1396r-6 and 1396r-8 to 1396v.

History: Add. 2006, Act 29, Eff. Apr. 1, 2006 ;-- Am. 2008, Act 135, Imd. Eff. May 21, 2008

Compiler's Notes: Enacting section 2 of Act 29 of 2006 provides:"Enacting section 2. Sections 34b and 34c of the adult foster care facility licensing act, 1979 PA 218, MCL 400.734b, as added by this amendatory act, take effect April 1, 2006, since the department has secured the necessary federal approval to utilize federal funds to reimburse those facilities for the costs incurred for requesting a national criminal history check to be conducted by the federal bureau of investigation and the department has filed written notice of that approval with the secretary of state. The department shall issue a medicaid policy bulletin regarding the payment and reimbursement for the criminal history checks by April 1, 2006."For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.734c Disqualification from or denial of employment based on criminal history check; appeal; decision; report to legislature; "business day" defined.

Sec. 34c. (1) An individual who has been disqualified from or denied employment by an adult foster care facility based on a criminal history check conducted pursuant to section 34a or 34b may appeal to the department if he or she believes that the criminal history report is inaccurate, and the appeal shall be conducted as a contested case hearing conducted pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The individual shall file the appeal with the director of the department within 15 business days after receiving the written report of the criminal history check unless the conviction contained in the criminal history report is one that may be expunged or

set aside. If an individual has been disqualified or denied employment based on a conviction that may be expunged or set aside, then he or she shall file the appeal within 15 business days after a court order granting or denying his or her application to expunge or set aside that conviction is granted. If the order is granted and the conviction is expunged or set aside, then the individual shall not be disqualified or denied employment based solely on that conviction. The director shall review the appeal and issue a written decision within 30 business days after receiving the appeal. The decision of the director is final.

(2) One year after the effective date of this section and each year thereafter for the next 3 years, the department shall provide the legislature with a written report regarding the appeals process implemented under this section for employees subject to criminal history checks. The report shall include, but is not limited to, for the immediately preceding year the number of applications for appeal received, the number of inaccuracies found and appeals granted with regard to the criminal history checks conducted under section 34b, the average number of days necessary to complete the appeals process for each appeal, and the number of appeals rejected without a hearing and a brief explanation of the denial.

(3) As used in this section, "business day" means a day other than a Saturday, Sunday, or any legal holiday.

History: Add. 2006, Act 29, Eff. Apr. 1, 2006
Compiler's Notes: Enacting section 2 of Act 29 of 2006 provides:"Enacting section 2. Sections 34b and 34c of the adult foster care facility licensing act, 1979 PA 218, MCL 400.734b, as added by this amendatory act, take effect April 1, 2006, since the department has secured the necessary federal approval to utilize federal funds to reimburse those facilities for the costs incurred for requesting a national criminal history check to be conducted by the federal bureau of investigation and the department has filed written notice of that approval with the secretary of state. The department shall issue a medicaid policy bulletin regarding the payment and reimbursement for the criminal history checks by April 1, 2006."For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of

adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.735 Repeal of MCL 331.681 to 331.694.

Sec. 35. Act No. 287 of the Public Acts of 1972, as amended, being sections 331.681 to 331.694 of the Michigan Compiled Laws, is repealed.

History: 1979, Act 218, Eff. Mar. 27, 1980 ;-- Am. 1984, Act 40, Imd. Eff. Mar. 26, 1984

Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.736 Concurrent license as foster family home or foster family group home; receiving additional minor children; definitions.

Sec. 36. (1) An adult foster care family home may be concurrently licensed as a foster family home or a foster family group home. Except as provided in subsection (2), additional minor children who are not related to a resident of the adult foster care family home shall not be received in the adult foster care family home after the filing of an application for a license under this act.

(2) A licensee may receive a minor child placed in foster care under the laws of this state after filing an application for a license under this act. A placement under this subsection shall be approved at the discretion of the director or his or her designee and shall be based upon a recommendation by a licensed child placing agency or an approved governmental unit and shall be subject to appropriate terms and conditions determined by the department.

(3) As used in this section:

(a) “Foster family home” means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(b) “Foster family group home” means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

History: Add. 1984, Act 140, Imd. Eff. June 1, 1984 ;-- Am. 2004, Act 59, Eff. Aug. 1, 2004
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

400.737 Concurrently licensing adult foster care small group home as child caring institution; receiving additional children under 18 years of age; limitation on combined licensed capacity; definition.
Sec. 37. (1) An adult foster care small group home may be concurrently licensed as a child caring institution. Additional children under 18 years of age who are not related to a resident of the adult foster care small group home shall not be received in the adult foster care small group home after the filing of an application for a license pursuant to this act. The combined licensed capacity shall not exceed more than a combination of 6 children and adults.

(2) As used in this section, “child caring institution” means that term as defined in section 1 of Act No. 116 of the Public Acts of 1973, being section 722.111 of the Michigan Compiled Laws.

History: Add. 1984, Act 140, Imd. Eff. June 1, 1984
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of adult foster care

licensing advisory council to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

CHILD CARE ORGANIZATIONS
Act 116 of 1973

AN ACT to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts.

History: 1973, Act 116, Eff. Mar. 29, 1974 ;-- Am. 1994, Act 209, Eff. Jan. 1, 1995 ;-- Am. 1997, Act 165, Eff. Mar. 31, 1998
Popular Name: Act 116
Popular Name: Child Care Licensing Act

The People of the State of Michigan enact:

722.111 Definitions; exemption from inspections and on-site visits.
Sec. 1. (1) As used in this act:

(a) "Child care organization" means a governmental or nongovernmental organization having as its principal function receiving minor children for care, maintenance, training, and supervision, notwithstanding that educational instruction may be given. Child care organization includes organizations commonly described as child caring institutions, child placing agencies, children's camps, children's campsites, children's therapeutic group homes, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes, or child care homes. Child care organization does not include a governmental or nongovernmental organization that does either of the following:

(i) Provides care exclusively to minors who have been emancipated by court order under section 4(3) of 1968 PA 293, MCL 722.4.

(ii) Provides care exclusively to persons who are 18 years of age or older and to minors who have been emancipated by court order under section 4(3) of 1968 PA 293, MCL 722.4, at the same location.

(b) "Child caring institution" means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year. An educational program may be provided, but the educational program shall not be the primary purpose of the facility. Child caring institution includes a maternity home for the care of unmarried mothers who are minors and an agency group home, that is described as a small child caring institution owned, leased, or rented by a licensed agency providing care for more than 4 but less than 13 minor children. Child caring institution also includes institutions for mentally retarded or emotionally disturbed minor children. Child caring institution does not include a hospital, nursing home, or home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, a boarding school licensed under section 1335 of the revised school code, 1976 PA 451, MCL 380.1335, a hospital or facility operated by the state or licensed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a child has been placed under section 5(6).

(c) "Child placing agency" means a governmental organization or an agency organized under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, for the purpose of receiving children for placement in private family homes for foster care or for adoption. The function of a child placing agency may include investigating applicants for adoption and investigating and certifying foster family homes and foster family group homes as provided in this act. The function of a child placing agency may also include supervising children who are 16 or 17 years of age and who are living in unlicensed residences as provided in section 5(4).

(d) "Children's camp" means a residential, day, troop, or travel camp that provides care and supervision and is conducted in a natural environment for more than 4 children, apart from the children's parents, relatives, or legal guardians, for 5 or more days in a 14-day period.

(e) "Children's campsite" means the outdoor setting where a children's residential or day camp is located.

(f) "Children's therapeutic group home" means a child caring institution receiving not more than 6 minor children who are diagnosed with a developmental disability as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a serious emotional disturbance as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d. A children's therapeutic group home meets all of the following requirements:

(i) Provides care, maintenance, and supervision, usually on a 24-hour basis.

(ii) Complies with the rules for child caring institutions, except that behavior management rooms, personal restraint, mechanical restraint, or seclusion which is allowed in certain circumstances under licensing rules are prohibited in a children's therapeutic group home.

(iii) Is not a private home.

(iv) Is not located on a campus with other licensed facilities.

(g) "Child care center" or "day care center" means a facility, other than a private residence, receiving 1 or more preschool or school-age children for care for periods of less than 24 hours a day, where the parents or guardians are not immediately available to the child. Child care center or day care center includes a facility that provides care for not less than 2 consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group,

before- or after-school program, or drop-in center. Child care center or day care center does not include any of the following:

(i) A Sunday school, a vacation bible school, or a religious instructional class that is conducted by a religious organization where children are attending for not more than 3 hours per day for an indefinite period or for not more than 8 hours per day for a period not to exceed 4 weeks during a 12-month period.

(ii) A facility operated by a religious organization where children are in the religious organization's care for not more than 3 hours while persons responsible for the children are attending religious services.

(iii) A program that is primarily supervised, school-age-child-focused training in a specific subject, including, but not limited to, dancing, drama, music, or religion. This exclusion applies only to the time a child is involved in supervised, school-age-child-focused training.

(iv) A program that is primarily an incident of group athletic or social activities for school-age children sponsored by or under the supervision of an organized club or hobby group, including, but not limited to, youth clubs, scouting, and school-age recreational or supplementary education programs. This exclusion applies only to the time the school-age child is engaged in the group athletic or social activities and if the school-age child can come and go at will.

(h) "Department" means the department of human services or a successor agency or department responsible for licensure and registration under this act.

(i) "Private home" means a private residence in which the licensee or registrant permanently resides as a member of the household, which residency is not contingent upon caring for children or employment by a licensed or approved child placing agency. Private home includes a full-time foster family home, a full-time foster family group home, a group child care home, or a family child care home, as follows:

(i) "Foster family home" is a private home in which 1 but not more than 4 minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, are given care and supervision for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent, legal guardian, or legal custodian.

(ii) "Foster family group home" means a private home in which more than 4 but fewer than 7 minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, are provided care for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent, legal guardian, or legal custodian.

(iii) "Family child care home" means a private home in which 1 but fewer than 7 minor children are received for care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Family child care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year.

(iv) "Group child care home" means a private home in which more than 6 but not more than 12 minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Group child care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year.

(j) "Legal custodian" means an individual who is at least 18 years of age in whose care a minor child remains or is placed after a court makes a

finding under section 13a(5) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(k) "Licensee" means a person, partnership, firm, corporation, association, nongovernmental organization, or local or state government child care organization that has been issued a license under this act to operate a child care organization.

(l) "Provisional license" means a license issued to a child care organization that is temporarily unable to conform to all of the rules promulgated under this act.

(m) "Regular license" means a license issued to a child care organization indicating that the organization is in compliance with all rules promulgated under this act.

(n) "Guardian" means the guardian of the person.

(o) "Minor child" means any of the following:

(i) A person less than 18 years of age.

(ii) A person who is a resident in a child caring institution, children's camp, foster family home, or foster family group home; who becomes 18 years of age while residing in the child caring institution, children's camp, foster family home, or foster family group home; and who continues residing in the child caring institution, children's camp, foster family home, or foster family group home to receive care, maintenance, training, and supervision. A minor child under this subparagraph does not include a person 18 years of age or older who is placed in a child caring institution, foster family home, or foster family group home under an adjudication under section 2(a) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or section 1 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1. This subparagraph applies only if the number of those residents who become 18 years of age does not exceed the following:

(A) Two, if the total number of residents is 10 or fewer.

(B) Three, if the total number of residents is not less than 11 and not more than 14.

(C) Four, if the total number of residents is not less than 15 and not more than 20.

(D) Five, if the total number of residents is 21 or more.

(iii) A person 18 years of age or older who is placed in a foster family home under section 5(7).

(p) "Registrant" means a person who has been issued a certificate of registration under this act to operate a family child care home.

(q) "Registration" means the process by which the department regulates family child care homes, and includes the requirement that a family child care home certify to the department that the family child care home has complied with and will continue to comply with the rules promulgated under this act.

(r) "Certificate of registration" means a written document issued under this act to a family child care home through registration.

(s) "Related" means a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin, great aunt, great uncle, or stepgrandparent related by marriage, blood, or adoption.

(t) "Religious organization" means a church, ecclesiastical corporation, or group, not organized for pecuniary profit, that gathers for mutual support and edification in piety or worship of a supreme deity.

(u) "School-age child" means a child who is eligible to be enrolled in a grade of kindergarten or above, but is less than 13 years of age.

(2) A facility or program for school-age children that is currently operated and has been in operation and licensed or approved as provided in this act for a minimum of 2 years may apply to the department to be exempt from inspections and on-site visits required under section 5. The department shall respond to a facility or program requesting exemption from inspections and on-site visits required under section 5 as provided under this subsection within 45 days from the date the completed application is received. The department may grant exemption from inspections and on-site visits required under section 5 to a facility or program that meets all of the following criteria:

(a) The facility or program has been in operation and licensed or approved under this act for a minimum of 2 years immediately preceding the application date.

(b) During the 2 years immediately preceding the application date, the facility or program has not had a substantial violation of this act, rules promulgated under this act, or the terms of a licensure or an approval under this act.

(c) The school board, board of directors, or governing body adopts a resolution supporting the application for exemption from inspections and on-site visits required under section 5 as provided for in this subsection.

(3) A facility or program granted exemption from inspections and on-site visits required under section 5 as provided under subsection (2) is required to maintain status as a licensed or approved program under this act and must continue to meet the requirements of this act, the rules promulgated under this act, or the terms of a license or approval under this act. A facility or program granted exemption from inspections and on-site visits required under section 5 as provided under subsection (2) is subject to an investigation by the department if a violation of this act or a violation of a rule promulgated under this act is alleged.

(4) A facility or program granted exemption from inspections and on-site visits required under section 5 as provided under subsection (2) is not subject to interim or annual licensing reviews. A facility or program

granted exemption from inspections and on-site visits required under section 5 as provided under subsection (2) is required to submit documentation annually demonstrating compliance with the requirements of this act, the rules promulgated under this act, or the terms of a license or approval under this act.

(5) An exemption provided under subsection (2) may be rescinded by the department if the facility or program willfully and substantially violates this act, the rules promulgated under this act, or the terms of a license or approval granted under this act.

History: 1973, Act 116, Eff. Mar. 29, 1974 ;-- Am. 1978, Act 438, Imd. Eff. Oct. 5, 1978 ;-- Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980 ;-- Am. 1980, Act 232, Imd. Eff. July 20, 1980 ;-- Am. 1980, Act 510, Imd. Eff. Jan. 26, 1981 ;-- Am. 1981, Act 126, Imd. Eff. July 23, 1981 ;-- Am. 1984, Act 139, Imd. Eff. June 1, 1984 ;-- Am. 1991, Act 162, Imd. Eff. Dec. 9, 1991 ;-- Am. 1994, Act 205, Eff. Jan. 1, 1995 ;-- Am. 2002, Act 696, Eff. Mar. 31, 2003 ;-- Am. 2005, Act 202, Imd. Eff. Nov. 10, 2005 ;-- Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007 ;-- Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007
Constitutionality: The First and Fourteenth Amendments of the United States Constitution do not prevent the state from compelling the defendants to conform to the licensure requirements of the childcare organization act. Department of Social Services v. Emmanuel Baptist Preschool, 434 Mich. 380, 455 N.W.2d 1 (1990).
Compiler's Notes: For transfer of powers and duties of child welfare licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.111a Concurrent licensing as adult foster care family home; additional children; combined licensed capacity; definitions.

Sec. 1a. (1) A private residence licensed as a foster family home or foster family group home may be concurrently licensed as an adult foster care family home. Additional children not related to a resident of the foster family home or foster family group home shall not be received in the

foster family home or foster family group home after the filing of an application for an adult foster care family home license.

(2) A child caring institution with a licensed capacity of 6 or fewer residents may be concurrently licensed as an adult foster care small group home. Additional children not related to a resident of the child caring institution shall not be received in the child caring institution after the filing of an application for an adult foster care small group home license. The combined licensed capacity shall not exceed a combination of 6 children and adults.

(3) As used in this section:

(a) “Adult foster care family home” means that term as defined in section 3 of the adult foster care facility licensing act, Act No. 218 of the Public Acts of 1979, being section 400.703 of the Michigan Compiled Laws.

(b) “Adult foster care small group home” means that term as defined in section 3 of the adult foster care facility licensing act, Act No. 218 of the Public Acts of 1979, being section 400.703 of the Michigan Compiled Laws.

History: Add. 1984, Act 139, Imd. Eff. June 1, 1984
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.112 Rules; ad hoc committee; review.
Sec. 2. (1) The department of human services, referred to in this act as the "department", is responsible for the development of rules for the care and protection of children in organizations covered by this act and for the promulgation of these rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The department shall establish an ad hoc committee for each type of child care organization as defined in this act when it is formulating or

amending rules under this act. The committee shall consist of not less than 12 members, and shall include representatives of the following groups and agencies:

(a) Department of community health.

(b) Department of labor and economic growth, bureau of fire services, and state fire safety board.

(c) Department of education.

(d) Representatives of organizations affected by this act.

(e) Parents of children affected by this act.

(3) A majority of the members appointed to the committee established by subsection (2) shall be representatives of organizations affected by this act and parents of children affected by this act. The committee shall serve during the period of the formulation of rules, shall have responsibility for making recommendations on the content of rules, and shall recommend to the department revisions in proposed rules at any time before their promulgation.

(4) The rules promulgated under this act shall be restricted to the following:

(a) The operation and conduct of child care organizations and the responsibility the organizations assume for child care.

(b) The character, suitability, training, and qualifications of applicants and other persons directly responsible for the care and welfare of children served.

(c) The general financial ability and competence of applicants to provide necessary care for children and to maintain prescribed standards.

(d) The number of individuals or staff required to insure adequate supervision and care of the children received.

(e) The appropriateness, safety, cleanliness, and general adequacy of the premises, including maintenance of adequate fire prevention and health standards to provide for the physical comfort, care, and well being of the children received. However, the rules with respect to fire prevention and fire safety shall not apply to a child care center established and operated by an intermediate school board, the board of a local school district, or by the board or governing body of a state approved nonpublic school, if the child care center is located in a school building that is approved by the bureau of fire services created in section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b, or other similar authority as provided in section 3 of 1937 PA 306, MCL 388.853, for school purposes and is in compliance with the school fire safety rules, R 29.1901 to R 29.1934 of the Michigan administrative code, as determined by the bureau of fire services or a fire inspector certified pursuant to section 2b of the fire prevention code, 1941 PA 207, MCL 29.2b.

(f) Provisions for food, clothing, educational opportunities, programs, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of children served.

(g) Provisions to safeguard the legal rights of children served.

(h) Maintenance of records pertaining to admission, progress, health, and discharge of children.

(i) Filing of reports with the department.

(j) Discipline of children.

(k) Transportation safety.

(5) Rules once promulgated are subject to major review by an ad hoc committee not less than once every 5 years and shall be reviewed biennially by the department. The ad hoc committee shall be established

by the department, shall consist of not less than 12 members, and shall include representatives of the groups and agencies indicated in subsection (2). The ad hoc committee shall hold at least 2 public hearings regarding the review of rules and shall report its recommendations regarding rules to the appropriate committees of the legislature.

History: 1973, Act 116, Eff. Mar. 29, 1974 ;-- Am. 1983, Act 150, Imd. Eff. July 18, 1983 ;-- Am. 2006, Act 206, Imd. Eff. June 19, 2006
Constitutionality: The First and Fourteenth Amendments of the United States Constitution do not prevent the state from compelling the defendants to conform to the licensure requirements of the childcare organization act. Department of Social Services v. Emmanuel Baptist Preschool, 434 Mich. 380, 455 N.W.2d 1 (1990).
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act
Admin Rule: R 400.1 et seq.; R 400.1301 et seq.; R 400.4101 et seq.; R 400.5101 et seq.; R 400.5106 et seq.; R 400.9101 et seq.; R 400.11101 et seq.; R 400.12101 et seq.; and R 400.16001 of the Michigan Administrative Code.

722.112a Child caring institution, child care center, or group child care home; person certified in first aid and CPR; applicability of MCL 722.125.

Sec. 2a. (1) A child caring institution, child care center, or group child care home shall have on duty at all times while the institution, center, or home is providing care to 1 or more children at least 1 person who has been certified within the preceding 36 months in first aid and within the preceding 12 months in age-appropriate cardiopulmonary resuscitation by the American red cross, the American heart association, or an equivalent organization or institution approved by the department.

(2) Section 15 does not apply to this section.

History: Add. 1994, Act 349, Eff. Dec. 16, 1995 ;-- Am. 1998, Act 440, Imd. Eff. Dec. 30, 1998 ;-- Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.112b Definitions; scope.

Sec. 2b. (1) As used in this section and sections 2c, 2d, and 2e, unless the context requires otherwise:

(a) "Adaptive device" means a mechanical device incorporated in the individual plan of services that is intended to provide anatomical support or to assist the minor child with adaptive skills.

(b) "Chemical restraint" means a drug that meets all of the following criteria:

(i) Is administered to manage a minor child's behavior in a way that reduces the safety risk to the minor child or others.

(ii) Has the temporary effect of restricting the minor child's freedom of movement.

(iii) Is not a standard treatment for the minor child's medical or psychiatric condition.

(c) "Emergency safety intervention" means use of personal restraint or seclusion as an immediate response to an emergency safety situation.

(d) "Emergency safety situation" means the onset of an unanticipated, severely aggressive, or destructive behavior that places the minor child or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.

(e) "Individual plan of services" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

(f) "Licensed practitioner" means an individual who has been trained in the use of personal restraint and seclusion, who is knowledgeable of the

risks inherent in the implementation of personal restraint and seclusion, and who is 1 of the following:

(i) A physician licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) An individual who has been issued a specialty certification as a nurse practitioner under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iii) A physician's assistant licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iv) A registered nurse licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(v) A psychologist and a limited licensed psychologist licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(vi) A counselor and a limited licensed counselor licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(vii) A licensed master's social worker licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(g) "Mechanical restraint" means a device attached or adjacent to the minor child's body that he or she cannot easily remove and that restricts freedom of movement or normal access to his or her body. Mechanical restraint does not include the use of a protective or adaptive device or a device primarily intended to provide anatomical support. Mechanical restraint does not include use of a mechanical device to ensure security precautions appropriate to the condition and circumstances of a minor child placed in the child caring institution as a result of an order of the family division of circuit court under section 2(a) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(h) "Personal restraint" means the application of physical force without the use of a device, for the purpose of restraining the free movement of a minor child's body. Personal restraint does not include:

(i) The use of a protective or adaptive device.

(ii) Briefly holding a minor child without undue force in order to calm or comfort him or her.

(iii) Holding a minor child's hand, wrist, shoulder, or arm to safely escort him or her from 1 area to another.

(iv) The use of a protective or adaptive device or a device primarily intended to provide anatomical support.

(i) "Protective device" means an individually fabricated mechanical device or physical barrier, the use of which is incorporated in the individualized written plan of service. The use of a protective device is intended to prevent the minor child from causing serious self-injury associated with documented, frequent, and unavoidable hazardous events.

(j) "Seclusion" means the involuntary placement of a minor child in a room alone, where the minor child is prevented from exiting by any means, including the physical presence of a staff person if the sole purpose of that staff person's presence is to prevent the minor child from exiting the room. Seclusion does not include the use of a sleeping room during regular sleeping hours to ensure security precautions appropriate to the condition and circumstances of a minor child placed in the child caring institution as a result of an order of the family division of circuit court under section 2(a) and (b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, if the minor child's individual case treatment plan indicates that the security precautions would be in the minor child's best interest.

(k) "Serious injury" means any significant impairment of the physical condition of the minor child as determined by qualified medical

personnel that results from an emergency safety intervention. This includes, but is not limited to, burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.

(2) The provisions of this section and sections 2c, 2d, and 2e only apply to a child caring institution that contracts with or receives payment from a community mental health services program or prepaid inpatient health plan for the care, treatment, maintenance, and supervision of a minor child in that child caring institution.

History: Add. 2004, Act 531, Imd. Eff. Jan. 3, 2005 ;-- Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.112c Personal restraint and seclusion; use in child caring institution contracting with community mental health services program or prepaid inpatient health plan; education, training, and knowledge.

Sec. 2c. (1) If a child caring institution contracts with and receives payment from a community mental health services program or prepaid inpatient health plan for the care, treatment, maintenance, and supervision of a minor child in a child caring institution, the child caring institution may place a minor child in personal restraint or seclusion only as provided in this section and sections 2d and 2e but shall not use mechanical restraint or chemical restraint.

(2) Not later than 180 days after the effective date of the amendatory act that added this section, a child caring institution shall require its staff to have ongoing education, training, and demonstrated knowledge of all of the following:

(a) Techniques to identify minor children's behaviors, events, and environmental factors that may trigger emergency safety situations.

(b) The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods to prevent emergency safety situations.

(c) The safe use of personal restraint or seclusion, including the ability to recognize and respond to signs of physical distress in minor children who are in personal restraint or seclusion or who are being placed in personal restraint or seclusion.

(3) A child caring institution's staff shall be trained in the use of personal restraint and seclusion, shall be knowledgeable of the risks inherent in the implementation of personal restraint and seclusion, and shall demonstrate competency regarding personal restraint or seclusion before participating in the implementation of personal restraint or seclusion. A child caring institution's staff shall demonstrate their competencies in these areas on a semiannual basis. The state agency licensing child caring institutions shall review and determine the acceptability of the child caring institutions' staff education, training, knowledge, and competency requirements required by this subsection and the training and knowledge required of a licensed practitioner in the use of personal restraint and seclusion.

History: Add. 2004, Act 531, Imd. Eff. Jan. 3, 2005
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.112d Personal restraint or seclusion; use; limitations; requirements.

Sec. 2d. (1) Personal restraint or seclusion shall not be imposed as a means of coercion, discipline, convenience, or retaliation by a child caring institution's staff.

(2) An order for personal restraint or seclusion shall not be written as a standing order or on an as-needed basis.

(3) Personal restraint or seclusion must not result in harm or injury to the minor child and shall be used only to ensure the minor child's safety or the safety of others during an emergency safety situation. Personal restraint or seclusion shall only be used until the emergency safety situation has ceased and the minor child's safety and the safety of others can be ensured even if the order for personal restraint or seclusion has not expired. Personal restraint and seclusion of a minor child shall not be used simultaneously.

(4) Personal restraint or seclusion shall be performed in a manner that is safe, appropriate, and proportionate to the severity of the minor child's behavior, chronological and developmental age, size, gender, physical condition, medical condition, psychiatric condition, and personal history, including any history of physical or sexual abuse.

(5) Except as provided in subsection (6), at the time a minor child is admitted to a child caring institution, the child caring institution shall do all of the following:

(a) Inform the minor child and his or her parent or legal guardian of the provider's policy regarding the use of personal restraint or seclusion during an emergency safety situation that may occur while the minor child is under the care of the child caring institution.

(b) Communicate the provider's personal restraint and seclusion policy in a language that the minor child or his or her parent or legal guardian will understand, including American sign language, if appropriate. The provider shall procure an interpreter or translator, if necessary to fulfill the requirement of this subdivision.

(c) Obtain a written acknowledgment from the minor child's parent or legal guardian that he or she has been informed of the provider's policy on the use of personal restraint and seclusion during an emergency safety situation. The child caring institution's staff shall file the acknowledgment in the minor child's records.

(d) Provide a copy of the policy to the minor child's parent or legal guardian.

(6) The child caring institution is not required to inform, communicate, and obtain the written acknowledgment from a minor child's parent or legal guardian as specified in subsection (5) if the minor child is within the care and supervision of the child caring institution as a result of an order of commitment of the family division of circuit court to a state institution, state agency, or otherwise, and has been adjudicated to be a dependent, neglected, or delinquent under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, if the minor child's individual case treatment plan indicates that notice would not be in the minor child's best interest.

(7) An order for personal restraint or seclusion shall only be written by a licensed practitioner.

(8) A licensed practitioner shall order the least restrictive emergency safety intervention measure that is most likely to be effective in resolving the emergency safety situation based on consultation with staff. Consideration of less restrictive emergency safety intervention measures shall be documented in the minor child's record.

(9) If the order for personal restraint or seclusion is verbal, it must be received by a child caring institution staff member who is 1 of the following:

(a) A licensed practitioner.

(b) A social services supervisor as described in R 400.4118 of the Michigan administrative code.

(c) A supervisor of direct care workers as described in R 400.4120 of the Michigan administrative code.

(d) A practical nurse licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(10) A verbal order must be received while personal restraint or seclusion is being initiated by child caring institution staff or immediately after the emergency safety situation begins. The licensed practitioner shall be available to staff for consultation, at least by telephone, throughout the period of personal restraint or seclusion. The licensed practitioner shall verify the verbal order in signed written form in the minor child's record.

(11) An order for personal restraint or seclusion shall meet both of the following criteria:

(a) Be limited to no longer than the duration of the emergency safety situation.

(b) Not exceed 4 hours for a minor child 18 years of age or older; 2 hours for a minor child 9 to 17 years of age; or 1 hour for a minor child under 9 years of age.

(12) If more than 2 orders for personal restraint or seclusion are ordered for a minor child within a 24-hour period, the director of the child caring institution or his or her designated management staff shall be notified to determine whether additional measures should be taken to facilitate discontinuation of personal restraint or seclusion.

(13) If personal restraint continues for less than 15 minutes or seclusion continues for less than 30 minutes from the onset of the emergency safety intervention, the child caring institution staff qualified to receive a verbal order for personal restraint or seclusion, in consultation with the licensed practitioner, shall evaluate the minor child's psychological well-being immediately after the minor child is removed from seclusion or personal restraint. Staff shall also evaluate the minor child's physical well-being or determine if an evaluation is needed by a licensed practitioner authorized to conduct a face-to-face assessment under subsection (14).

(14) A face-to-face assessment shall be conducted if the personal restraint continues for 15 minutes or more from the onset of the

emergency safety intervention or if seclusion continues for 30 minutes or more from the onset of the emergency safety intervention. This face-to-face assessment shall be conducted by a licensed practitioner who is 1 of the following:

(a) A physician licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(b) An individual who has been issued a speciality certification as a nurse practitioner under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(c) A physician's assistant licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(d) A registered nurse licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(15) The face-to-face assessment shall be conducted within 1 hour of the onset of the emergency safety intervention and immediately after the minor child is removed from personal restraint or seclusion. The face-to-face assessment of the physical and psychological well-being of the minor child shall include, but is not limited to, all of the following:

(a) The minor child's physical and psychological status.

(b) The minor child's behavior.

(c) The appropriateness of the intervention measures.

(d) Any complications resulting from the intervention.

History: Add. 2004, Act 531, Imd. Eff. Jan. 3, 2005
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.112e Personal restraint or seclusion; release; documentation; record; notification; debriefing; report of serious occurrence; annual report.

Sec. 2e. (1) A minor child shall be released from personal restraint or seclusion whenever the circumstance that justified the use of personal restraint or seclusion no longer exists.

(2) Each instance of personal restraint or seclusion requires full justification for its use, and the results of the evaluation immediately following the use of personal restraint or seclusion shall be placed in the minor child's record.

(3) Each order for personal restraint or seclusion shall include all of the following:

(a) The name of the licensed practitioner ordering personal restraint or seclusion.

(b) The date and time the order was obtained.

(c) The personal restraint or seclusion ordered, including the length of time for which the licensed practitioner ordered its use.

(4) The child caring institution staff shall document the use of the personal restraint or seclusion in the minor child's record. That documentation shall be completed by the end of the shift in which the personal restraint or seclusion occurred. If the personal restraint or seclusion does not end during the shift in which it began, documentation shall be completed during the shift in which the personal restraint or seclusion ends. Documentation shall include all of the following:

(a) Each order for personal restraint or seclusion.

(b) The time the personal restraint or seclusion actually began and ended.

(c) The time and results of the 1-hour assessment.

(d) The emergency safety situation that required the resident to be personally restrained or secluded.

(e) The name of the staff involved in the personal restraint or seclusion.

(5) The child caring institution staff trained in the use of personal restraint shall continually assess and monitor the physical and psychological well-being of the minor child and the safe use of personal restraint throughout the duration of its implementation.

(6) The child caring institution staff trained in the use of seclusion shall be physically present in or immediately outside the seclusion room, continually assessing, monitoring, and evaluating the physical and psychological well-being of the minor. Video monitoring shall not be exclusively used to meet this requirement.

(7) The child caring institution staff shall ensure that documentation of staff monitoring and observation is entered into the minor child's record.

(8) If the emergency safety intervention continues beyond the time limit of the order for use of personal restraint or seclusion, child caring institution staff authorized to receive verbal orders for personal restraint or seclusion shall immediately contact the licensed practitioner to receive further instructions.

(9) The child caring institution staff shall notify the minor child's parent or legal guardian and the appropriate state or local government agency that has responsibility for the minor child if the minor child is under the supervision of the child caring institution as a result of an order of commitment by the family division of circuit court to a state institution or otherwise as soon as possible after the initiation of personal restraint or seclusion. This notification shall be documented in the minor child's record, including the date and time of the notification, the name of the staff person providing the notification, and the name of the person to whom notification of the incident was reported. The child caring institution is not required to notify the parent or legal guardian as provided in this subsection if the minor child is within the care and

supervision of the child caring institution as a result of an order of commitment of the family division of circuit court to a state institution, state agency, or otherwise, and has been adjudged to be dependent, neglected, or delinquent under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, if the minor child's individual case treatment plan indicates that the notice would not be in the minor child's best interest.

(10) Within 24 hours after the use of personal restraint or seclusion, child caring institution staff involved in the emergency safety intervention and the minor child shall have a face-to-face debriefing session. The debriefing shall include all staff involved in the seclusion or personal restraint except if the presence of a particular staff person may jeopardize the well-being of the minor child. Other staff members and the minor child's parent or legal guardian may participate in the debriefing if it is considered appropriate by the child caring institution.

(11) The child caring institution shall conduct a debriefing in a language that is understood by the minor child. The debriefing shall provide both the minor child and the staff opportunity to discuss the circumstances resulting in the use of personal restraint or seclusion and strategies to be used by staff, the minor child, or others that could prevent the future use of personal restraint or seclusion.

(12) Within 24 hours after the use of personal restraint or seclusion, all child caring institution staff involved in the emergency safety intervention, and appropriate supervisory and administrative staff, shall conduct a debriefing session that includes, at a minimum, all of the following:

(a) Discussion of the emergency safety situation that required personal restraint or seclusion, including a discussion of precipitating factors that led up to the situation.

(b) Alternative techniques that might have prevented the use of personal restraint or seclusion.

(c) The procedures, if any, that child caring institution staff are to implement to prevent a recurrence of the use of personal restraint or seclusion.

(d) The outcome of the emergency safety intervention, including any injury that may have resulted from the use of personal restraint or seclusion.

(13) The child caring institution staff shall document in the minor child's record that both debriefing sessions took place and shall include the names of staff who were present for the debriefings, names of staff that were excused from the debriefings, and changes to the minor child's treatment plan that result from the debriefings.

(14) Each child caring institution subject to this section and sections 2c and 2d shall report each serious occurrence to the state agency licensing the child caring institution. The state agency licensing the child caring institution shall make the reports available to the designated state protection and advocacy system upon request of the designated state protection and advocacy system. Serious occurrences to be reported include a minor child's death, a serious injury to a minor child, and a minor child's suicide attempt. Staff shall report any serious occurrence involving a minor child by no later than close of business of the next business day after a serious occurrence. The report shall include the name of the minor child involved in the serious occurrence, a description of the occurrence, and the name, street address, and telephone number of the child caring institution. The child caring institution shall notify the minor child's parent or legal guardian and the appropriate state or local government agency that has responsibility for the minor child if the minor child is under the supervision of the child caring institution as a result of an order of commitment by the family division of circuit court to a state institution or otherwise as soon as possible and not later than 24 hours after the serious occurrence. Staff shall document in the minor child's record that the serious occurrence was reported to both the state agency licensing the child caring institution and the state-designated protection and advocacy system, including the name of the person to whom notification of the incident was reported. A copy of the report

shall be maintained in the minor child's record, as well as in the incident and accident report logs kept by the child caring institution.

(15) Each child caring institution subject to this section and sections 2c and 2d shall maintain a record of the incidences in which personal restraint or seclusion was used for all minor children. The record shall include all of the following information:

(a) Whether personal restraint or seclusion was used.

(b) The setting, unit, or location in which personal restraint or seclusion was used.

(c) Staff who initiated the process.

(d) The duration of each use of personal restraint or seclusion.

(e) The date, time, and day of the week restraint or seclusion was initiated.

(f) Whether injuries were sustained by the minor child or staff.

(g) The age and gender of the minor child.

(16) Each child caring institution subject to this section and sections 2c and 2d shall submit a report annually to the state agency that licenses the child caring institution containing the aggregate data from the record of incidences for each 12-month period as directed by the state licensing agency. The state licensing agency shall prepare reporting forms to be used by the child caring institution, shall aggregate the data collected from each child caring institution, and shall annually report the data to each child caring institution and the state-designated protection and advocacy system.

History: Add. 2004, Act 531, Imd. Eff. Jan. 3, 2005
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.113 Inspection of child care organizations; contract; provisional license; investigation and certification of foster family home or group home; inspection reports; final determination as to license; report of findings; license limitations.
Sec. 3. (1) The rules promulgated by the department under this act shall be used by the department of community health, the bureau of fire services, and local authorities in the inspection of and reporting on child care organizations covered by this act. The inspection of the health and fire safety of child care organizations shall be completed by department staff or by the department of community health, the bureau of fire services, or local authorities upon request of the department, or pursuant to subsection (2).

(2) If an inspection is not conducted pursuant to subsection (1), a person owning or operating or who proposes to own or operate a child care organization may enter a contract with a local authority or other person qualified to conduct an inspection pursuant to subsection (1) and pay for that inspection after an inspection is completed pursuant to this subsection. A person may receive a provisional license if the proposed child care organization passes the inspection, and the other requirements of this act are met.

(3) The rules promulgated by the department for foster family homes and foster family group homes shall be used by a licensed child placing agency or an approved governmental unit when investigating and certifying a foster family home or a foster family group home.

(4) Inspection reports completed by state agencies, local authorities, and child placing agencies shall be furnished to the department and shall become a part of its evaluation for licensing of organizations covered by this act. After careful consideration of the reports and consultation where necessary, the department shall assume responsibility for the final determination of the issuance, denial, revocation, or provisional nature of licenses issued to nongovernmental organizations. A report of findings shall be furnished to the licensee. A license shall be issued to a specific

person or organization at a specific location, shall be nontransferable, and shall remain the property of the department.

History: 1973, Act 116, Eff. Mar. 29, 1974 ;-- Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980 ;-- Am. 1980, Act 232, Imd. Eff. July 20, 1980 ;-- Am. 2006, Act 206, Imd. Eff. June 19, 2006
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.113a Visiting child at child care center or day care center; effect of court order.

Sec. 3a. (1) A parent or legal guardian of a child at a child care center or day care center may visit the child at the center at any time.

(2) A parent or legal guardian who wishes to enroll a child at a child care center or day care center may visit the center before the child's enrollment at the times the center establishes.

(3) This section shall not be construed to permit parenting time with a child in violation of a court order.

History: Add. 1986, Act 140, Imd. Eff. July 1, 1986 ;-- Am. 1997, Act 165, Eff. Mar. 31, 1998
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.113b Smoking prohibited; “smoke” defined.

Sec. 3b. (1) An individual shall not smoke in a child caring institution or child care center or on real property that is under the control of a child caring institution or child care center and upon which the child caring institution or child care center is located, including other related buildings.

(2) As used in this section, “smoke” means that term as defined in section 12601 of the Public Health Code, Act No. 368 of the Public Acts of 1978, being section 333.12601 of the Michigan Compiled Laws.

History: Add. 1993, Act 211, Imd. Eff. Oct. 22, 1993
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.113c Smoking on premises of family child care home during hours of operation prohibited; notice to parents of smoking during other hours; definitions.
Sec. 3c. (1) An individual shall not smoke on the premises of a family child care home during the hours of operation of the family child care home. The operator of a family child care home may permit smoking on the premises during a period other than the hours of operation of that family child care home if the operator has provided to a parent or legal guardian of each child participating in a family child care home activity notice that smoking on the premises occurs or may occur when the family child care home is not in operation.

(2) As used in this section and section 3d:

(a) "Child" means an individual less than 18 years of age who is not related to an adult member of the family child care home or group child care home operator.

(b) "Smoke" and "smoking" mean those terms as defined in section 12601 of the public health code, 1978 PA 368, MCL 333.12601.

History: Add. 1993, Act 219, Eff. Apr. 1, 1994 ;-- Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.113d Smoking on premises of group child care home during hours of operation prohibited; posting notice; notice to parents of smoking during other hours.

Sec. 3d. (1) An individual shall not smoke on the premises of a group child care home during the hours of operation of the group child care home. The operator of a group child care home shall conspicuously post on the premises a notice that specifies that smoking on the premises is prohibited during the hours of operation of the group child care home.

(2) A group child care home operator may permit smoking on the premises during a period other than the hours of operation of that group child care home if the operator has provided to a parent or legal guardian of each child participating in a group child care home activity notice that smoking on the premises occurs or may occur when the group child care home is not in operation.

History: Add. 1993, Act 218, Eff. Apr. 1, 1994 ;-- Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.113e Criminal history check required; posting notice; rules.

Sec. 3e. The operator of a child care center or child caring institution shall conspicuously post on the premises a notice stating whether or not that child care center or child caring institution requires a criminal history check on its employees or volunteers. The department shall promulgate rules to implement this section under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: Add. 2002, Act 717, Eff. Mar. 31, 2003 ;-- Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.113f Child care organization receiving notice of special investigation classified as high risk; notification to parent or legal guardian; requirements; noncompliance; determination of substantial rule violations; availability of information to public; exceptions; "special investigation" defined.

Sec. 3f. (1) Except as provided in subsection (6), within 24 hours after a child care organization receives notice that a special investigation that the department classifies as high risk is being conducted, the child care organization shall make a good faith effort to make oral notification to each parent or legal guardian of 1 or more of the following:

(a) Children who were under the child care organization's care at the site and the time the incident being investigated occurred.

(b) If the individual being investigated is still present at the child care organization at the time of the investigation, children who have or will come into contact with the individual being investigated as long as that individual is present at the child care organization.

(2) The child care organization shall send written notification within 1 business day after the initial good faith attempt under subsection (1) at oral notification. For the purpose of this subsection, written notification shall be given by 1 of the following:

(a) Mail service.

(b) Facsimile transmission.

(c) Electronic mail.

(3) If the department determines that a child care organization is not complying with either notification requirement in subsection (1) or (2), the department may suspend the child care organization's license issued under this act pending review.

(4) If, upon completion of the special investigation described in subsection (1), the department makes a determination that there are no

substantiated rule violations, the department shall provide the child care organization with written notification of that determination that the child care organization may share with the parents or legal guardians of the children in the child care organization's care who received the notification required under subsections (1) and (2).

(5) The department shall make the information provided in subsection (4) available to the public on the department website.

(6) This section does not apply to a child caring institution, child placing agency, foster family home, or foster family group home.

(7) For the purpose of this section, "special investigation that the department classifies as high risk" means an investigation in which the department becomes aware that 1 or more of the conditions listed in section 8(3)(a) to (c) of the child protection law, 1975 PA 238, MCL 722.628, exist.

History: Add. 2008, Act 15, Eff. June 1, 2008
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.114 Consultation and assistance to organizations.

Sec. 4. The department shall provide consultation to organizations covered by this act to assist them in meeting the requirements of this act and the rules promulgated under this act. The department shall offer assistance, training, and education, within fiscal limitations, upon request, in developing methods for the improvement of service.

History: 1973, Act 116, Eff. Mar. 29, 1974 ;-- Am. 1980, Act 232, Imd. Eff. July 20, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.115 License or certificate of registration required; application; forms; investigations; on-site visit; issuance or renewal of license;

issuance of certificate of registration; certifying compliance, services, and facilities; conditions; orientation session; limitations on certificate; investigation and certification of foster family home or group home; placement of children in foster family home, family group home, unlicensed residence, adult foster care family home, or adult foster care small group home; certification; supervisory responsibility; records; exceptions; receipt of completed application; issuance of license within certain period of time; inspections; report; criminal history check or criminal records check; definitions.

Sec. 5. (1) A person, partnership, firm, corporation, association, or nongovernmental organization shall not establish or maintain a child care organization unless licensed or registered by the department. Application for a license or certificate of registration shall be made on forms provided, and in the manner prescribed, by the department. Before issuing or renewing a license, the department shall investigate the applicant's activities and proposed standards of care and shall make an on-site visit of the proposed or established organization. If the department is satisfied as to the need for a child care organization, its financial stability, the applicant's good moral character, and that the services and facilities are conducive to the welfare of the children, the department shall issue or renew the license. If a county juvenile agency as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622, certifies to the department that it intends to contract with an applicant for a new license, the department shall issue or deny the license within 60 days after it receives a complete application as provided in section 5b.

(2) The department shall issue a certificate of registration to a person who has successfully completed an orientation session offered by the department and who certifies to the department that the family child care home has complied with and will continue to comply with the rules promulgated under this act and will provide services and facilities, as determined by the department, conducive to the welfare of children. The department shall make available to applicants for registration an orientation session regarding this act, the rules promulgated under this act, and the needs of children in family child care before issuing a certificate of registration. The department shall issue a certificate of

registration to a specific person at a specific location. A certificate of registration is nontransferable and remains the property of the department. Within 90 days after initial registration, the department shall make an on-site visit of the family child care home.

(3) The department may authorize a licensed child placing agency or an approved governmental unit to investigate a foster family home or a foster family group home according to subsection (1) and to certify that the foster family home or foster family group home meets the licensing requirements prescribed by this act. Before certifying to the department that a foster family home or foster family group home meets the licensing requirements prescribed by this act, the licensed child placing agency or approved governmental unit shall receive and review a medical statement for each member of the household indicating that he or she does not have a known condition that would affect the care of a foster child. The medical statement required under this section shall be signed and dated by a physician licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, a physician's assistant licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, or a certified nurse practitioner licensed as a registered professional nurse under part 172 of the public health code, 1978 PA 368, MCL 333.17201 to 333.17242, who has been issued a specialty certification as a nurse practitioner by the board of nursing under section 17210 of the public health code, 1978 PA 368, MCL 333.17210, within the 12 months immediately preceding the date of the initial evaluation. This subsection does not require new or additional third party reimbursement or worker's compensation benefits for services rendered. A foster family home or a foster family group home shall be certified for licensing by the department by only 1 child placing agency or approved governmental unit. Other child placing agencies may place children in a foster family home or foster family group home only upon the approval of the certifying agency or governmental unit.

(4) The department may authorize a licensed child placing agency or an approved governmental unit to place a child who is 16 or 17 years of age in his or her own unlicensed residence, or in the unlicensed residence of

an adult who has no supervisory responsibility for the child, if a child placing agency or governmental unit retains supervisory responsibility for the child.

(5) A licensed child placing agency, child caring institution, and an approved governmental unit shall provide the state court administrative office and a local foster care review board established under 1984 PA 422, MCL 722.131 to 722.139a, those records requested pertaining to children in foster care placement for more than 6 months.

(6) The department may authorize a licensed child placing agency or an approved governmental unit to place a child who is 16 or 17 years old in an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, if a licensed child placing agency or approved governmental unit retains supervisory responsibility for the child and certifies to the department all of the following:

(a) The placement is in the best interests of the child.

(b) The child's needs can be adequately met by the adult foster care family home or small group home.

(c) The child will be compatible with other residents of the adult foster care family home or small group home.

(d) The child placing agency or approved governmental unit will periodically reevaluate the placement of a child under this subsection to determine that the criteria for placement in subdivisions (a) through (c) continue to be met.

(7) On an exception basis, the director of the department, or his or her designee, may authorize a licensed child placing agency or an approved governmental unit to place an adult in a foster family home if a licensed child placing agency or approved governmental unit certifies to the department all of the following:

(a) The adult is a person with a developmental disability as defined by section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a person who is otherwise neurologically disabled and is also physically limited to a degree that requires complete physical assistance with mobility and activities of daily living.

(b) The placement is in the best interests of the adult and will not adversely affect the interests of the foster child or children residing in the foster family home.

(c) The identified needs of the adult can be met by the foster family home.

(d) The adult will be compatible with other residents of the foster family home.

(e) The child placing agency or approved governmental unit will periodically reevaluate the placement of an adult under this subsection to determine that the criteria for placement in subdivisions (a) through (d) continue to be met and document that the adult is receiving care consistent with the administrative rules for a child placing agency.

(8) On an exception basis, the director of the department, or his or her designee, may authorize a licensed child placing agency or an approved governmental unit to place a child in an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, if the licensed child placing agency or approved governmental unit certifies to the department all of the following:

(a) The placement is in the best interests of the child.

(b) The placement has the concurrence of the parent or guardian of the child.

(c) The identified needs of the child can be met adequately by the adult foster care family home or small group home.

(d) The child's psychosocial and clinical needs are compatible with those of other residents of the adult foster care family home or small group home.

(e) The clinical treatment of the child's condition is similar to that of the other residents of the adult foster care family home or small group home.

(f) The child's cognitive level is consistent with the cognitive level of the other residents of the adult foster care family home or small group home.

(g) The child is neurologically disabled and is also physically limited to such a degree as to require complete physical assistance with mobility and activities of daily living.

(h) The child placing agency or approved governmental unit will periodically reevaluate the placement of a child under this subsection to determine that the criteria for placement in subdivisions (a) to (g) continue to be met.

(9) Except as provided in subsection (1) and section 5b, the department shall issue an initial or renewal license or registration under this act for child care centers, group child care homes, and family child care homes not later than 6 months after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of this state. If the application is considered incomplete by the department, the department shall notify the applicant in writing or make notice electronically available within 30 days after receipt of the incomplete application, describing the deficiency and requesting additional information. This subsection does not affect the time period within which an on-site visit to a family child care home shall be made. If the department identifies a deficiency or requires the fulfillment of a corrective action plan, the 6-month period is tolled until either of the following occurs:

(a) Upon notification by the department of a deficiency, until the date the requested information is received by the department.

(b) Upon notification by the department that a corrective action plan is required, until the date the department determines the requirements of the corrective action plan have been met.

(10) The determination of the completeness of an application is not an approval of the application for the license and does not confer eligibility on an applicant determined otherwise ineligible for issuance of a license.

(11) Except as provided in subsection (1) and section 5b, if the department fails to issue or deny a license or registration to a child care center, group child care home, or family child care home within the time required by this section, the department shall return the license or registration fee and shall reduce the license or registration fee for the applicant's next renewal application, if any, by 15%. Failure to issue or deny a license to a child care center, group child care home, or family child care home within the time period required under this section does not allow the department to otherwise delay the processing of the application. A completed application shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of an application based on the fact that the application fee was refunded or discounted under this subsection.

(12) If, on a continual basis, inspections performed by a local health department delay the department in issuing or denying licenses or registrations for child care centers, group day care homes, and family child care homes under this act within the 6-month period, the department may use department staff to complete the inspections instead of the local health department causing the delays.

(13) Beginning October 1, 2008, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with human services and children's issues. The director shall include all of the following information regarding applications for licenses and registrations only for child care centers,

group child care homes, and family child care homes filed under this act in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 6-month time period described in subsection (9).

(b) The number of applications requiring a request for additional information.

(c) The number of applications rejected.

(d) The number of licenses and registrations not issued within the 6-month period.

(e) The average processing time for initial and renewal licenses and registrations granted after the 6-month period.

(14) Except as provided in section 5c(8), the department shall not issue to or renew the license of a child care center or day care center under this act without requesting a criminal history check and criminal records check as required by section 5c. If a criminal history check or criminal records check performed under section 5c or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for a license under this act has been convicted of a listed offense, the department shall not issue a license to that applicant. If a criminal history check or criminal records check performed under section 5c or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for renewal of a license under this act has been convicted of a listed offense, the department shall not renew that license. If a criminal history check or criminal records check performed under section 5c or information obtained as a result of notification from the department of state police under section 5k reveals that a current licensee has been convicted of a listed offense, the department shall revoke the license of that licensee.

(15) Except as provided in section 5f(13), the department shall not issue or renew a certificate of registration to a family child care home or a license to a group child care home under this act without requesting a criminal history check and criminal records check as required by sections 5f and 5g. If a criminal history check or criminal records check performed under section 5f or 5g or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for a certificate of registration or license under this act or a person over 18 years of age residing in that applicant's home has been convicted of a listed offense, the department shall not issue a certificate of registration or license to that applicant. If a criminal history check or criminal records check performed under section 5f or 5g or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for renewal of a certificate of registration or license under this act or a person over 18 years of age residing in that applicant's home has been convicted of a listed offense, the department shall not renew a certificate of registration or license to that applicant. If a criminal history check or criminal records check performed under section 5f or 5g or information obtained as a result of notification from the department of state police under section 5k reveals that a current registrant or licensee under this act or a person over 18 years of age residing in that registrant's or licensee's home has been convicted of a listed offense, the department shall revoke that registrant's certificate of registration or licensee's license.

(16) Except as provided in section 5h(7), the department shall not issue or renew a license to operate a foster family home or foster family group home under this act without requesting a criminal history check and criminal records check as required by sections 5h and 5j. If a criminal history check or criminal records check performed under section 5h or 5j or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for a license to operate a foster family home or foster family group home under this act or a person over 18 years of age residing in that applicant's home has been convicted of a listed offense, the department shall not issue a license to that applicant. If a criminal history check or criminal records check performed under section 5h or 5j or information obtained as a

result of notification from the department of state police under section 5k reveals that an applicant for renewal of a license to operate a foster family home or foster family group home under this act or a person over 18 years of age residing in that applicant's home has been convicted of a listed offense, the department shall not renew a license to that applicant. If a criminal history check or criminal records check performed under section 5h or 5j or information obtained as a result of notification from the department of state police under section 5k reveals that a current licensee under this act of a foster family home or foster family group home or a person over 18 years of age residing in that licensee's foster family home or foster family group home has been convicted of a listed offense, the department shall revoke that licensee's license.

(17) As used in this section:

(a) "Completed application" means an application complete on its face and submitted with any applicable licensing or registration fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state. A completed application does not include a health inspection performed by a local health department.

(b) "Good moral character" means that term as defined in and determined under 1974 PA 381, MCL 338.41 to 338.47.

(c) "Member of the household" means any individual, other than a foster child, who resides in a foster family home or foster family group home on an ongoing or recurrent basis.

History: 1973, Act 116, Eff. Mar. 29, 1974 ;-- Am. 1974, Act 191, Imd. Eff. July 2, 1974 ;-- Am. 1978, Act 309, Imd. Eff. July 10, 1978 ;-- Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980 ;-- Am. 1980, Act 232, Imd. Eff. July 20, 1980 ;-- Am. 1980, Act 498, Imd. Eff. Jan. 21, 1981 ;-- Am. 1980, Act 510, Imd. Eff. Jan. 26, 1981 ;-- Am. 1981, Act 126, Imd. Eff. July 23, 1981 ;-- Am. 1982, Act 329, Imd. Eff. Dec. 14, 1982 ;-- Am. 1984, Act 421, Imd. Eff. Dec. 28, 1984 ;-- Am. 1986, Act 169, Imd. Eff. July 7, 1986 ;-- Am. 1989, Act 72, Imd. Eff. June 16, 1989 ;-- Am. 1991, Act 162, Imd. Eff. Dec. 9, 1991 ;-- Am. 1995, Act 81, Imd. Eff. June 15, 1995 ;-- Am. 1998, Act 34, Imd. Eff. Mar. 18, 1998 ;-- Am. 1998, Act 519, Imd. Eff. Jan. 12, 1999 ;-- Am. 2004, Act

315, Eff. Oct. 1, 2007 ;-- Am. 2005, Act 133, Eff. Jan. 1, 2006 ;-- Am. 2006, Act 51, Imd. Eff. Mar. 9, 2006 ;-- Am. 2006, Act 580, Imd. Eff. Jan. 3, 2007 ;-- Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007 ;-- Am. 2007, Act 218, Eff. Jan. 1, 2008
Constitutionality: The First and Fourteenth Amendments of the United States Constitution do not prevent the state from compelling the defendants to conform to the licensure requirements of the childcare organization act. Department of Social Services v. Emmanuel Baptist Preschool, 434 Mich. 380, 455 N.W.2d 1 (1990).
Compiler's Notes: For transfer of powers and duties of child welfare licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act
Admin Rule: R 400.1 et seq.; R 400.1301 et seq.; R 400.4101 et seq.; R 400.5101 et seq.; R 400.9101 et seq.; R 400.11101 et seq.; and R 400.12101 et seq. the Michigan Administrative Code.

722.115a Providing records to children's ombudsman.

Sec. 5a. A child placing agency shall provide the children's ombudsman created in section 3 of the children's ombudsman act with those records requested by the ombudsman pertaining to a matter under investigation by the ombudsman.

History: Add. 1994, Act 205, Eff. Jan. 1, 1995
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.115b Contract with license applicant; review of application; issuance or denial of license; county juvenile agency as party to proceeding.

Sec. 5b. (1) If a county juvenile agency as defined in section 2 of the county juvenile agency act certifies that it intends to contract with a license applicant as provided in section 5(1), the department shall review the application and advise the applicant and the county juvenile agency within 10 days after receiving the application what further information or material is necessary to complete the application.

(2) If the department fails to issue or deny the license within 60 days after receiving the information it determined was necessary to complete the application, the county juvenile agency or the applicant may bring an action for mandamus to require the department to issue or deny the license.

(3) The county juvenile agency is a party for purposes of any hearing, review, or other proceeding on a license application described in this section or section 5(1) for which the county juvenile agency certifies to the department that it intends to contract with the applicant. The county juvenile agency or applicant may challenge the department's determination concerning what further information or material is necessary to complete the application.

History: Add. 1998, Act 519, Imd. Eff. Jan. 12, 1999
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.115c Applicant for child care center or day care center license; criminal history check and criminal records check; requirements; fee; definitions.

Sec. 5c. (1) Except as provided in subsection (8), when a person, partnership, firm, corporation, association, or nongovernmental organization applies for or to renew a license for a child care center or day care center under section 5, the department shall request the department of state police to perform both of the following on the person or each partner, officer, or manager of the child care center or day care center applying for the license:

(a) Conduct a criminal history check on the person.

(b) Conduct a criminal records check through the federal bureau of investigation on the person.

(2) Except as provided in subsection (7), each person applying for a license to operate a child care center or day care center shall give written consent at the time of the license application for the department of state police to conduct the criminal history check and criminal records check required under this section. The department shall require the person to submit his or her fingerprints to the department of state police for the criminal history check and criminal records check described in subsection (1).

(3) The department shall request a criminal history check and criminal records check required under this section on a form and in the manner prescribed by the department of state police.

(4) Within a reasonable time after receiving a complete request by the department for a criminal history check on a person under this section, the department of state police shall conduct the criminal history check and provide a report of the results to the department. The report shall contain any criminal history record information on the person maintained by the department of state police.

(5) Within a reasonable time after receiving a proper request by the department for a criminal records check on a person under this section, the department of state police shall initiate the criminal records check. After receiving the results of the criminal records check from the federal bureau of investigation, the department of state police shall provide a report of the results to the department.

(6) The department of state police may charge the department a fee for a criminal history check or a criminal records check required under this section that does not exceed the actual and reasonable cost of conducting the check. The department may pass along to the licensee or applicant the actual cost or fee charged by the department of state police for performing a criminal history check or a criminal records check required under this section.

(7) When a person, partnership, firm, corporation, association, or nongovernmental organization applies for or renews a license under

section 5 for a child care center or day care center that is established and operated by an intermediate school board, the board of a local school district, or by the board or governing body of a state-approved nonpublic school, the criminal history check and criminal records check required under subsection (1) shall be performed in compliance with the provisions of sections 1230 to 1230h of the revised school code, 1976 PA 451, MCL 380.1230 to 380.1230h. Before issuing or renewing a license to a child care center or day care center described in this subsection, the department shall verify that the intermediate school board, the board of a local school district, or the board or governing body of a state-approved nonpublic school has obtained the required criminal history checks and criminal records checks.

(8) Beginning January 1, 2006, if a person, partnership, firm, corporation, association, or nongovernmental organization applying to renew a license to operate a child care center or day care center has previously undergone a criminal history check and criminal records check required under subsection (1) and has remained continuously licensed after the criminal history check and criminal records check have been performed, that person, partnership, firm, corporation, association, or nongovernmental organization is not required to submit to another criminal history check or criminal records check upon renewal of the license obtained under section 5.

(9) As used in this section and sections 5, 5d, 5e, 5f, and 5g:

(a) "Criminal history record information" means that term as defined in section 1a of 1925 PA 289, MCL 28.241a.

(b) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

History: Add. 2005, Act 133, Eff. Jan. 1, 2006 ;-- Am. 2006, Act 580, Imd. Eff. Jan. 3, 2007

Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.115d Offer of employment to person at child care center or day care center; criminal history check and criminal records check; current employees; cost.

Sec. 5d. (1) Before a child care center or day care center makes an offer of employment to a person or allows a person to regularly and continuously work under contract at the child care center or day care center, the child care center or day care center shall perform a criminal history check on that person using the department of state police's internet criminal history access tool (ICHAT).

(2) If a search of the department of state police's ICHAT reveals that the person described in subsection (1) has been convicted of a listed offense, the child care center or day care center shall not make an offer of employment to that person or allow that person to regularly and continuously work under contract at the child care center or day care center. If a search of the department of state police's ICHAT reveals that a current employee has been convicted of a listed offense, the child care center or day care center shall not continue to employ that person. If a search of the department of state police's ICHAT reveals that a person who regularly and continuously works under contract at the child care center or day care center has been convicted of a listed offense, the child care center or day care center shall not allow that person to regularly or continuously work under contract at the child care center or day care center.

(3) Not later than 1 year after the effective date of the amendatory act that added this section, the child care center or day care center shall conduct a criminal history check on all current employees using the department of state police's ICHAT.

(4) A child care center or day care center may pass along the actual cost of a search of the department of state police's ICHAT to the employee or applicant on whom the search is being performed.

History: Add. 2005, Act 133, Eff. Jan. 1, 2006
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.115e Arraignment of licensee or employee; report; crimes; licensee or employee not convicted of crime; deletion of information from records; notice requirements.

Sec. 5e. (1) A child care center or day care center licensee shall report to the department and an employee of a child care center or day care center shall report to that child care center or day care center within 3 business days after he or she has been arraigned for 1 or more of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(i) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(ii) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(iii) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(iv) A misdemeanor violation of section 7410 of the public health code, 1978 PA 368, MCL 333.7410.

(v) A violation of section 115, 141a, 145a, 335a, or 359 of the Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.145a, 750.335a, and 750.359, or a misdemeanor violation of section 81, 81a, or 145d of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.145d.

(vi) A misdemeanor violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701.

(vii) Any misdemeanor that is a listed offense.

(c) A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(2) A person who violates subsection (1) is guilty of a crime as follows:

(a) If the person violates subsection (1) and the crime involved in the violation is a misdemeanor that is a listed offense or is a felony, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

(b) If the person violates subsection (1) and the crime involved in the violation is a misdemeanor that is not a listed offense, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(3) The department shall delete from the licensee's records all information relating to an arraignment required to be reported under subsection (1) if the department receives documentation that the licensee is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that arraignment.

(4) A child care center or day care center shall delete from the employee's records all information relating to an arraignment required to be reported under subsection (1) if it receives documentation that the employee is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that arraignment.

(5) Not later than 30 days after the effective date of the amendatory act that added this section, the department shall inform all licensees and applicants for licenses of the requirement under this section to report when he or she is arraigned for certain crimes and the penalty for not reporting.

(6) Not later than 30 days after the effective date of the amendatory act that added this section, a child care center or day care center shall inform all current employees and all persons who work regularly and continuously under contract at the child care center or day care center of the requirement under this section to report when he or she is arraigned for certain crimes and the penalty for not reporting.

(7) At the time a child care center or day care center makes an offer of employment to a person or allows a person to regularly and continuously work under contract at the child care center or day care center, the child care center or day care center shall notify that person of the requirement under this section to report when he or she is arraigned for certain crimes and the penalty for not reporting.

History: Add. 2005, Act 133, Eff. Jan. 1, 2006
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.115f Operation of family or group child care home; conduct of criminal history check and criminal records check by department of state police; fee; arraignment of registrant or licensee for certain crimes; report required; violation; penalty; deletion of arraignment information from records; notice; criminal history check and criminal records check on current licensees and registrants; exception.
Sec. 5f. (1) Except as provided in subsection (13), when a person applies for or to renew a certificate of registration to operate a family child care home or a license to operate a group child care home under section 5, the department shall request the department of state police to perform both of the following on that person:

(a) Conduct a criminal history check on the person.

(b) Conduct a criminal records check through the federal bureau of investigation on the person.

(2) Each person applying for a certificate of registration to operate a family child care home or a license to operate a group child care home shall give written consent at the time of application for the department of state police to conduct a criminal history check and a criminal records check required under this section. The department shall require the person to submit his or her fingerprints to the department of state police for the criminal history check and criminal records check described in subsection (1).

(3) The department shall request a criminal history check and criminal records check required under this section on a form and in the manner prescribed by the department of state police.

(4) Within a reasonable time after receiving a complete request by the department for a criminal history check on a person under this section, the department of state police shall conduct the criminal history check and provide a report of the results to the department. The report shall contain any criminal history record information on the person maintained by the department of state police.

(5) Within a reasonable time after receiving a proper request by the department for a criminal records check on a person under this section, the department of state police shall initiate the criminal records check. After receiving the results of the criminal records check from the federal bureau of investigation, the department of state police shall provide a report of the results to the department.

(6) The department of state police may charge the department a fee for a criminal history check or a criminal records check required under this section that does not exceed the actual and reasonable cost of conducting the check. The department may pass along to the registrant, licensee, or applicant the actual cost or fee charged by the department of state police for performing a criminal history check or a criminal records check required under this section.

(7) A person to whom a certificate of registration or license has been issued under this act shall report to the department within 3 business

days after he or she has been arraigned for 1 or more of the following crimes and within 3 business days after he or she knows or should reasonably know that an employee or a person over 18 years of age residing in the home has been arraigned for 1 or more of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(i) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(ii) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(iii) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(iv) A misdemeanor violation of section 7410 of the public health code, 1978 PA 368, MCL 333.7410.

(v) A violation of section 115, 141a, 145a, 335a, or 359 of the Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.145a, 750.335a, and 750.359, or a misdemeanor violation of section 81, 81a, or 145d of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.145d.

(vi) A misdemeanor violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701.

(vii) Any misdemeanor that is a listed offense.

(c) A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(8) A person who violates subsection (7) is guilty of a crime as follows:

(a) If the person violates subsection (7) and the crime involved in the violation is a misdemeanor that is a listed offense or is a felony, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

(b) If the person violates subsection (7) and the crime involved in the violation is a misdemeanor that is not a listed offense, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(9) The department shall delete from the registrant's or licensee's records all information relating to an arraignment required to be reported under this section if the department receives documentation that the person arraigned for the crime is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that arraignment.

(10) Not later than January 31, 2006, the department shall inform all persons currently issued a certificate of registration or license and all applicants for a certificate of registration or license of the requirement to report certain arraignments as required in this section and the penalty for not reporting those arraignments.

(11) At the time the department issues a certificate of registration to operate a family child care home or a license to operate a group child care home under this act, the department shall notify the registrant or licensee of the requirement to report certain arraignments as required in this section and the penalty for not reporting those arraignments.

(12) Not later than January 1, 2007, the department shall conduct a criminal history check and criminal records check on all persons currently issued a certificate of registration under this act to operate a family child care home or a license under this act to operate a group child care home.

(13) Beginning January 1, 2006, if a person applying to renew a certificate of registration to operate a family child care home under section 5 or a license to operate a group child care home under section 5

has previously undergone a criminal history check and criminal records check required under subsection (1) and has continuously maintained a certificate of registration to operate a family child care home or license to operate a group child care home after the criminal history check and criminal records check have been performed, that person is not required to submit to another criminal history check or criminal records check upon renewal of the certificate of registration or license obtained under section 5.

History: Add. 2005, Act 128, Eff. Jan. 1, 2006 ;-- Am. 2006, Act 580, Imd. Eff. Jan. 3, 2007 ;-- Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
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722.115g Performance of criminal history check.

Sec. 5g. (1) When a person applies for a certificate of registration to operate a family child care home or a license to operate a group child care home under section 5, the department shall perform a criminal history check with the department of state police on all persons over 18 years of age residing in the home in which the family child care home or group child care home is operated. This section does not apply to a person residing in the home for a period of not more than 14 days.

(2) Not later than January 1, 2007, the department shall perform a criminal history check on all persons over 18 years of age residing in the home in which a family child care home or group child care home is currently operated.

(3) If a criminal history check reveals that a person over 18 years of age residing in the home has been convicted of a listed offense, the department shall not issue a certificate of registration or license to the applicant, shall not renew a certificate of registration to the registrant or license to the licensee applying for renewal, or shall revoke a current registrant's certificate of registration or current licensee's license.

History: Add. 2005, Act 128, Eff. Jan. 1, 2006 ;-- Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.115h Application for or to renew license to operate foster family home or foster family group home; criminal history check required; procedures.

Sec. 5h. (1) Except as provided in subsection (7), when a person applies for or to renew a license to operate a foster family home or foster family group home under this act, the department shall request the department of state police to perform both of the following on that person:

(a) Conduct a criminal history check on the person.

(b) Conduct a criminal records check through the federal bureau of investigation on the person.

(2) Each person applying for a license to operate a foster family home or foster family group home shall give written consent at the time of application for the department of state police to conduct a criminal history check and a criminal records check required under this section. The department shall require the person to submit his or her fingerprints to the department of state police for the criminal history check and criminal records check described in subsection (1).

(3) The department shall request a criminal history check and criminal records check required under this section on a form and in the manner prescribed by the department of state police.

(4) Within a reasonable time after receiving a complete request by the department for a criminal history check on a person under this section, the department of state police shall conduct the criminal history check and provide a report of the results to the department. The report shall

contain any criminal history record information on the person maintained by the department of state police.

(5) Within a reasonable time after receiving a proper request by the department for a criminal records check on a person under this section, the department of state police shall initiate the criminal records check. After receiving the results of the criminal records check from the federal bureau of investigation, the department of state police shall provide a report of the results to the department.

(6) The department of state police may charge the department a fee for a criminal history check or a criminal records check required under this section that does not exceed the actual and reasonable cost of conducting the check.

(7) Beginning January 1, 2008, if a person applying to renew a license to operate a foster family home or foster family group home under this act has previously undergone a criminal history check and criminal records check required under subsection (1) and has continuously maintained a license to operate a foster family home or foster family group home under this act after the criminal history check and criminal records check have been performed, that person is not required to submit to another criminal history check or criminal records check upon renewal of the license obtained to operate a foster family home or foster family group home under this act.

(8) The department shall provide written notice to all persons currently issued a license to operate a foster family home or foster family group home and all applicants applying for a license to operate a foster family home or foster family group home, that upon renewal all licensees will be required to submit fingerprints and undergo a criminal history check and a criminal records check before their licenses will be renewed. The notice provided under this subsection shall include information to the licensee that he or she may submit his or her fingerprints in advance of the time his or her license is up for renewal.

History: Add. 2007, Act 218, Eff. Jan. 1, 2008
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.115i Licensee or resident arraigned for certain crimes; report; violation; penalty; person not convicted; notice.
Sec. 5i. (1) A person to whom a license to operate a foster family home or foster family group home has been issued under this act shall report to the department within 3 business days after he or she has been arraigned for 1 or more of the following crimes and within 3 business days after he or she knows or should reasonably know that a person over 18 years of age residing in the home has been arraigned for 1 or more of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(i) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(ii) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(iii) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(iv) A misdemeanor violation of section 7410 of the public health code, 1978 PA 368, MCL 333.7410.

(v) A violation of section 115, 141a, 145a, 335a, or 359 of the Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.145a, 750.335a, and 750.359, or a misdemeanor violation of section 81, 81a, or 145d of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.145d.

(vi) A misdemeanor violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701.

(vii) Any misdemeanor that is a listed offense.

(c) A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(2) A person who violates subsection (1) is guilty of a crime as follows:

(a) If the person violates subsection (1) and the crime involved in the violation is a misdemeanor that is a listed offense or is a felony, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

(b) If the person violates subsection (1) and the crime involved in the violation is a misdemeanor that is not a listed offense, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(3) The department shall delete from the licensee's records all information relating to an arraignment required to be reported under this section if the department receives documentation that the person arraigned for the crime is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that arraignment.

(4) Not later than January 1, 2008, the department shall inform all persons currently issued a license to operate a foster family home or foster family group home and all applicants for a license to operate a foster family home or foster family group home of the requirement to report certain arraignments as required in this section and the penalty for not reporting those arraignments.

(5) At the time the department issues a license to operate a foster family home or foster family group home under this act, the department shall notify the licensee of the requirement to report certain arraignments as required in this section and the penalty for not reporting those arraignments.

History: Add. 2007, Act 218, Eff. Jan. 1, 2008
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.115j Criminal history check performed by department.

Sec. 5j. (1) When a person applies for or to renew a license to operate a foster family home or foster family group home under this act, the department shall perform a criminal history check with the department of state police on all persons over 18 years of age residing in the home in which the foster family home or foster family group home is operated. This section does not apply to a person residing in the home for a period of not more than 14 days.

(2) Not later than January 1, 2009, the department shall perform a criminal history check with the department of state police on all persons over 18 years of age residing in the home in which a foster family home or foster family group home is currently operated.

(3) If a criminal history check reveals that a person over 18 years of age residing in the foster family home or foster family group home has been convicted of a listed offense, the department shall not issue a license to the applicant, shall not renew a license to the licensee applying for renewal, or shall revoke a current licensee's license.

History: Add. 2007, Act 218, Eff. Jan. 1, 2008
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.115k Storage and maintenance of fingerprints; automated fingerprint identification system database.

Sec. 5k. The department of state police shall store and maintain all fingerprints submitted under this act in an automated fingerprint identification system database that provides for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this act. Upon such notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective child care center, day care center,

family child care home, group child care home, licensed child placing agency or approved governmental unit, foster family home, or foster family group home with which that individual is associated. Information in the database maintained under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

History: Add. 2007, Act 218, Eff. Jan. 1, 2008
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.115l Intentional false report as crime; penalties.
Sec. 5l. A person who intentionally makes a false report to the department regarding a child care organization that causes the department to initiate a special investigation for which the child care organization is required to send notice under section 3f is guilty of a crime as follows:

(a) If the incident reported would not constitute a crime or would constitute a misdemeanor if the report were true, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.

(b) If the incident reported would constitute a felony if the report were true, the person is guilty of a felony punishable by the lesser of the following:

(i) The penalty for the incident falsely reported.

(ii) Imprisonment for not more than 4 years or a fine of not more than $5,000.00, or both.

History: Add. 2008, Act 15, Eff. June 1, 2008
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.116 Evaluation of local and state government child care organizations; report; state funds.

Sec. 6. Local and state government child care organizations similar to those nongovernmental organizations required to be licensed pursuant to this act shall be evaluated and approved at least once every 2 years, using this act and rules promulgated thereunder for similar nongovernmental organizations licensed under this act. A report of the evaluation shall be furnished to the funding body for each child care organization. Unless child care organizations are approved, or provisionally approved, as meeting the appropriate administrative rules, state funds shall not be appropriated for their continued operation.

History: 1973, Act 116, Eff. Mar. 29, 1974
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
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722.117 Provisional license.

Sec. 7. A provisional license shall be issued to a new organization during the first 6 months of operation. At the end of the 6 months of operation, the department shall either issue a regular license or renew or refuse to renew the provisional license as provided in section 11. A provisional license may be issued to a child care organization which is temporarily unable to conform to the rules. A provisional license shall expire 6 months from the date of issuance and may be issued not more than 4 times. The issuance of a provisional license shall be contingent upon the submission to the department of an acceptable plan to overcome the deficiency present in the child care organization within the time limitations of the provisional licensing period.

History: 1973, Act 116, Eff. Mar. 29, 1974
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.118 Regular license; duration; reinstatement; contents.
Sec. 8. A regular license shall be effective for 2 years after the date of issuance unless revoked pursuant to section 11 or modified to a provisional status based on evidence of noncompliance with this act or the rules promulgated under this act. The license shall be reinstated biennially on application and approval. A license shall specify in general terms the kind of child care program the licensee may undertake, and the number, and ages of children that can be received and maintained.

History: 1973, Act 116, Eff. Mar. 29, 1974 ;-- Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980 ;-- Am. 1980, Act 232, Imd. Eff. July 20, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.118a Assessment of foster family home or group home; certification; on-site evaluation.
Sec. 8a. (1) The department shall periodically assess a child care organization's continued compliance with this act and the rules promulgated under this act. The department shall make an on-site evaluation of a child care organization at least once a year.

(2) The department may authorize a licensed child placing agency or an approved governmental unit to periodically assess a licensed foster family home or a licensed foster family group home pursuant to subsection (1) and to certify that the foster family home or the foster family group home continues to comply with this act and the rules promulgated under this act. A periodic assessment of a licensed foster family home or a licensed foster family group home pursuant to this subsection may include an on-site evaluation of the child care organization.

History: Add. 1980, Act 32, Imd. Eff. Mar. 10, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.118b Regulation of foster family homes or foster family group homes; variance.
Sec. 8b. (1) Upon the recommendation of a local foster care review board under section 7a of 1984 PA 422, MCL 722.137, or of a child placing agency, the department may grant a variance to 1 or more licensing rules or statutes regulating foster family homes or foster family group homes to allow the child and 1 or more siblings to remain or be placed together. If the department determines that such a placement would be in the child's best interests and that the variance from the particular licensing rules or statutes would not jeopardize the health or safety of a child residing in the foster family home or foster family group home, the department may grant the variance.

(2) The department's grant of a variance does not change a private home's licensure status.

History: Add. 1997, Act 165, Eff. Mar. 31, 1998
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.119 Child care center, child caring institution, or child placing agency; presence of staff member prohibited; conditions; unsupervised contact by volunteer prohibited; conditions; documentation that staff member or volunteer not named in central registry; policy regarding supervision of volunteers.
Sec. 9. (1) A staff member shall not be present in a child care center, child caring institution, or child placing agency if he or she has been convicted of either of the following:

(a) Child abuse or child neglect.

(b) A felony involving harm or threatened harm to an individual within the 10 years immediately preceding the date of hire.

(2) A volunteer shall not have unsupervised contact with children who are in the care of a child care center, child caring institution, or child placing agency if he or she has been convicted of either of the following:

(a) Child abuse or child neglect.

(b) A felony involving harm or threatened harm to an individual within the 10 years immediately preceding the date of offering to volunteer at the child care center, child caring institution, or child placing agency.

(3) Before a staff member or unsupervised volunteer may have contact with a child who is in the care of a child care center, child caring institution, or child placing agency, the staff member or volunteer shall provide the child care center, child caring institution, or child placing agency with documentation from the family independence agency that he or she has not been named in a central registry case as the perpetrator of child abuse or child neglect. For individuals who are employed by or volunteer at a child care center, child caring institution, or child placing agency, the child care center, child caring institution, or child placing agency shall comply with this subsection not later than the date on which that child care center's, child caring institution's, or child placing agency's license is issued or first renewed after the effective date of the amendatory act that added this section. As used in this subsection, “child abuse” and “child neglect” mean those terms as defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622.

(4) Each child care center, child caring institution, or child placing agency shall establish and maintain a policy regarding supervision of volunteers including volunteers who are parents of a child receiving care at the child care center, child caring institution, or child placing agency.

History: Add. 2002, Act 674, Eff. Mar. 31, 2003
Compiler's Notes: Former MCL 722.119, which pertained to registration of family day care homes, was repealed by Act 232 of 1980, Imd. Eff. July 20, 1980.For transfer of powers and duties of state fire marshal to department of labor and economic growth,

bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
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722.119a Certificate of registration; duration; renewal; contents; assessing compliance; on-site visits.

Sec. 9a. (1) A certificate of registration shall be in force for 3 years unless revoked under section 11. Until September 30, 2007, a renewal certificate of registration shall be issued in the same manner as provided in section 5(2) for initially issuing the certificate, except that an on-site visit of the family child care home and the orientation session are not required. Beginning October 1, 2007, a renewal certificate of registration shall be issued in the same manner as provided in section 5(2), (9), and (11) for the initial issuance of the certificate, except that an on-site visit of the family child care home and the orientation session are not required. The certificate shall state that the registrant may operate a family child care home and the number and the ages of the children that may be received and maintained.

(2) This section does not limit the right or the duty of the department to assess periodically, randomly, or at the time of renewal, the continued compliance with this act and rules promulgated under this act. The department shall make on-site visits as provided in this act to a 10% sample of the family child care homes in each county each year, or when a complaint about a family child care home or registrant is received by the department.

History: Add. 1980, Act 232, Imd. Eff. July 20, 1980 ;-- Am. 2004, Act 315, Eff. Oct. 1, 2007 ;-- Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
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722.120 Investigation and examination of conditions, books, records, and reports; visits regarding health or fire protection; records;

report; forms; confidentiality; disclosure of information; availability of confidential records.

Sec. 10. (1) The department may investigate and examine conditions of a child care organization in which a licensee receives, maintains, or places out children, and may investigate and examine the books and records of the licensee. The licensee shall admit members of the department and furnish all reasonable facilities for thorough examination of its books, records, and reports. The department of community health, the bureau of fire services, or local authorities, in carrying out the provisions of this act, may visit a child care organization to advise in matters affecting the health or fire protection of children.

(2) A licensee shall keep the records the department prescribes regarding each child in its control and care and shall report to the department, when requested, the facts the department requires with reference to the children upon forms furnished by the department. Except as otherwise provided in this subsection, records regarding children and facts compiled about children and their parents and relatives are confidential and disclosure of this information shall be properly safeguarded by the child care organization, the department, and any other entity in possession of the information. Records that are confidential under this section are available to both of the following:

(a) A standing or select committee or appropriations subcommittee of either house of the legislature having jurisdiction over protective services matters for children, pursuant to section 7 of the child protection law, 1975 PA 238, MCL 722.627.

(b) The children's ombudsman established in section 3 of the children's ombudsman act, 1994 PA 204, MCL 722.923.

History: 1973, Act 116, Eff. Mar. 29, 1974 ;-- Am. 1980, Act 498, Imd. Eff. Jan. 21, 1981 ;-- Am. 1994, Act 205, Eff. Jan. 1, 1995 ;-- Am. 2006, Act 206, Imd. Eff. June 19, 2006

Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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Admin Rule: R 400.1 et seq.; R 400.9101 et seq.; R 400.11101 et seq.; and R 400.12101 et seq. of the Michigan Administrative Code.

722.120a Contribution.

Sec. 10a. (1) A child placing agency shall not solicit or accept a contribution from a prospective adoptive parent unless the contribution is equivalent in value to the cost of, and tendered as payment for, an adoption service actually performed for the prospective adoptive parent by the child placing agency.

(2) A child placing agency shall not give or offer to give an individual preferential treatment in connection with an adoption service in return for a contribution from or on behalf of that individual.

(3) As used in this section, "contribution" means the payment of money or donation of goods or services.

History: Add. 1994, Act 243, Eff. July 5, 1994
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
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722.121 Denial, revocation, or refusal to renew license or certificate of registration; modifying provisional status of license; grounds; notice; appeal; hearing; decision; protest; denial of license for noncompliance; complaint by legislative body of city, village, or township; procedure.

Sec. 11. (1) An original license shall not be granted under this act if the issuance of the license would substantially contribute to an excessive concentration of community residential facilities within a city, village, township, or county of this state.

(2) The department may deny, revoke, or refuse to renew a license or certificate of registration of a child care organization when the licensee, registrant, or applicant falsifies information on the application or wilfully and substantially violates this act, the rules promulgated under this act,

or the terms of the license or certificate of registration. The department may modify to a provisional status a license of a child care organization when the licensee wilfully and substantially violates this act, the rules promulgated under this act, or the terms of the license. A license or a certificate of registration shall not be revoked, a renewal of a license or certificate of registration shall not be refused, an application for a license or a certificate of registration shall not be denied, or a regular license shall not be modified to a provisional status unless the licensee, registrant, or applicant is given notice in writing of the grounds of the proposed revocation, denial, modification, or refusal. If revocation, denial, modification, or refusal is appealed within 30 days after receipt of the notice by writing addressed to the director of the department, the director or a designated representative of the director shall conduct a hearing at which the licensee, registrant, or applicant may present testimony and confront witnesses. Notice of the hearing shall be given to the licensee, registrant, or applicant by personal service or delivery to the proper address by certified mail not less than 2 weeks before the date of the hearing. The decision of the director shall be made not more than 30 days after the hearing, and forwarded to the protesting party by certified mail not more than 10 days thereafter. If the proposed revocation, denial, modification, or refusal is not protested, the license or certificate of registration may be revoked or the application or the renewal of the license or certificate of registration refused.

(3) The department shall deny a license to a child caring institution or foster family group home which does not comply with section 16a of Act No. 183 of the Public Acts of 1943, as amended, being section 125.216a of the Michigan Compiled Laws, section 16a of Act No. 184 of the Public Acts of 1943, as amended, being section 125.286a of the Michigan Compiled Laws, and section 3b of Act No. 207 of the Public Acts of 1921, as amended, being section 125.583b of the Michigan Compiled Laws.

(4) The legislative body of a city, village, or township in which a child caring institution or foster family group home is located may file a complaint with the department to have the organization's license suspended, denied, or revoked pursuant to the procedures outlined in this

act and the rules promulgated under this act. The director of the department shall resolve the issues of the complaint within 45 days after the receipt of the complaint. Notice of the resolution of the issues shall be mailed by certified mail to the complainant and the licensee. Failure of the director of the department to resolve the issues of the complaint within 45 days after receipt of the complaint shall serve as a decision by the director to suspend, deny, or revoke the organization's license. If the decision to suspend, deny, or revoke the license or the resolution of the issues is protested by written objection of the complainant or licensee to the director of the department within 30 days after the suspension, denial, or revocation of the license or the receipt of the notice of resolution, the director of the department or a designated representative of the director shall conduct a hearing pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, at which the complainant and licensee may present testimony and cross-examine witnesses. The decision of the director of the department shall be mailed by certified mail to the complainant and the licensee. If the resolution of the issues by the director of the department is not protested within 30 days after receipt of the notice of the resolution, the resolution by the director of the department is final.

History: 1973, Act 116, Eff. Mar. 29, 1974 ;-- Am. 1976, Act 398, Eff. Mar. 31, 1977 ;-- Am. 1980, Act 232, Imd. Eff. July 20, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
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722.121a Notice of location of new and existing licensed child caring institutions or foster family group homes.

Sec. 11a. The director of the department shall notify the clerk of the city, village, or township and the legislature of the location of new and existing licensed child caring institution or foster family group home within the boundaries of the cities, villages, and townships in this state. The notification for existing licensed organizations shall be given within

90 days after the effective date of this amendatory act and within 30 days after the licensing of a new organization.

History: Add. 1976, Act 398, Eff. Mar. 31, 1977
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
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722.121b Database on child care options.

Sec. 11b. (1) The department shall establish and maintain a database of child care centers, family child care homes, and group child care homes as a central clearinghouse for persons seeking information on child care options. The database shall include, at a minimum, all of the following information:

(a) The name, address, and telephone number of the child care center, family child care home, or group child care home.

(b) The days and general hours of operation of the child care center, family child care home, or group child care home.

(c) The license or registration number, effective date, and expiration date of the child care center, family child care home, or group child care home.

(d) The number and nature of any adverse action taken against the child care center, family child care home, or group child care home by the department.

(2) The department shall make the database available to the public on the internet, without charge, through that department's website.

(3) The department shall inform the public, through press releases or other media avenues, of the information available in the database established under subsection (1) and how to access that database.

History: Add. 2002, Act 645, Imd. Eff. Dec. 23, 2002 ;-- Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.122 Appeal.

Sec. 12. A person aggrieved by the decision of the director following a hearing under section 11 may, within 30 days after receipt of the decision, take an appeal to the circuit court for the county in which the person resides by filing with the clerk of the court an affidavit setting forth the substance of the proceedings before the department and the errors of law upon which the person relies, and serving the director of the department with a copy of the affidavit. The circuit court shall have jurisdiction to hear and determine the questions of law involved in the appeal. If the department prevails, the circuit court shall affirm the decision of the department; if the licensee, registrant, or applicant prevails, the circuit court shall set aside the revocation, or order the issuance or renewal of the license or certificate of registration.

History: 1973, Act 116, Eff. Mar. 29, 1974 ;-- Am. 1980, Act 232, Imd. Eff. July 20, 1980
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.123 Injunction.

Sec. 13. When there is a violation of this act or a rule promulgated thereunder, and the unlawful activity or condition of the child care organization is likely to result in serious harm to the children under care, the department may seek injunctive action against the child care organization in the circuit court through proceedings instituted by the attorney general on behalf of the department.

History: 1973, Act 116, Eff. Mar. 29, 1974
Compiler's Notes: For transfer of powers and duties of state fire marshal to department

of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.124 Persons authorized to place child.

Sec. 14. Only a parent, guardian of the person of a child, a person related to a child by blood, marriage, or adoption, a licensed child placing agency, or a governmental unit may place a child in the control and care of a person. This section shall not be construed to prevent foster parents from placing foster children in temporary care pursuant to rules promulgated by the department.

History: 1973, Act 116, Eff. Mar. 29, 1974
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act
Admin Rule: R 400.1 et seq.; R 400.9101 et seq.; R 400.11101 et seq.; and R 400.12101 et seq. of the Michigan Administrative Code.

722.124a Consent to medical and surgical treatment of minor child; "routine, nonsurgical medical care" defined.

Sec. 14a. (1) A probate court, a child placing agency, or the department may consent to routine, nonsurgical medical care, or emergency medical and surgical treatment of a minor child placed in out-of-home care pursuant to Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws, Act No. 288 of the Public Acts of 1939, as amended, being sections 710.21 to 712A.28 of the Michigan Compiled Laws, or this act. If the minor child is placed in a child care organization, then the probate court, the child placing agency, or the department making the placement shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The department may also execute a written instrument investing a child care organization with authority to consent to routine, nonsurgical medical care of the child. If the minor child is placed in a child care institution, the probate court, the child placing agency, or the department making the

placement shall in addition execute a written instrument investing that institution with authority to consent to the routine, nonsurgical medical care of the child.

(2) A parent or guardian of a minor child who voluntarily places the child in a child care organization shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The parent or guardian shall consent to routine, nonsurgical medical care.

(3) Only the minor child's parent or legal guardian shall consent to nonemergency, elective surgery for a child in foster care. If parental rights have been permanently terminated by court action, consent for nonemergency, elective surgery shall be given by the probate court or the agency having jurisdiction over the child.

(4) As used in this section, “routine, nonsurgical medical care” does not include contraceptive treatment, services, medication or devices.

History: Add. 1974, Act 191, Imd. Eff. July 2, 1974 ;-- Am. 1984, Act 396, Eff. Mar. 29, 1985
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.124b Definitions used in MCL 722.124b, 722.124c, and 722.124d.
Sec. 14b. As used in this section and sections 14c and 14d:

(a) “Adoption attorney” means that term as defined in section 22 of the adoption code, being section 710.22 of the Michigan Compiled Laws.

(b) “Adoption code” means chapter X of Act No. 288 of the Public Acts of 1939, being sections 710.21 to 710.70 of the Michigan Compiled Laws.

(c) “Adoption facilitator” means a child placing agency or an adoption attorney who assists biological parents or guardians or prospective adoptive parents with adoptions pursuant to the adoption code.

(d) “Primary adoption facilitator” means the adoption facilitator in an adoption who files the court documents on behalf of the prospective adoptive parent.

(e) “Public information form” means a form described in section 14d that is completed by a primary adoption facilitator and maintained in a central clearinghouse by the department of social services for distribution pursuant to section 14d to individuals seeking information about adoption.

History: Add. 1994, Act 209, Eff. Jan. 1, 1995
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.124c Filing of public information form by primary adoption facilitator; contents; authentication; applicability of section to certain adoptions.

Sec. 14c. (1) Not later than 10 days after the entry of an order of adoption pursuant to section 56 of the adoption code, being section 710.56 of the Michigan Compiled Laws, the primary adoption facilitator for that adoption shall file with the probate court a completed public information form setting forth information including costs connected with the adoption as prescribed by section 14d. The public information form shall be authenticated by verification under oath by the primary adoption facilitator, or, in the alternative, contain the following statement immediately above the date and signature of the facilitator: “I declare that this public information form has been examined by me and that its contents are true to the best of my information, knowledge, and belief.”

(2) This section does not apply to a stepparent adoption, the adoption of a child related to the petitioner within the fifth degree by blood,

marriage, or adoption, or an adoption in which the consent of a court or the department is required.

(3) Except as provided in subsection (2), this section applies to adoptions in which the order of adoption under section 56 of the adoption code is entered after the effective date of this section, including adoptions pending on the effective date of this section.

History: Add. 1994, Act 209, Eff. July 1, 1995
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.124d Public information form; reporting nonconfidential information; detachable section; distribution of blank forms; acceptance and maintenance of completed forms; individual requests for information about adoption facilitators; sending nonconfidential portion in response to individual's request; fee.
Sec. 14d. (1) The department shall develop a public information form for the reporting of the following nonconfidential information:

(a) The name and address of the primary adoption facilitator.

(b) The type of adoption, as follows:

(i) Direct placement or agency placement.

(ii) Intrastate, interstate, or intercountry.

(c) The name of the agency and individual who performed the preplacement assessment or the investigation required under section 46 of the adoption code, being section 710.46 of the Michigan Compiled Laws, and the cost of the assessment or investigation.

(d) The name of each individual who performed counseling services for a biological parent, a guardian, or the adoptee; the individual's agency

affiliation, if any; the number of hours of counseling performed; and the cost of that counseling.

(e) The name of each individual who performed counseling services for an adoptive parent, the individual's agency affiliation, if any, the number of hours of counseling performed, and the cost of that counseling.

(f) The total amount paid by an adoptive parent for hospital, nursing, or pharmaceutical expenses incurred by a biological parent or the adoptee in connection with the birth or any illness of the adoptee.

(g) The total amount paid by an adoptive parent for a biological mother's living expenses.

(h) The total amount paid by an adoptive parent for expenses incurred in ascertaining the information required under section 27 of the adoption code, being section 710.27 of the Michigan Compiled Laws.

(i) The name of any attorney representing an adoptive parent, the number of hours of service performed in connection with the adoption, and the total cost of the attorney's services performed for the adoptive parent.

(j) The name of any attorney representing a biological parent, the number of hours of service performed in connection with the adoption, and the total cost of the attorney's services performed for the biological parent.

(k) The name of any agency assisting a biological parent or adoptive parent, and the cost of all services provided by the agency other than services specifically described in subdivisions (c), (d), and (e).

(l) The total amount paid by an adoptive parent for a biological parent's travel expenses.

(m) Any fees or expenses sought but disallowed by the court.

(n) The total amount of all expenses connected with the adoption that were paid for by the adoptive parent.

(o) An explanation of any special circumstances that made costs of the adoption higher than would normally be expected.

(2) The public information form prescribed by subsection (1) shall contain a detachable section for the reporting of all of the following confidential information:

(a) The age, sex, and race of each biological parent.

(b) The age, sex, and race of the adoptee.

(c) The name, age, sex, and race of each adoptive parent.

(d) The county in which the final order of adoption was entered.

(e) The county, state, and country of origin of the adoptee.

(f) The legal residence of biological parents.

(g) The legal residence of adoptive parents.

(h) The dates of the following actions related to the adoption:

(i) The first contact of the birth parent with the primary adoption facilitator.

(ii) The first contact of the adoptive parent with the primary adoption facilitator.

(iii) The temporary placement, if applicable.

(iv) The formal placement.

(v) The order of the court finalizing the adoption.

(3) The department of social services shall distribute blank public information forms to adoption facilitators, courts, and other interested individuals and organizations.

(4) Beginning on July 1, 1995, the department of social services shall accept from the probate court of each county and maintain in a central clearinghouse completed public information forms for each adoption completed in this state. Upon the request of an individual seeking information about adoption facilitators serving a particular county or counties, the department shall send the individual a list of all adoption facilitators serving that county or those counties, the number of adoptions each person facilitated in the county or counties during the preceding 12 months, and the fees the department charges for transmitting copies of public information forms. Upon the individual's request for public information forms for a particular adoption facilitator or facilitators and payment of the required fees, the department shall send the individual copies of the nonconfidential portions of the public information forms completed by that adoption facilitator or those adoption facilitators during the preceding 12 months. If the number of adoptions facilitated by a particular adoption facilitator in a particular county or counties is insufficient to protect the confidentiality of the participants in an adoption, the department shall send the nonconfidential portions of additional public information forms for adoptions facilitated by that adoption facilitator in earlier years or in other counties. The additional forms required to protect confidentiality shall be sent without charge to the individual requesting the information.

(5) If the department receives public information forms completed by a probate register containing only the primary adoption facilitator's name and confidential information, the department shall send the nonconfidential portion of those public information forms completed by the probate register in response to an individual's request for public information forms for that adoption facilitator.

(6) The department may charge a fee for transmitting public information forms to individuals requesting them. The fee shall be sufficient to

reimburse the department for the costs of copying, postage or facsimile, and labor.

History: Add. 1994, Act 209, Eff. Jan. 1, 1995 ;-- Am. 1995, Act 107, Imd. Eff. June 23, 1995
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
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722.125 Violation as misdemeanor; penalty; conviction as ground for revocation of license or certificate of registration; effect of revocation, denial, or refusal to renew.
Sec. 15. (1) A person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization who violates this act is guilty of a misdemeanor, punishable by the following:

(a) A fine of not less than $100.00 or more than $1,000.00 for a violation of section 3b, 3c, or 3d.

(b) For a violation not described in subdivision (a), a fine of not less than $100.00 or more than $1,000.00, or imprisonment for not more than 90 days, or both.

(2) If a person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization is convicted under this act, the conviction is sufficient ground for the revocation of its license or certificate of registration, and the person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization convicted shall not be granted a license or certificate of registration, or be permitted to be connected, directly or indirectly, with a licensee or a registrant for a period of not less than 2 years after the conviction.

(3) A person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization who has a license or certificate of registration revoked, application denied, or renewal

refused, may be refused a license or certificate of registration, or be prohibited from being connected, directly or indirectly, with a licensee or a registrant for a period of not less than 2 years after the revocation, denial, or refusal to renew.

History: 1973, Act 116, Eff. Mar. 29, 1974 ;-- Am. 1980, Act 232, Imd. Eff. July 20, 1980 ;-- Am. 1993, Act 218, Eff. Apr. 1, 1994
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.126 Education of public.

Sec. 16. The department shall provide continuous education of the public in regard to the requirements of this act through the ongoing use of mass media and other methods as are deemed appropriate.

History: 1973, Act 116, Eff. Mar. 29, 1974
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.127 Objection on religious grounds to medical examination, immunization, or treatment of child.

Sec. 17. Nothing in the rules adopted pursuant to this act shall authorize or require medical examination, immunization, or treatment for any child whose parent objects thereto on religious grounds.

History: 1973, Act 116, Eff. Mar. 29, 1974
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.127a Use of inhaler or epinephrine auto-injector by child at children's camp.

Sec. 17a. (1) If the conditions prescribed in subsection (2) are met, notwithstanding any children's camp policy to the contrary, a minor child may possess and use 1 or more of the following at the children's camp, on camp-sponsored transportation, or at any activity, event, or program sponsored by the children's camp or in which the minor child is participating:

(a) A metered dose inhaler or a dry powder inhaler to alleviate asthmatic symptoms or for use before exercise to prevent the onset of asthmatic symptoms.

(b) An epinephrine auto-injector or epinephrine inhaler to treat anaphylaxis.

(2) Subsection (1) applies to a minor child if all of the following conditions are met:

(a) The minor child has written approval to possess and use the inhaler or epinephrine auto-injector as described in subsection (1) from the minor child's physician or other health care provider authorized by law to prescribe an inhaler or epinephrine auto-injector and from the minor child's parent or legal guardian.

(b) The director or other chief administrator of the minor child's camp has received a copy of each written approval required under subdivision (a) for the minor child.

(c) There is on file at the children's camp a written emergency care plan that contains specific instructions for the minor child's needs, that is prepared by a licensed physician in collaboration with the minor child and the minor child's parent or legal guardian, and that is updated as necessary for changing circumstances.

(3) A children's camp or an owner, director, or employee of a children's camp is not liable for damages in a civil action for injury, death, or loss to person or property allegedly arising from either of the following:

(a) An employee of the children's camp having prohibited a minor child from using an inhaler or epinephrine auto-injector because the conditions prescribed in subsection (2) had not been satisfied.

(b) An employee of the children's camp having permitted a minor child to use or possess an inhaler or epinephrine auto-injector because the conditions prescribed in subsection (2) had been satisfied.

(4) This section does not eliminate, limit, or reduce any other immunity or defense that a camp or an owner, director, or employee of a camp may have under other state law.

(5) A children's camp may request a minor child's parent or legal guardian to provide an extra inhaler or epinephrine auto-injector to designated camp personnel for use in case of emergency. A parent or legal guardian is not required to provide an extra inhaler or epinephrine auto-injector to camp personnel.

(6) A director or other chief administrator of a children's camp who is aware that a minor child possesses an inhaler or epinephrine auto-injector as authorized under this section shall notify each camp employee who supervises the minor child of that fact and of the provisions of this section.

History: Add. 2005, Act 120, Imd. Eff. Sept. 22, 2005
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

722.128 Repeal.

Sec. 18. Act No. 47 of the Public Acts of 1944, being sections 722.101 to 722.108 of the Compiled Laws of 1970, is repealed.

History: 1973, Act 116, Eff. Mar. 29, 1974
Compiler's Notes: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.
Popular Name: Act 116
Popular Name: Child Care Licensing Act

B. AIRPORT REGULATIONS AND DEVELOPMENT

AERONAUTICS CODE OF THE STATE OF MICHIGAN (EXCERPTS) Act 327 of 1945

259.2 Definitions; A.
Sec. 2. As used in this act:

(a) "Accident" means an event involving an aircraft that is in-flight or taxiing, resulting in death or injury to any person, damage to the aircraft affecting its ability to safely operate, or damage to public property or property of another person.

(b) "Aeronautical facilities" means any device, physical or otherwise, that is an object of nature or that is human-made, that aids and is used in aeronautics.

(c) "Aeronautics" means any act or matter that treats or deals with flight in the airspace.

(d) "Air navigation" means the operation or navigation of aircraft in the airspace over the land and waters of this state.

(e) "Aircraft" means any contrivance used or designed for navigation of or flight in the air.

(f) "Aircraft, civil" means any aircraft other than a public aircraft.

(g) "Aircraft, public" means any aircraft used exclusively in the service of any government or of any political subdivision of a government,

including the government of any state, territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(h) “Airman” means any individual, including the 1 in command, and any pilot, mechanic, or member of the crew, who engages in the navigation of aircraft while under way, and any individual who is in charge of the inspection, overhauling, or repair of aircraft, and any individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.

(i) “Airport” means any location, either on land or water, that is used for the landing or take-off of aircraft, and includes the buildings and facilities, if any, on that location.

(j) “Airport approach plan” means a plan, or an amendment to a plan, adopted under section 12 of the airport zoning act, 1950 (Ex Sess) PA 23, MCL 259.442.

(k) “Airport layout plan” means a plan, or an amendment to a plan, that shows current or proposed layout of an airport and that is approved by the commission.

(l) “Airport manager” means any individual who is properly appointed and designated by the airport owner as the airport manager, and who is responsible for the supervision and operation of the airport to the airport owner.

(m) “Airspace approval” means that approval issued by the appropriate federal authority pertaining to the safe and efficient use of airspace by aircraft for an established or proposed airport or landing field.

(n) “Airspace, navigable” means airspace at and above the minimum flight altitudes prescribed in the federal air regulations including airspace needed for safe takeoff and landing.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.2 ;-- Am. 1996, Act 370, Imd. Eff. July 3, 1996 ;-- Am. 2002, Act 35, Eff. May 15, 2002

259.54 Cooperation with federal government; compliance with federal laws and regulations for expenditure of federal money; receipt and disbursement of federal and other money; commission as agent of state; deposit of money in state treasury; commission assistance in preparation of airport projects; cost.

Sec. 54. (1) The commission may cooperate with the government of the United States and any agency or department thereof, in the acquisition, construction, improvement, maintenance, and operation of airports, landing fields, and other aeronautical facilities in this state where federal financial aid is received. The commission shall comply with the laws of the United States and any regulations made under those laws for the expenditure of federal money upon airports, landing fields, and other aeronautical facilities for which federal financial aid is received.

(2) The commission may accept, receive, receipt for, and disburse, federal or other money for and in behalf of this state or a political subdivision of this state, for the acquisition, construction, improvement, maintenance, and operation of airports, landing fields, and other aeronautical facilities in this state. In each case, the commission shall act as agent of the political subdivision of this state in accepting, receiving, receipting for, and disbursing such money in behalf of the political subdivision. The governing body of a political subdivision in this state may designate the commission as its agent for these purposes, as provided in section 135.

(3) Money accepted for disbursement by the commission pursuant to subsection (2) shall be deposited in the state treasury and disbursed in accordance with the provisions of the respective grants and the fiscal procedures of the state treasurer.

(4) The commission may assist political subdivisions of this state in the preparation of airport projects under federal statutes that provide federal funding of the airport and airway system, by the furnishing of engineering or other technical services. The cost for such assistance shall be chargeable to the airport project and reimbursable to the commission

in accordance with the federal statute providing federal funding as allowable project costs, and deposited to the planning and engineering fund for use on future projects.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.54 ;-- Am. 1948, 1st Ex. Sess., Act 32, Imd. Eff. May 10, 1948 ;-- Am. 1982, Act 466, Imd. Eff. Dec. 30, 1982

259.102 Aeronautics commission; airport protection privileges.

Sec. 102. Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports, landing fields, and other aeronautical facilities acquired or operated under this act, the commission may acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports, landing fields, or other aeronautical facilities and other airport protection privileges as are necessary to insure safe approaches to the landing areas of airports, landing fields, and other aeronautical facilities, and the safe and efficient operation of these airports, landing fields, and aeronautical facilities. The commission may also acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards for the purpose of maintaining and repairing the lights and marks. This authority shall not be so construed to limit the right, power, or authority of the state or any political subdivision to zone property adjacent to any airport pursuant to laws of this state.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.102 ;-- Am. 1996, Act 370, Imd. Eff. July 3, 1996

259.111 Public airport authority; board; membership; appointment; terms; qualifications; violation of subsection 5(b); chief executive officer; chief financial officer; duties.

Sec. 111. (1) An authority created under or pursuant to this chapter shall be directed and governed by a board consisting of 7 members.

(2) The members of a board created under section 110(2) shall be appointed as follows:

(a) Two board members shall be appointed by the governor, with 1 board member appointed for an initial term of 6 years and 1 board member appointed for an initial term of 8 years.

(b) One board member shall be appointed by the legislative body of the local government that owns the airport, for an initial term of 4 years. Notwithstanding any other statute, law, ordinance, or charter provision to the contrary, the board member appointed by the legislative body may be a member of the legislative body of the local government that owns the airport, but only while continuing to serve as a member of the legislative body of that local government.

(c) Four board members shall be appointed by the local chief executive officer of the local government that owns the airport, with 1 board member appointed for an initial term of 4 years, 1 board member appointed for an initial term of 2 years, and 2 board members appointed for an initial term of 6 years.

(d) Each appointing entity shall file each appointment under this subsection with the department. Each subsequent appointment by an appointing entity to fill a vacancy on the board shall also be filed with the department.

(3) Upon incorporation of an authority pursuant to section 110(3), the local chief executive officer, with the consent of the legislative body of the local government if the local chief executive officer is not elected, shall appoint the members of the board. Of the board members first appointed under this subsection, 1 board member shall be appointed for a term of 2 years, 2 board members shall be appointed for terms of 4 years each, 3 board members shall be appointed for terms of 6 years each, and 1 board member shall be appointed for a term of 8 years.

(4) A board member appointed pursuant to subsection (2)(b) or (c) or (3) must be a citizen of the United States and a resident of the local

government that owns the airport over which operational jurisdiction will be transferred to an authority. A board member appointed pursuant to subsection (2)(a) must be a citizen of the United States and a resident of the area within the jurisdiction of the regional planning commission created under 1945 PA 281, MCL 125.11 to 125.25, in which the airport over which operational jurisdiction will be transferred is located. Except as permitted by subsection (2)(b), a person shall not be appointed under subsection (2) or (3) as a board member if he or she is, or was during the 12 months preceding the date of appointment, an elected public official or employee of this state or an agency or instrumentality of this state, a local government or an agency or instrumentality of a local government, or the federal government or an agency or instrumentality of the federal government.

(5) A board member appointed pursuant to subsection (2) or (3), a chief executive officer, and chief financial officer of an authority, shall, at time of appointment or hiring and subject to subsection (6), meet all of the following qualifications:

(a) Neither the board member or the chief executive officer or chief financial officer, nor the spouse or his or her siblings, children or their spouses, parents, or siblings or their spouses of the board member or the chief executive officer or chief financial officer, are actively engaged or employed in any other business, vocation, or employment of any civil aeronautics enterprise connected with the airport under the control of the authority.

(b) Neither the board member or the chief executive officer or chief financial officer, nor the spouse or his or her siblings, children or their spouses, parents, or siblings or their spouses of the board member or the chief executive officer or chief financial officer, have a combined 15% or greater direct pecuniary interest in any civil aeronautics enterprise connected with the airport under the control of the authority.

(c) The board member or the chief executive officer or chief financial officer would not be considered to have a conflict of interest under 1968 PA 318, MCL 15.301 to 15.310, in respect to any contract or subcontract

involving the airport if the board member or the chief executive officer or chief financial officer were considered a state officer under 1968 PA 318, MCL 15.301 to 15.310.

(6) A board member who, at any time during his or her term of service, becomes in violation of subsection (5)(b) shall have 30 days to divest, or arrange for the divestment of, the interest that caused the violation. If the board member or his or her relative is still in violation of subsection (5)(b) after the expiration of the 30-day period, the entity that appointed that board member shall remove the board member from office.

(7) Notwithstanding any law or charter provision to the contrary, appointments by a local chief executive officer under subsection (2) shall not be subject to the approval by the legislative body of the local government.

(8) The board shall appoint a chief executive officer who shall be an ex officio member, without vote, of the board and shall not be considered in determining the presence of a quorum, who shall have professional qualifications commensurate with the responsibility of the jobs to be performed by such officials. The board may enter into a contract with the chief executive officer for a commercially reasonable length of time commensurate with the length of time for contracts of airport chief executive officers, directors, or managers with similar responsibilities at other airports or airport authorities within or without this state with a comparable number of annual enplanements.

(9) The chief executive officer shall appoint a chief financial officer who shall be the treasurer of the authority, who shall have professional qualifications commensurate with the responsibility of the jobs to be performed by such officials. Notwithstanding any law or charter provision to the contrary, it shall be the duty and right of the chief financial officer of the authority to receive all money belonging to the authority, or arising or received in connection with the airport over which operational jurisdiction has been transferred to the authority, from whatever source derived. Money of the authority shall be deposited, invested, and paid by the chief financial officer only in accordance with

policies, procedures, ordinances or resolutions adopted by the board. Upon the approval date, the authority shall be considered to be the owner of all money or other property then or thereafter received by the treasurer of the local government or deposited in the treasury of a local government to the credit of the airport for which operational jurisdiction has been transferred to the authority. The authority shall be entitled to all interest and other earnings on those funds on and after the latter of the effective date of this chapter or the date on which the authority is created or incorporated. The treasurer of any local government receiving or having custody of money or other property belonging to an authority under this chapter shall promptly transfer the money and other property to the custody of the chief financial officer of the authority. The chief financial officer shall provide the board with copies of all reports made by the chief financial officer to the chief executive officer.

History: Add. 2002, Act 90, Imd. Eff. Mar. 26, 2002

259.116 Authority as public body corporate; powers; personal liability; transfer of operational jurisdiction; indemnification for local government with civil claim; imposition of fees or charges; airport revenues, facilities, or assets as security; prohibited actions; completion of airport or facility project; preparation, submission, and administration of grants; custodian of funds.

Sec. 116. (1) An authority is a public body corporate with the following powers:

(a) An authority may adopt a corporate seal.

(b) An authority may sue or be sued in any court of the state.

(c) An authority has the power and duty of planning, promoting, extending, maintaining, acquiring, purchasing, constructing, improving, repairing, enlarging, and operating all airports and airport facilities under the operational jurisdiction of or owned by the authority.

(d) An authority has the power to assume and perform the obligations and the covenants related to the airport that are contained in an

agreement or other document between or by the local government that owns the airport for which operational jurisdiction has been transferred to the authority pursuant to this chapter and the state or the federal aviation administration relative to grants for the airport or airport facilities.

(e) An authority may take by grant, purchase, devise, or lease, or by the exercise of the right of eminent domain, or otherwise acquire and hold, real and personal property, in fee simple or any lesser interest or easement, as an authority may deem necessary either for the construction of any airport facilities or for the efficient operation or for the extension of any airport facilities acquired or constructed or to be constructed under this chapter, and, except as otherwise provided by this act, to hold in its name, lease, and dispose of all real and personal property owned by or under the operational jurisdiction of the authority. If land is acquired by condemnation, the provisions of the uniform condemnation procedures act, 1980 PA 87, MCL 213.51 to 213.76, or any successor statute, shall be adopted and used for the purpose of instituting and prosecuting the condemnation proceedings. For the purpose of making surveys and examinations relative to any condemnation proceedings, it shall be lawful to enter upon any land, doing no unnecessary damage. The acquisition of any land by an authority for an airport or airport facilities in furtherance of the purposes of the authority, and the exercise of any other powers of the authority, are hereby declared as a matter of legislative determination to be public, governmental and municipal functions, purposes and uses exercised for a public purpose, and matters of public necessity.

(f) An authority may make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter with any department or agency of the United States, with any state or local governmental agency, or with any other person, public or private, upon those terms and conditions acceptable to the authority consistent with section 114(6).

(g) An authority has the exclusive responsibility to study and plan any improvements, expansion, or enhancements that affect the airport.

(h) An authority may commission planning, engineering, economic, and other studies to provide information for making decisions about the location, design, management, and other features of the airport or airport facilities.

(i) An authority is responsible for developing all aspects of the airport and airport facilities, including, but not limited to, all of the following:

(i) The location of terminals, hangars, aids to air navigation, parking lots and structures, cargo facilities, and all other facilities and services necessary to serve passengers and other customers of the airport.

(ii) Street and highway access and egress with the objective of minimizing, to the extent practicable, traffic congestion on access routes in the vicinity of the airport.

(j) An authority may act as a sponsor and submit requests for, accept, and be responsible to perform all of the assurances associated with accepting grants from the federal aviation administration or any other agency of the United States or of this state, with respect to the airport under the operational jurisdiction of the authority, and to perform the duties and responsibilities previously assumed by the local government that owns the airport under the operational jurisdiction of the authority by virtue of its acceptance of grants from the federal aviation administration or any other agency of the United States or this state.

(k) An authority may enter into agreements to use the facilities or services of the state, any subdivision or department of the state, any county or municipality, or the federal government or any agency of the federal government as necessary or desirable to accomplish the purposes of this chapter for that consideration or pursuant to that cost allocation formula that may be acceptable to the authority in compliance with its obligations under applicable federal law, regulations, and assurances associated with accepting grants from the FAA or any other agency of the United States or this state, including, but not limited to, policies of the FAA prohibiting revenue diversion or the payment of fees exceeding the value of services provided by a governmental agency.

(l) An authority may allow the state, any subdivision or department of the state, any county or municipality, or the federal government or any agency of the federal government to utilize airport facilities or the services of the authority as necessary or desirable to accomplish the purposes of this chapter, for consideration acceptable to the authority in compliance with its obligations under applicable federal law, regulations, and assurances associated with accepting grants from the FAA or any other agency of the United States or this state.

(m) An authority may adopt and enforce in a court of competent jurisdiction of this state reasonable rules, regulations, and ordinances for the orderly, safe, efficient, and sanitary operation and use of airport facilities owned by the authority or under its operational jurisdiction. The authority may establish civil and criminal penalties for the violation of rules, regulations, and ordinances authorized under this subdivision to the same extent as the local government that owns the airport.

(n) An authority may enter into exclusive or nonexclusive contracts, leases, franchises, or other arrangements with any person or persons for terms not exceeding 50 years, for granting the privilege of using or improving, or having access to the airport or any airport facility, or any portions of the airport or the authority's airport facilities, for commercial airline-related purposes consistent with its obligations under applicable federal law, regulations, and assurances associated with accepting grants from the FAA or any other agency of the United States or this state.

(o) An authority may enter into exclusive or nonexclusive contracts, leases, or other arrangements not described in subdivision (n) for commercially reasonable terms consistent with its obligations under applicable federal law, regulations, and assurances associated with accepting grants from the FAA or any other agency of the United States or this state.

(p) Subject to section 119, an authority may appoint and vest with police powers airport law enforcement officers, guards, or police officers under this chapter. The law enforcement officers, guards, or police officers of the authority shall have the full police powers and the authority of peace

officers within the areas over which the authority has operational jurisdiction, including, but not limited to, the prevention and detection of crime, the power to investigate and enforce the laws of this state, rules, regulations, and ordinances issued by the authority, and, to the extent permitted or required by federal law and regulations, requirements of federal law and regulations governing airport security. The officers may issue summons, make arrests, and initiate criminal proceedings. An authority is responsible for all actions of its officers committed under color of their official position and authority.

(q) An authority may procure insurance or become a self-funded insurer against loss in connection with the property, assets, or activities of the authority.

(r) An authority may invest money of the authority, at the board's discretion, in instruments, obligations, securities, or property determined proper by the board, and name and use depositories for its money.

(s) Except as otherwise prohibited by this chapter, an authority shall have all the powers of a political subdivision under this act, but shall not levy or impose a tax or special assessment.

(t) An authority may exercise its powers and duties under this chapter notwithstanding any charter provision, ordinance, resolution, contract, regulation, or rule of a local government to the contrary. This subdivision does not apply to a contract entered into by a local government after the authority is created if the contract also has been approved or ratified by the authority. Nothing in this chapter shall be construed to limit the exercise of the powers of a local government in which an airport is located to zone property under the city and village zoning act, 1921 PA 207, MCL 125.581 to 125.600, or to engage in land planning under 1931 PA 285, MCL 125.31 to 125.45, with respect to property that is not part of the airport.

(u) An authority may fix, charge, and collect rates, fees, rentals, and charges within and for the use and operation of the airport or airports under the operational jurisdiction of the authority.

(2) A member of the board or an officer, appointee, or employee of the authority shall not be subject to personal liability when acting in good faith within the scope of his or her authority or on account of liability of the authority, and the board may defend and indemnify a member of the board or an officer, appointee, or employee of the authority against liability arising out of the discharge of his or her official duties. An authority may indemnify and procure insurance indemnifying members of the board and other officers and employees of the authority from personal loss or accountability for liability asserted by a person with regard to bonds or other obligations of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or other obligations or by reason of any other action taken or the failure to act by the authority. The authority may also purchase and maintain insurance on behalf of any person against any liability asserted against the person and incurred by the person in any capacity or arising out of the status of the person as a member of the board or an officer or employee of the authority, whether or not the authority would have the power to indemnify the person against that liability under this subsection. An authority, pursuant to bylaw, contract, agreement, or resolution of its board, may obligate itself in advance to defend and indemnify persons.

(3) An authority shall indemnify and hold harmless the local government that owns the airport over which operational jurisdiction has been transferred to the authority for any civil claim existing or any civil action or proceeding pending by or against the local government involving or relating to the airport, airport facilities, or any civil liability related to the obligations of the local government issued or incurred with respect to the airport which was pending at the time of, or which had been incurred prior to, the transfer of operational jurisdiction of the airport to the authority.

(4) Notwithstanding any other provision of law to the contrary, an authority does not have the power to impose or levy taxes, except the authority has the power to impose fees or charges permitted by federal law.

(5) Unless an authority obtains the approval of the legislative body of the local government that owns the airport over which operational jurisdiction has been transferred to the authority pursuant to section 117, the authority shall not incur any indebtedness pledging, on a parity or superior basis, any revenues from airport facilities that are otherwise pledged to secure any obligation, note, bond, or other instrument of indebtedness for which the full faith and credit of the local government has been pledged.

(6) Upon the creation or incorporation of an authority under this chapter, the local government that owns the airport over which operational jurisdiction may be transferred pursuant to section 117 shall not pledge airport facilities or assets to secure any instrument of indebtedness except to secure airport revenue bonds issued for airport capital improvement projects after the creation or incorporation of the authority and prior to the approval date.

(7) An authority shall not take any action contrary to obligations assumed or entered into under federal rules or regulations or any agreement entered into or assumed with respect to state or federal grants.

(8) A local government shall not take any action contrary to obligations or covenants under applicable federal law, regulations, and assurances associated with the state or federal government. A local government, or an official of the local government acting in an official capacity, shall take no action, including, but not limited to, action pursuant to charter provision, ordinance, resolution, contract, regulation, or rule, to impede the exercise of powers or duties under this chapter.

(9) If a local government previously acted as a sponsor and action by, or concurrence of, the local government is required to complete a project related to the airport or airport facilities, the local government shall not withhold, condition, or delay concurrence with any authority action necessary to complete the project in accordance with obligations under applicable federal law, regulations, and assurances associated with accepting grants from the FAA or any other agency of the United States or this state.

(10) The authority to which operational jurisdiction for an airport is transferred shall be the agent of a local government for the preparation, submission, and administration of all state or federal grants pending as of the approval date. The authority shall also be the custodian of all funds received or to be received by the local government or the authority for the projects for which the grants were awarded.

History: Add. 2002, Act 90, Imd. Eff. Mar. 26, 2002

259.120 Sources of revenue.

Sec. 120. (1) An authority may raise revenues to fund all of its activities, operations, and investments consistent with its purposes. However, an authority shall not levy a tax or impose a special assessment. The sources of revenue available to the authority may include, but are not limited to, fees, rents, or other charges the authority may fix, regulate, and collect for the airport facilities under the control of and services furnished by the authority, including fees, rentals, and charges fixed in connection with agreements entered into under section 116. The revenues raised by an authority may be pledged, in whole or in part, for the repayment of bonded indebtedness and other expenditures issued or incurred by the authority.

(2) To the extent practicable, an authority shall endeavor to maximize the revenues generated from enterprises located at the airport consistent with its obligations under applicable federal law, regulations, and assurances associated with accepting grants from the FAA or any other agency of the United States or this state.

(3) The authority may make application for and receive loans, grants, guarantees, or other financial assistance in aid of airport facilities and the operation of the airport from any state, federal, county, or municipal government or agency or from any other source, public or private, including financial assistance for purposes of planning, constructing, improving, and operating the airport, for providing security at the airport, and for providing ground access to the airport.

History: Add. 2002, Act 90, Imd. Eff. Mar. 26, 2002

Chapter VII
ACQUISITION AND OPERATION OF AIRPORTS, LANDING FIELDS AND OTHER AERONAUTICAL FACILITIES BY POLITICAL SUBDIVISIONS OF THIS STATE.

259.126 Airports; acquisition and operation by political subdivisions.
Sec. 126. Every political subdivision in this state is hereby authorized through its governing body to acquire property, real and personal, for the purpose of establishing, constructing, and enlarging airports, landing fields and other aeronautical facilities, and to acquire, establish, construct, enlarge, improve, maintain, equip, operate and regulate such airports, landing fields and other aeronautical facilities, and other property incidental to their operation, either within or without the territorial limits of such political subdivision, and within or without the state of Michigan, in the manner provided by the laws of this state for the acquisition of real property for public purposes. Acquisition may be by purchase, lease, gift, condemnation or dedication: Provided, That, except with respect to the enlargement of existing airports, landing fields and other aeronautical facilities, a verdict of necessity in any condemnation case pending on the effective date of this act, or hereafter instituted pursuant to the provisions of this section, shall not be rendered by the condemnation jury, in case the proposed site is wholly or partially located within a charter township of more than 35,000 population according to the latest census or is wholly or partially located within a political subdivision next adjoining such charter township and the proposed site is located in a county other than that in which the condemning authority is situated, until such time as evidence is presented to the court showing that the board of supervisors of the county within which the proposed site is wholly or partially located and the board of supervisors of the county within which the adjoining political subdivision is located have approved the acquisition and condemnation of such property for such purposes by a majority vote of its members elect.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.126 ;-- Am. 1953, Act 39, Imd. Eff. May 3, 1953

259.126a Aeronautical facilities; acquisition and operation by state of Wisconsin; reciprocity.

Sec. 126a. The governing body of a political subdivision in the state of Wisconsin whose laws permit, may acquire, establish, construct, enlarge, own, control, lease, equip, improve, maintain and operate airports, landing fields and other aeronautical facilities in this state, subject to all laws, rules and regulations of this state applicable to its political subdivisions in such aeronautical projects, but subject to the laws of Wisconsin in all matters relating to financing such projects. A political subdivision of the state of Wisconsin shall have the same privileges, rights and duties of like political subdivisions of this state. This section shall not apply unless the laws of Wisconsin permit political subdivisions of this state to acquire, establish, construct, enlarge, own, control, lease, equip, improve, maintain, operate and otherwise control such airport, landing field and other aeronautical facilities in Wisconsin with all privileges, rights and duties applicable to the other political subdivisions of the state of Wisconsin in such aeronautical projects.

History: Add. 1967, Act 271, Eff. Nov. 2, 1967
Admin Rule: R 259.201 et seq.; R 259.801 et seq. of the Michigan Administrative Code.

259.126b Political subdivision of state of Ohio; privileges, rights, and duties.

Sec. 126b. The governing body of a political subdivision in the state of Ohio whose laws permit may acquire, establish, construct, enlarge, own, control, lease, equip, improve, maintain, and operate airports, landing fields, and other aeronautical facilities in this state, subject to all laws, rules, and regulations of this state applicable to its political subdivisions in such aeronautical projects, but subject to the laws of Ohio in all matters relating to financing of such projects. A political subdivision of the state of Ohio shall have the same privileges, rights, and duties of like political subdivisions of this state. This section does not apply unless the laws of Ohio permit political subdivisions of this state to acquire, establish, construct, enlarge, own, control, lease, equip, improve, maintain, operate, and otherwise control an airport, landing field, and other aeronautical facility in Ohio with all privileges, rights, and duties

applicable to the other political subdivisions of the state of Ohio in such aeronautical projects.

History: Add. 1996, Act 370, Imd. Eff. July 3, 1996

259.126c Political subdivision of state of Indiana; privileges, rights, and duties.

Sec. 126c. The governing body of a political subdivision in the state of Indiana whose laws permit may acquire, establish, construct, enlarge, own, control, lease, equip, improve, maintain, and operate airports, landing fields, and other aeronautical facilities in this state, subject to all laws, rules, and regulations of this state applicable to its political subdivisions in such aeronautical projects, but subject to the laws of Indiana in all matters relating to financing such projects. A political subdivision of the state of Indiana shall have the same privileges, rights, and duties of like political subdivisions of this state. This section does not apply unless the laws of Indiana permit political subdivisions of this state to acquire, establish, construct, enlarge, own, control, lease, equip, improve, maintain, operate, and otherwise control an airport, landing field, and other aeronautical facility in Indiana with all privileges, rights, and duties applicable to the other political subdivisions of the state of Indiana in such aeronautical projects.

History: Add. 1996, Act 370, Imd. Eff. July 3, 1996

259.127 Air space rights.

Sec. 127. Where necessary, in order to provide unobstructed air space for the safe landing or taking off of aircraft utilizing airports, landing fields, or other aeronautical facilities acquired or operated under this act, every political subdivision of this state is authorized to acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports, landing fields, and other aeronautical facilities, and such other airport protection privileges as are necessary to insure safe approaches to the landing and takeoff areas. Political subdivisions are also authorized to acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking

and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from airport hazards, for the purpose of maintaining and repairing the lights and marks.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.127 ;-- Am. 1996, Act 370, Imd. Eff. July 3, 1996

259.128 Encroachments on airport protection privileges declared public nuisance; abatement.

Sec. 128. Encroachments on airport protection privileges a public nuisance. It shall be unlawful for anyone to build, rebuild, create, or cause to be built, rebuilt, or created any object, or plant, cause to be planted or permit to grow higher any tree or trees or other vegetation, which shall encroach upon any airport protection privileges acquired pursuant to the provisions of this chapter. Any such encroachment is declared to be a public nuisance and may be abated in the manner as is prescribed by law for the abatement of public nuisance.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.128

259.129 Prior acquisitions; validation.

Sec. 129. Prior acquisition and operation of airport property validated. Any acquisition of property within or without the limits of any political subdivision of this state for airports, landing fields, or other aeronautical facilities, or of airport protection privileges and arrangements made for the operation of such facilities, heretofore made by any such political subdivision in any manner, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.129

259.130 Political subdivisions; appropriation of funds.

Sec. 130. Political subdivisions may appropriate funds and levy tax for airports, landing fields and other aeronautical facilities. Every political subdivision of this state is hereby authorized to appropriate funds for acquisition, improvement, maintenance and equipping of airports, landing fields and other aeronautical facilities as provided in this act, and may levy tax on property within such political subdivisions subject to

taxation for public purposes, as provided by law; but said tax shall never exceed in any 1 year 1 mill on the assessed valuation of said political subdivision: Provided, That funds of any political subdivision not already appropriated or earmarked for other purposes may be used for the herein authorized purposes upon the majority vote of the legislative body of any such political subdivision.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.130

259.131 Aeronautical facilities; general obligation bonds; revenue bonds; additional security; "revenues" defined.

Sec. 131. (1) The legislative body of any political subdivision in this state may submit to the qualified electors of the political subdivision at any regular or special election called for that purpose the question of the issuance of general obligation bonds of the political subdivision, the proceeds of which shall be used for the acquisition, construction, operation, maintenance, and equipping of airports and landing fields, including buildings, structures, or facilities relating to them and the necessary land for them. A majority vote of the qualified voters voting on the question shall authorize the issuance of the general obligation bonds. General obligation bonds issued under this act are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) Revenue bonds may be issued for the purposes set forth in subsection (1), and the legislative body of the political subdivision may pledge as security for the bonds all or any portion of the landing fees, concession fees, rents, charges, or any other revenues derived from the operation of the airport. The revenue bonds shall be issued in accordance with the applicable provisions of the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140. However, the fees, rents, or charges pledged that are fixed and established under the provisions of a lease or contract shall not be subject to revision or change except in the manner provided in the lease or contract. As additional security for the payment of the principal of and interest on any revenue bonds issued under the provisions of this section, any issuing political subdivision may, by resolution adopted by a majority vote of its governing body, agree that if the funds pledged for the payment of the revenue bonds are not sufficient

to pay the principal and interest on the bonds as they become due, the political subdivision shall advance sufficient money out of its general funds for the payment of the principal and interest, if the proceeds of the revenue bonds are used exclusively within the territorial limits of the county in which the political subdivision is located, and the treasurer of the political subdivision shall promptly make the advancement. The political subdivision shall be reimbursed for any money advanced out of funds pledged for the payment of the revenue bonds subsequently paid or collected.

(3) Except for the additional security that may be agreed upon by resolution of the governing body as provided in this section, the principal of and interest on the revenue bonds shall be payable solely from the revenues described in this section. As used in this section, “revenues” means net revenues after operating expenses.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.131 ;-- Am. 1955, Act 34, Imd. Eff. Apr. 19, 1955 ;-- Am. 1956, Act 163, Imd. Eff. Apr. 16, 1956 ;-- Am. 1957, Act 228, Imd. Eff. June 6, 1957 ;-- Am. 1958, Act 194, Eff. Sept. 13, 1958 ;-- Am. 2002, Act 342, Imd. Eff. May 23, 2002

259.131a Repealed. 1996, Act 370, Imd. Eff. July 3, 1996.

Compiler's Notes: The repealed section pertained to issuance of capital city airport revenue bonds.

259.132 Declaration of public purpose and necessity.

Sec. 132. Declaration of public purpose and as a public necessity. The acquisition of any lands for the purpose of establishing airports, landing fields or other aeronautical facilities; the acquisition, of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports, landing fields and other aeronautical facilities, and the exercise of any other powers herein granted to political subdivisions of this state, are hereby declared to be public, governmental and municipal functions, exercised for a public purpose, and matters of public necessity.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.132

259.133 Additional powers of political subdivision establishing aeronautical facility.

Sec. 133. In addition to the general powers conferred by this act, a political subdivision that has established or establishes an airport, landing field, or other aeronautical facility may do 1 or more of the following:

(a) Vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation of the airport, landing field, or other aeronautical facility, in an officer, a board, or body of a political subdivision, by ordinance or resolution that prescribes the powers and duties of the officer, board, or body. In counties operating under the county road system with a population of more than 2,000,000, the board of county road commissioners may implement this section for that county.

(b) Employ a regular airport manager for the airport, landing field, or other aeronautical facility under its control, or in cases where an airport board or body is established, the airport manager may be employed by the board or body.

(c) Adopt and amend all necessary rules, regulations, and ordinances, for the management, government, and use of any properties under its control, whether within or outside of its territorial limits; appoint airport guards or police, with full police powers; establish penalties for the violation of the rules, regulations, and ordinances, and enforce the penalties.

(d) Adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports, landing fields, or other aeronautical facilities within the political subdivision or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules adopted pursuant to this subdivision shall be consistent with and conform as nearly as possible with the laws of this state and the rules of the state transportation department.

(e) Lease for a term of years, donate, or sell, the airport, landing field, or other aeronautical facility, or buildings and structures relating to the airport, landing field, or other aeronautical facility, or real property acquired or set apart for these purposes, to any person or persons, any other political subdivision or the state, or the federal government, or any department of a political subdivision, or the state or federal government, either exclusively or in common with others, for operation and public use; confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities; enter into leases, contracts, agreements, or grants of privileges of concessions with any person or persons, any other political subdivision or the state government or the federal government, or any department of a political subdivision or the state or federal government, for the operation, use, or occupancy, either exclusively or in common with others, of all or any part of the airport, landing field, or other aeronautical facility, including any buildings and structures of the airport, landing field, or aeronautical facility, under its control, for a term or terms not to exceed 50 years, establishing the charges, rentals, or fees at a fixed or variable rate binding upon the parties for the full term of the lease, contract, agreement, or grant, which lease, contract, agreement, or grant may provide for the resolution of disputes or for the fixing of variable terms through arbitration or similar procedure. The terms, charges, rentals, and fees shall be equal and uniform for the same type of facilities provided, services rendered, or privileges granted with no unjust discrimination between users of the same class for like facilities provided, services rendered, or privileges granted. However, the public shall not be deprived of its rightful, equal, and uniform use of facilities provided, services rendered, or privileges granted. Terms, charges, rentals, and fees may vary if necessary, to provide security and funds for payment of bonds to be issued as authorized by this act to finance improvements to any airport, or to allow for other differing costs of financing, construction of facilities, or maintenance and operation of the facility.

(f) Sell, donate, or lease any property, real or personal, acquired for such purposes and belonging to the political subdivision, which in the judgment of its governing body, may not be subsequently required for aeronautic purposes, in accordance with the laws of this state, or the

provisions of the charter of the political subdivision, governing the sale or leasing of similarly owned property.

(g) Determine the charges, rentals, or fees for the use of any properties under its control, and the charges for any services or accommodations, and the terms and conditions under which the properties may be used, which rentals, fees, charges, terms, and conditions shall be equal and uniform for the same type of use provided, services rendered, or accommodations granted with no unjust discrimination between users of the same class for like use provided, services rendered, or accommodations granted, except that any charges, rentals, and fees as may be fixed or determined by any lease, contract, agreement, or grant of privileges of concessions to which the political subdivision is a party or is the grantor, shall be binding upon all parties for the full term prescribed in the lease, contract, agreement, or grant unless the same is sooner modified or terminated by mutual consent of the parties. However, the public shall not be deprived of its rightful, equal, and uniform use of such property. Terms, charges, rentals, and fees may vary if necessary, to provide security and funds for payment of bonds to be issued as authorized by this act to finance improvements to any airport, or to allow for other differing costs of financing, construction of facilities, or maintenance and operation of any such facility. Liens may be attached and enforced by law, as provided in such cases, and their enforcement, for repairs to or improvements or storage or care of any personal property, to enforce the payment of the charges.

(h) Exercise all powers necessarily incidental to the exercise of the general and special powers granted under this section.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.133 ;-- Am. 1955, Act 187, Eff. Oct. 14, 1955 ;-- Am. 1956, Act 163, Imd. Eff. Apr. 16, 1956 ;-- Am. 1959, Act 181, Eff. Mar. 19, 1960 ;-- Am. 1968, Act 238, Imd. Eff. June 26, 1968 ;-- Am. 1974, Act 261, Imd. Eff. Aug. 6, 1974 ;-- Am. 1996, Act 370, Imd. Eff. July 3, 1996 ;-- Am. 2002, Act 35, Eff. May 15, 2002

259.134 Joint operation; board, compensation, term; condemnation proceedings; expenditures.

Sec. 134. Joint operation. (a) All powers, rights and authority granted to any political subdivision in this act may be exercised and enjoyed by 2 or more of them, or by this state and 1 or more such political subdivisions, acting jointly, either within or without the territorial limits of either or any of them, and within or without this state; or by this state or any political subdivision acting jointly with any other state or political subdivision thereof, whether within or without this state; provided the laws of such other state permit such joint action; and contracts may be entered with each other for the herein provided and authorized joint action.

(b) Political subdivisions of this state acting jointly as herein authorized shall create a board from the inhabitants thereof for the purpose of acquiring property for, establishing, constructing, enlarging, improving, maintaining, equipping, operating and regulating the airports, landing fields and other aeronautical facilities, and airport protection privileges to be jointly acquired, controlled and operated. Such board shall consist of members to be appointed by the governing body of each political subdivision involved, the number to be appointed by each to be provided for by the agreement for the joint venture. Each member shall serve for such time and upon such terms as to compensation, if any, as may be provided for in the agreement.

(c) Such board may exercise, on behalf of the political subdivisions acting jointly by which it is appointed, all the powers of each such political subdivision granted by this act.

(d) Condemnation proceedings shall be instituted in the names of the political subdivisions jointly, and the property acquired shall be held by the political subdivisions as tenants in common.

(e) For the purpose of providing funds for necessary expenditures in carrying out the provisions of this act, a joint fund shall be created and maintained, into which each of the political subdivisions involved shall deposit its proportionate share as provided by the joint agreement;

revenues in excess of cost of maintenance and operating expenses of the joint properties to be divided as may be provided in the original agreement for the joint venture.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.134

259.135 Federal or other assistance to political subdivisions; submittal of project application to administrator of federal aviation administration; commission as agent; terms and conditions of agency; disbursements.

Sec. 135. (1) A political subdivision of this state is empowered to accept federal or other assistance in the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports, landing fields, and other aeronautical facilities.

(2) A political subdivision of this state, whether acting alone or jointly with another political subdivision or with the state, shall not submit directly to the administrator of the federal aviation administration or its successor agency any project application under the provisions of an act of Congress for airport and airway systems, unless the project and the project application have been first approved by the commission.

(3) A political subdivision shall not directly accept, receive, receipt for, or disburse any funds granted by the United States for the purpose of acquisition, construction, enlargement, maintenance, equipment, or improvement of airports, landing fields, or other aeronautical facilities, but it shall designate the commission as its agent and in its behalf to accept, receive, receipt for, and disburse such funds. A political subdivision shall enter into an agreement with the commission which shall prescribe the terms and conditions of the agency in accordance with federal laws, rules, and regulations and the applicable laws of this state. Money paid over by the United States government for the acquisition, construction, improvement, enlargement, equipment, or maintenance of airports, landing fields, or other aeronautical facilities shall be channeled through the state treasury and disbursed for and in behalf of the political subdivision under the terms and conditions of the respective grants. The

disbursements shall be made in accordance with the accounting laws and procedures of this state.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.135 ;-- Am. 1948, Ex. Sess., Act 32, Imd. Eff. May 10, 1948 ;-- Am. 1982, Act 466, Imd. Eff. Dec. 30, 1982

259.136 Board of county commissioners; vote to provide aid.
Sec. 136. The county board of commissioners of any county may vote to provide aid for any publicly owned or operated airport, landing field, or other aeronautical facility within the county, and include the aid in the county tax, or provide for the payment of the aid from money available in the general fund of the county.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.136 ;-- Am. 1996, Act 370, Imd. Eff. July 3, 1996

259.151 State plan for approach protection areas.
Sec. 151. (1) The commission may create and establish a state plan for approach protection areas surrounding airports, landing fields, and other aeronautical facilities, by establishing standards of height and use to which any structure or obstruction, whether natural or human-made, may be erected or maintained within a distance from the boundaries of any airport, landing field or other aeronautical facility necessary for public safety.

(2) The airport manager of an airport licensed under this act shall promptly file all of the following with any city, village, township, or county that is located in whole or in part within the approach protection area:

(a) A copy of the airport approach plan for the airport, if any.

(b) A copy of the airport layout plan for the airport, if any.

(c) A registration of the airport's name and mailing address for the purposes of receipt of notice under section 4 of the city and village zoning act, 1921 PA 207, MCL 125.584, section 9 of the county zoning

act, 1943 PA 183, MCL 125.209, or section 9 of the township zoning act, 1943 PA 184, MCL 125.279.

(3) The filing under subsection (2) shall be made with the zoning board, zoning commission, or other commission appointed to recommend zoning regulations or, if there is no body exercising the powers of such a commission, with the legislative body of the city, village, township, or county.

History: 1945, Act 327, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.151 ;-- Am. 1996, Act 370, Imd. Eff. July 3, 1996 ;-- Am. 2000, Act 382, Imd. Eff. Jan. 2, 2001 ;-- Am. 2002, Act 35, Eff. May 15, 2002

AIRPORT DEVELOPMENT
Act 107 of 1969

AN ACT to authorize the department of state highways and transportation, through the aeronautics commission, to make loans to counties, cities, townships, and incorporated villages, or any combination thereof, and to establish a revolving fund for the purpose of airport development; and to authorize the commission to prescribe rules for granting loans and repayment of loans.

History: 1969, Act 107, Imd. Eff. July 24, 1969 ;-- Am. 1975, Act 192, Imd. Eff. Aug. 8, 1975

The People of the State of Michigan enact:

259.251 Continuing airport loan program; creation; administration; purpose.

Sec. 1. A continuing airport loan program is created to be administered by the department of state highways and transportation through the aeronautics commission for the purpose of making loans to counties, cities, townships, and incorporated villages, or any combination thereof to assist in the construction and improvement of publicly owned airports and landing fields.

History: 1969, Act 107, Imd. Eff. July 24, 1969 ;-- Am. 1975, Act 192, Imd. Eff. Aug. 8, 1975

259.252 Revolving loan account; appropriation, administration.
Sec. 2. The sum of $250,000.00 is appropriated from the state aeronautics fund to be administered by the aeronautics commission for the establishment of a revolving loan account to implement the provisions of this act.

History: 1969, Act 107, Imd. Eff. July 24, 1969

259.253 Loans; rules; limitation; repayment period; interest rate; collection and disposition of repayments and interest.
Sec. 3. The commission shall promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, for making loans pursuant to section 1 not to exceed 90% of the local share of the project cost, or $100,000.00, whichever is the lesser. The loan shall be repaid within 10 years and shall bear an annual interest rate as established by the state treasurer in the year of the loan. The annual interest rate shall not exceed 6%. The repayments shall be collected by the commission and credited to the revolving loan account established in section 2. The interest shall be collected annually by the commission and credited to the state aeronautics fund.

History: 1969, Act 107, Imd. Eff. July 24, 1969 ;-- Am. 1975, Act 192, Imd. Eff. Aug. 8, 1975 ;-- Am. 1978, Act 134, Imd. Eff. May 4, 1978 ;-- Am. 1980, Act 45, Imd. Eff. Mar. 19, 1980
Admin Rule: R 259.801 et seq. of the Michigan Administrative Code.

259.254 Aeronautics commission; report to legislature, time, contents.
Sec. 4. At the end of each fiscal year, the commission shall submit to the legislature a report showing total funds available for loans, itemization of loans made, and repayment of loans and interest received.

History: 1969, Act 107, Imd. Eff. July 24, 1969

259.255 Supplemental construction of act.
Sec. 5. This act shall be construed as supplemental to the laws of this state relative to improvement of airports.

History: 1969, Act 107, Imd. Eff. July 24, 1969

SPECIAL AERONAUTICAL PLANNING FUND
Act 328 of 1945

AN ACT to create a fund for the purpose of advancement to the state board of aeronautics of moneys for planning, surveys, engineering services, and development of airports and landing fields; to provide for disbursement of said fund; and to make an appropriation therefor.

History: 1945, Act 328, Imd. Eff. May 28, 1945

The People of the State of Michigan enact:

259.401 Appropriation; purpose.
Sec. 1. There is hereby appropriated from the general fund the sum of $250,000.00 for the fiscal year ending June 30, 1945, to the state administrative board to be expended as provided in this act.

History: 1945, Act 328, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.401

259.402 Special aeronautical planning fund; expenditure.
Sec. 2. Said appropriation shall be credited to a special fund to be known as the “special aeronautical planning fund”. Moneys may be released from said special fund from time to time by the state administrative board to the director of aeronautics, upon his request for planning, survey, engineering services and development of airports and landing fields within this state.

History: 1945, Act 328, Imd. Eff. May 28, 1945 ;-- CL 1948, 259.402

AIRPORT ZONING ACT
Act 23 of 1950 (Ex. Sess.)

AN ACT to empower and direct the Michigan aeronautics commission to adopt airport approach plans for publicly owned airports within this state; to empower the Michigan aeronautics commission, municipalities, and other political subdivisions to promulgate, adopt, establish, administer, and enforce airport zoning regulations limiting the height of structures and objects of natural growth, and otherwise regulating the use of property in the vicinity of publicly owned airports, and to acquire, by purchase, grant, condemnation, or otherwise, air rights and other interests in land; to provide for the establishment of zoning commissions, administrative agencies, and boards of appeals to administer the provisions of this act, and to provide for their organization and procedure and appeals therefrom; and to provide penalties and remedies for violations of this act or ordinances or regulations made under the authority herein conferred; to provide for reciprocity with adjoining states maintaining and operating airports; and to repeal any inconsistent act or parts of acts.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950 ;-- Am. 1976, Act 158, Imd. Eff. June 17, 1976

The People of the State of Michigan enact:

259.431 Airport zoning act; definitions.

Sec. 1. For the purpose of this act the words, terms and phrases set forth in sections 2 through 10, inclusive, shall have the meanings prescribed in such sections.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.432 Airport; publicly owned; definitions.

Sec. 2. The term “airport”, when used in this act means any location which is used for the landing or taking off of aircraft, which provides facilities for the shelter, supply or care of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or acquired for airport buildings or other airport facilities, and all

appurtenant rights-of-way, either heretofore or hereafter established. An airport is "publicly owned" if the portion thereof used for the landing and taking off of aircraft is owned, operated, controlled, leased to or leased by the United States, any agency or department thereof, this state or any municipality or other political subdivision of this state, or any other governing body, public agency or other public corporation.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.433 Airport hazard; definition.
Sec. 3. The term "airport hazard", when used in this act means any structure or tree or use of land or of appurtenances thereof which obstructs the air space required for the safe flight of aircraft in landing or taking off at an airport or is otherwise hazardous or creates hazards to such safe landing or taking off of aircraft.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.434 Airport hazard area; definition.
Sec. 4. The term "airport hazard area", when used in this act means any area of land or water, or both, upon which an airport hazard might be established if not prevented as provided in this act, including any such area which has been declared to be an "airport hazard area" by the Michigan aeronautics commission in connection with any airport approach plan adopted by said commission.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.435 Commission; definition.
Sec. 5. The term "commission", when used in this act means the Michigan aeronautics commission, or any successor thereto established by law.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.436 Political subdivision; definition.
Sec. 6. The term "political subdivision", when used in this act means any county, city, village or township of this state, and any other political

subdivision, public corporation, authority, or district in this state which is or may hereafter be authorized by law to construct, enlarge, improve, maintain, equip, operate and regulate airports.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.437 Person; definition.
Sec. 7. The term "person", when used in this act means any individual, firm, partnership, corporation, company, association, joint stock association, municipal corporation or other body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.438 State; definition.
Sec. 8. The term "state" when used in this act means the state of Michigan.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.439 Structure; definition.
Sec. 9. The term "structure", when used in this act means any object constructed or installed by man, including, but without limitation, buildings, towers, smoke stacks and overhead transmission lines, but not including highways and their appurtenances.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.440 Tree; definition.
Sec. 10. The term "tree", when used in this act, means any object of natural growth.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.441 Airport hazard declared nuisance; prevention.
Sec. 11. It is hereby found that an airport hazard endangers the lives and property of the general public, of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces

the size of the area available for the landing, taking-off, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (a) That the creation or establishment or maintenance of an airport hazard is a public nuisance and an injury to the community served by the airport in question; and (b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, abatement, or marking or lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property rights therein.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.442 Airport approach plan; adoption by aeronautics commission, considerations.

Sec. 12. The commission shall formulate, adopt and revise, when necessary, an airport approach plan for each publicly owned airport in this state. Each such plan shall indicate and determine the circumstances in which structures and trees are or would be airport hazards, the airport hazard area within which measures for the protection of the airport's aerial approaches should be taken, and what the height limits and other objectives of such measures should be. In adopting or revising any such plans, the commission shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the traffic pattern and regulations affecting flying operations at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, and the possibility of lowering or removing existing obstructions; and the commission may obtain and consider the views of the agency of the federal government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.443 Airport hazard area; determination; zoning regulations; "development" defined.

Sec. 13. (1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area wholly or partly within its territorial limits or jurisdiction may make an official determination that the area is in fact an airport hazard area and may thereupon adopt, administer, and enforce, in the interest of public safety and in the manner and upon the conditions prescribed in this act, airport zoning regulations for that part of the airport hazard area which is within its territorial limits or jurisdiction. The regulations may divide the area into zones, and, within those zones, may specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) A political subdivision in which is wholly or partially located an airport hazard area, may adopt, administer, and enforce zoning regulations for that part of an airport hazard area within the political subdivision's territorial limits or jurisdiction to protect public health and safety. The political subdivision may divide the area into zones and specify within the zones the land uses or developments permitted. As used in this subsection, "development" means an activity which materially alters or affects the existing conditions or use on any land.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950 ;-- Am. 1976, Act 158, Imd. Eff. June 17, 1976

259.444 Joint airport zoning board; creation; powers; membership.

Sec. 14. In each case where (a) an airport is owned, operated, controlled, leased to, or leased by a political subdivision and an airport hazard area appertaining to the airport is located wholly or partly outside the territorial limits or jurisdiction of the political subdivision, or (b) an airport hazard area is located wholly or partly within the territorial limits or jurisdiction of 2 or more political subdivisions, whether or not the particular airport in connection with which the airport hazard area exists is owned, operated, controlled, leased to, or leased by 1 or more of the political subdivisions, all the political subdivisions involved, including the political subdivision which is the owner, operator, controller, lessee, or lessor of the airport, shall, by ordinance or by resolution duly adopted,

create a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question, as that vested by section 13 in the political subdivision or political subdivisions within which the hazard area is wholly or partly located. Each joint board shall have as members 2 representatives appointed by the governing body of each political subdivision participating in its creation and in addition, another member to be elected by a majority of the members so appointed. This section shall not require the creation of a joint airport zoning board whenever a county, acting through its governing body or any county agency which is by law authorized to maintain, operate, and improve airports, adopts airport zoning regulations applicable to an airport hazard area located entirely within the territorial limits or jurisdiction of the county and the airport zoning regulations shall supersede any other airport zoning regulations applicable to the same airport zoning area.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950 ;-- Am. 1976, Act 158, Imd. Eff. June 17, 1976

259.445 Airport zoning regulations; incorporation into zoning ordinance.

Sec. 15. In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and may be administered and enforced as an integral part thereof.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.446 Airport zoning regulations; amendment.

Sec. 16. Every airport zoning regulation for an airport hazard area existing in connection with a publicly owned airport shall be designed to effectuate the commission's airport approach plan, as amended by it, whenever necessary, for such publicly owned airport, and said regulations shall likewise be amended, when necessary, to conform to any revision of the applicable airport approach plan that may be made by the commission.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.447 Airport hazard; definition and certification by aeronautics commission; joint airport zoning board, appointment, meetings, powers, compensation and expenses, expenditures.

Sec. 17. In each case where an airport hazard area exists in connection with a publicly owned airport and suitable airport zoning regulations have not been adopted, administered and enforced for such airport hazard area in a form and manner deemed reasonably adequate by the commission for the purposes of this act, the commission on behalf of this state shall define and determine such airport hazard area and certify such determination to the board of supervisors of the county or counties within which such airport hazard area is located and to the political subdivision authorized by law to maintain, operate, improve and regulate such airport, hereinafter referred to in this section as the airport operating agency. Whereupon and within 90 days thereafter, the board of supervisors of each county involved shall appoint 3 members and the operating agency and the commission shall each appoint 1 member to a board which shall constitute a joint airport zoning board. Two of the members appointed by the board of supervisors of each county involved shall be from a township or townships within which the hazard area is located and 1 shall be from that part of the county outside the townships where the hazard area is located. Within 120 days after such certification such airport zoning board shall meet and organize and thereafter function in the same manner and with the same powers as joint airport zoning boards provided for under section 14 of this act. Members of joint zoning boards created pursuant to the provisions of this section shall be compensated for services actually rendered at a rate established by the airport operating agency and approved by the commission, and shall be reimbursed for any actual and necessary expenses incurred by them in the performance of their duties.

Subject to the approval of the airport operating agency, each joint board created pursuant to the provisions of this section is hereby authorized to make such expenditures, to employ such servants and to engage such professional and consultant services as are necessary to carry out the provisions of this act. All expenses of such joint boards, including the

compensation of its members, shall be paid by the airport operating agency. Provided, however, That the commission and the board of supervisors of any county involved, or any of them, are hereby authorized to participate in and contribute toward such compensation and expenses in such amounts and to such extent as may be fixed or provided by agreement.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.448 Airport zoning regulations; conflict, determination by commission.

Sec. 18. In the event of conflict between any airport zoning regulations adopted under this act and any other zoning regulations applicable to the same area, whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, or by a joint airport zoning board, and whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, those limitations or requirements which may be determined by the commission to be most conducive to airport and air travel safety shall govern and prevail.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.449 Airport zoning regulations; public hearing on adoption or amendment, notice.

Sec. 19. No airport zoning regulations shall be adopted, amended, or changed under this act except by action of the governing body of the political subdivision in question, or by action of the joint board provided for in sections 14 or 17, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in a newspaper of general circulation, in the political subdivision or subdivisions in which is located wholly or partly, the airport hazard area to be zoned, or, if no newspaper is generally circulated in any such political subdivision, then in a newspaper of general circulation in the county in which such political subdivision is located.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.450 Airport zoning commission; appointment, reports and hearings.

Sec. 20. Prior to the initial zoning of any airport hazard area under this act, the governing body of the political subdivision or the joint airport zoning board which is to adopt the regulations shall appoint a body, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such airport zoning commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the governing body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such airport zoning commission. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.451 Airport zoning regulations; reasonableness, considerations.

Sec. 21. All airport zoning regulations adopted under this act shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this act. In determining what regulations it may adopt, each political subdivision and joint airport zoning board, shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the traffic pattern and regulations affecting flying operations at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.452 Airport zoning regulations; removal or alteration of structures or trees prohibited, exception.

Sec. 22. No airport zoning regulations adopted under this act shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in sections 23 and 25.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.453 Airport zoning regulations; construction permits for new structures required.

Sec. 23. Any airport zoning regulations adopted under this act shall require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or substantially repaired. All such regulations shall further provide that before any non-conforming structure or tree may be replaced, substantially altered or substantially repaired, rebuilt, allowed to grow higher, or replanted, a permit authorizing such replacement, change or repair must be secured from the administrative agency authorized to administer and enforce the regulations. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming structure or tree or non-conforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for permit is made. Whenever an administrative agency determines that a non-conforming use or non-conforming structure or tree has been abandoned or more than 80 per cent torn down, destroyed, deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.454 Airport zoning regulations; variance.

Sec. 24. (1) A person desiring to erect a structure, or increase the height of a structure, or permit the growth of a tree, or otherwise use property in violation of the airport zoning regulations adopted under this act, may apply to the board of appeals, for a variance from the zoning regulations in question. The board of appeals shall allow a variance if a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest, but would do substantial justice and be in accordance with the spirit of the regulations. However, a variance may be granted subject to any reasonable condition or condition subsequent

that the board of appeals considers necessary to effectuate the purposes of this act. A variance shall not conflict with a general zoning ordinance or regulation of a political subdivision. However, a variance may conflict with a zoning ordinance or regulation adopted exclusively for airport zoning purposes.

(2) A variance from an airport zoning regulation may be applied for and granted pursuant to section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and this act.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950 ;-- Am. 2000, Act 16, Imd. Eff. Mar. 8, 2000

259.455 Airport zoning regulations; variances, markers and lights required.

Sec. 25. In granting any permit under section 23 or variance under section 24, any administrative agency or board of appeals may, if it deems such action advisable to effectuate the purposes of this act and reasonable in view of the surrounding circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the state or the political subdivision, as the case may be, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.456 Airport zoning regulations; administration and enforcement.

Sec. 26. All airport zoning regulations adopted under this act shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of any political subdivision adopting the regulations or one of the political subdivisions which participated in the creation of the joint zoning board adopting the regulations, if satisfactory to that political subdivision; but in no case shall such administrative agency be or include any member of the board of appeals. The duties of any administrative agency designated

pursuant to this act shall include that of hearing and deciding all permits under section 23 but such agency shall not have or exercise any of the powers herein granted to the board of appeals.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.457 Board of appeals; provision, powers.
Sec. 27. All airport zoning regulations adopted under the provisions of this act shall provide for a board of appeals to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the zoning regulations, as provided in section 29;

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations;

(c) To hear and decide specific variances under section 24.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.458 Board of appeals; members, appointment, terms, officers, removals, rules, meetings, records, subpoenas.
Sec. 28. Where a zoning board of appeals already exists it may be appointed as the board of appeals under this act. Otherwise, the board of appeals shall consist of 5 members, each to be appointed for a term of 3 years and until his successor is appointed and qualified, 1 of whom shall be designated as chairman and 1 of whom shall be designated as vice-chairman, which appointments shall be made by the governing body of the political subdivision adopting the regulations, or by the joint airport zoning board adopting the regulations, as the case may be; and said members shall be removable by the appointing body for cause shown, upon written charges and after notice and opportunity for public hearing before the appointing body.

The concurring vote of a majority of the members of the board of appeals shall be sufficient for all purposes including the reversal of any order, requirement, decision or determination of the administrative agency, or a decision in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

The board shall adopt rules concerning its organization and procedure and other authorized matters, consistent with the provisions of this act, and in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the vice-chairman, may administer oaths or affirmations and issue subpoenas to compel the attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the offices of the board and shall be a public record.

In case of disobedience of a subpoena, the board or its duly authorized agents may invoke the aid of any circuit court of the state of Michigan in requiring the attendance and testimony of witnesses and the production of books, records and papers pertaining to the question involved. Any of the circuit courts of the state within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena, issue an order requiring such person to appear before said board or its duly authorized agents and to produce books, records and papers if so ordered and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.459 Appeals; filing, hearing, notice.
Sec. 29. In cases where airport zoning regulations are adopted by a political subdivision or joint airport zoning board under sections 13, 14, 15 or 17, any person, including the commission on behalf of the state, aggrieved by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this act, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of appeals authorized to hear and decide appeals from the decisions of such administrative agency.

All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by order of the board on notice to the agency from which the appeal is taken and on due cause shown.

The board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or modify, the order, requirement, decisions, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall

have all the powers of the administrative agency from which the appeal is taken.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.460 Appeals; petitions for review by circuit court.
Sec. 30. Any person, including the commission, on behalf of and in the name of the state, aggrieved by any decision of a board of appeals, or any governing body of a political subdivision or any joint airport zoning board who is of the opinion that a decision of a board of appeals is erroneous, after first exhausting the remedies provided by such board, may present to the circuit court in any county in which the board transacts its business, a verified petition setting forth that the decision is erroneous, in whole or in part, and specifying the grounds of the error. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board. When petitions for review are filed in qualified courts located in different counties, the court in which a petition is filed first shall have exclusive jurisdiction of the matter.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.461 Board of appeals; certiorari; jurisdiction of court.
Sec. 31. Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decisions of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, or notice to the board and on due cause shown, grant a restraining order.

The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to

order further proceedings by the board of appeals. The findings of fact of the board if supported by substantial evidence, shall be accepted by the court as conclusive.

In any case in which airport zoning regulations adopted under this act, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the constitution of this state or the constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.462 Approach protection; acquisition of property by aeronautics commission.

Sec. 32. In any case in which: (a) it is desired to remove, lower, or otherwise terminate a non-conforming structure, tree or use; or (b) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this act; or (c) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the commission, on behalf of and in the name of the state, within the limitation of available appropriations, or each political subdivision within which the property or non-conforming use is wholly or partly located or the political subdivision owning, operating, controlling or which is lessee or lessor of the airport or is served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which the commission, on behalf of and in the name of the state, or political subdivisions are authorized to acquire real property for public purposes, such air right, avigation easement, or other estate or interest in the property or non-conforming structure or use in question as may be necessary to effectuate the purposes of this act.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.463 Violation of act or regulations; penalty.

Sec. 33. Any person who shall violate this act or any regulations, orders, or rulings promulgated or made pursuant to this act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $100.00 and imprisonment for a term not to exceed 90 days, and each day a violation continues to exist after notice shall constitute a separate offense. In addition, the political subdivision or joint airport zoning board adopting airport zoning regulations under this act may institute in the circuit court of any county in which the airport hazard area is located, in whole or in part, in connection with which such airport zoning regulations were adopted, an action to prevent, restrain, correct or abate any violation of this act, or of airport zoning regulations adopted under this act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order to fully effectuate the purposes of this act and of the regulations adopted and orders and rulings made pursuant thereto.

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.464 Airport zoning act; short title.

Sec. 34. This act shall be known and may be cited as the “Airport Zoning Act.”

History: 1950, Ex. Sess., Act 23, Imd. Eff. June 7, 1950

259.465 Powers and duties of contiguous political subdivision in adjoining state as to airports, landing fields, and other aeronautical facilities.

Sec. 35. The governing body of a contiguous political subdivision in an adjoining state whose laws permit may acquire, establish, construct, enlarge, own, control, lease, equip, improve, maintain, and operate airports, landing fields, and other aeronautical facilities in this state with a political subdivision thereof, subject to the laws and rules of this state applicable to its political subdivisions in aeronautical projects and subject to the laws of the other state in matters relating to financing the projects. A political subdivision of an adjoining state shall have the same

privileges, rights, and duties of a like political subdivision of this state. This section shall not apply unless the laws of the adjoining state permit political subdivisions of this state to acquire, establish, construct, enlarge, own, control, lease, equip, improve, maintain, operate, and otherwise control airports, landing fields, and other aeronautical facilities in the adjoining state with all privileges, rights, and duties applicable to the other political subdivisions of that state in aeronautical projects.

History: Add. 1976, Act 158, Imd. Eff. June 17, 1976

TALL STRUCTURE ACT
Act 259 of 1959

AN ACT to promote the safety, welfare, and protection of persons and property in the air and on the ground by regulating the height, location, and visual and aural identification characteristics of certain structures; to provide for the powers and duties of certain state agencies; and to provide penalties for the violation of this act.

History: 1959, Act 259, Eff. Mar. 19, 1960 ;-- Am. 1986, Act 296, Eff. Apr. 1, 1987

The People of the State of Michigan enact:

259.481 Definitions.
Sec. 1. As used in this act:

(a) “Airport” means a structure or an area of land or water that is designed and set aside for the landing and taking off of aircraft, is utilized or to be utilized by and in the interest of the public for the landing and taking off of aircraft, and is licensed by the commission.

(b) “Approach surface” means an imaginary plane longitudinally centered on a runway's centerline extended, and extending outward and upward from each end of that runway's primary surface, which plane has the specifications described in section 2c.

(c) “Commission” means the Michigan aeronautics commission.

(d) “Conical surface” means an imaginary plane extending outward and upward from the perimeter of a runway's horizontal surface at a slope of 50 to 1.

(e) “FAA” means the federal aviation administration or a successor agency to the federal aviation administration.

(f) “Heliport approach surface” means an imaginary plane projecting outward and upward from the perimeter of a heliport primary surface at a slope of 8 to 1.

(g) “Heliport primary surface” means an imaginary plane that is at the elevation established for a heliport coinciding in size and shape with the designated takeoff and landing area of that heliport.

(h) “Horizonal surface” means an imaginary horizontal plane 150 feet above the elevation established for an airport, the perimeter of which plane is constructed as described in section 2e.

(i) “Minimum obstruction clearance altitude” means the lowest FAA published altitude that assures acceptable navigational signal coverage and that is in effect between radio fixes on a low altitude airway, on an off-airway route, or, provided the altitude meets obstacle clearance requirements for the entire route segment, on a route segment.

(j) “Nonprecision approach procedure” means a standard instrument approach in which an electronic glide slope is not provided.

(k) “Permit” means a permit issued by the commission under this act.

(l) “Person” means an individual, firm, partnership, corporation, association, or body politic. Person includes a trustee, receiver, assignee, or other similar representative of a person.

(m) “Precision approach procedure” means a standard instrument approach in which an electronic glide slope is provided.

(n) “Primary surface” means an imaginary plane longitudinally centered on a runway which plane has the specifications described in section 2b.

(o) “Runway” means the portion of an airport designated as the area used for the landing or takeoff of aircraft.

(p) “Structure” means an object constructed or installed including, but not limited to, a building, tower, antenna, smokestack, or overhead transmission line.

(q) “Transitional surface” means an imaginary plane perpendicular to a runway centerline and to that centerline extended through the runway's primary surface and approach surface, which plane extends outward and upward from each side of the runway's primary surface and approach surface at a slope of 7 to 1 for the distances described in section 2d.

(r) “Utility runway” means a runway that is constructed for and intended to be used by aircraft with a maximum gross weight of 12,500 pounds or less.

(s) “Visual approach procedure” means an approach in which an aircraft on an instrument flight rules flight plan, operating in visual flight rules conditions under the control of an air traffic control authorization, may proceed to the airport of destination in visual flight rules conditions.

History: 1959, Act 259, Eff. Mar. 19, 1960 ;-- Am. 1986, Act 296, Eff. Apr. 1, 1987
Compiler's Notes: In subsection (h) of this section, “Horizonal” evidently should read “Horizontal”.

259.482 Permit required for construction of certain structures.
Sec. 2. Without a permit issued by the commission, a person shall not construct any of the following:

(a) A structure regulated under section 2a or 4.

(b) A structure that is, or that increases the height of an existing structure, higher than 200 feet above the ground elevation at the

structure's site or higher than an imaginary plane extending outward and upward at any of the following slopes:

(i) For an airport with at least 1 runway that is more than 3,200 feet in length, 100 to 1 for a horizontal distance of 20,000 feet from the nearest point of the nearest runway.

(ii) For an airport whose longest runway is 3,200 feet or less in length, excluding heliports, 50 to 1 for a horizontal distance of 10,000 feet from the nearest point of the nearest runway.

(iii) For a heliport, 25 to 1 for a horizontal distance of 5,000 feet from the nearest point of the nearest landing and takeoff area.

History: 1959, Act 259, Eff. Mar. 19, 1960 ;-- Am. 1986, Act 296, Eff. Apr. 1, 1987

259.482a Condition to issuance of permit allowing construction, replacement, or increase in height of certain structures.
Sec. 2a. Unless an airspace study has been made by the commission resulting in a finding of noninterference to air navigation, the commission shall not issue a permit allowing construction of any of the following structures, or replacement of or an increase in the height of a structure that creates any of the following structures:

(a) A structure that is over 500 feet above ground elevation at the structure's site and that is within 2 miles of a well-defined natural landmark such as a shoreline or river; a manmade landmark such as a railroad, canal, or road; or a low altitude airway.

(b) A structure of a height that would increase the minimum obstruction clearance altitude, the minimum safe altitude prescribed by the FAA, or the minimum altitude required for a safe instrument approach.

(c) A structure that would encroach into a runway's primary surface.

(d) A structure of a height that would penetrate a runway's approach surface.

(e) A structure of a height that would penetrate a runway's transitional surface.

(f) A structure of a height that would penetrate a runway's horizontal surface.

(g) A structure of a height that would penetrate a runway's conical surface.

(h) A structure that would encroach into a heliport primary surface.

(i) A structure of a height that would penetrate a heliport approach surface.

(j) A structure that violates a zoning ordinance adopted by a political subdivision under the airport zoning act, Act No. 23 of the Public Acts of the Extra Session of 1950, being sections 259.431 to 259.465 of the Michigan Compiled Laws, except to the extent permitted by the zoning ordinance.

History: Add. 1986, Act 296, Eff. Apr. 1, 1987

259.482b Width of primary surface; length of primary surface; elevation.

Sec. 2b. (1) Based upon the most precise approach available or planned for either end of a runway, the width of the primary surface is 1 of the following:

(a) For a utility runway that permits only a visual approach..... 250 feet

(b) For a utility runway that permits a nonprecision instrument approach..... 500 feet

(c) For other than a utility runway that permits only a visual approach..... 500 feet

(d) For other than a utility runway that permits a nonprecision instrument approach and for which the

FAA has established a visibility minimum that is
greater than 3/4 of a statute mile..... 500 feet
(e) For other than a utility runway that permits
a nonprecision instrument approach and for which the
FAA has established a visibility minimum that is as
low as 3/4 of a statute mile or less..... 1,000 feet
(f) For a runway that permits a precision
instrument approach..... 1,000 feet

(2) Based upon the type of runway surface, the length of the primary surface is 1 of the following:

(a) For a runway with a prepared hard surface or for which there are plans for a prepared hard surface, the length of the runway plus 200 feet beyond each end of the runway.

(b) For a runway other than a runway described in subdivision (a), the length of the runway.

(3) The elevation of a point on a primary surface is the same as the elevation of the point on the runway's centerline nearest to the point on the primary surface.

History: Add. 1986, Act 296, Eff. Apr. 1, 1987

259.482c Width of approach surface; outward and upward extension of approach surface.

Sec. 2c. (1) Based upon the most precise approach available or planned for the end of a runway, the width of the approach surface at the end of the primary surface equals the width of the primary surface and expands uniformly to the following maximum width:
(a) For the end of a utility runway, which end
has only a visual approach procedure..... 1,200 feet
(b) For the end of other than a utility runway,
which end has only a visual approach procedure..... 1,500 feet

(c) For the end of a utility runway, which end
has a nonprecision instrument approach procedure..... 2,000 feet
(d) For the end of other than a utility runway,
which end has a nonprecision instrument approach
procedure and a visibility minimum established by the
FAA that is greater than 3/4 of a statute mile..... 3,500 feet
(e) For the end of other than a utility runway,
which end has a nonprecision instrument approach
procedure and a visibility minimum established by the
FAA that is 3/4 of a statute mile or less..... 4,000 feet
(f) For the end of a runway, which end has a
precision approach procedure..... 16,000 feet

(2) Based upon the most precise approach available or planned for the end of a runway, the approach surface extends outward and upward at the following slope for the following distance:

(a) For the end of a utility runway regardless of the available or planned approach, or for the end of other than a utility runway which end has only a visual approach procedure, a slope of 20 to 1 for 5,000 feet from the end of the primary surface.

(b) For the end of other than a utility runway, which end has a nonprecision instrument approach procedure, a slope of 34 to 1 for 10,000 feet from the end of the primary surface.

(c) For the end of other than a utility runway, which end has a precision instrument approach procedure, a slope of 50 to 1 for 10,000 feet from the end of the primary surface and, from that point, a slope of 40 to 1 for an additional 40,000 feet.

History: Add. 1986, Act 296, Eff. Apr. 1, 1987

259.482d Extension of transitional surface.
Sec. 2d. (1) Except as provided in subsection (2), a runway's transitional surface extends to the intersection of the transitional surface with the conical surface.

(2) For a runway that has a precision instrument approach, the transitional surface beginning at the side of a runway's approach surface extends for 5,000 feet measured horizontally from the side of the approach surface.

History: Add. 1986, Act 296, Eff. Apr. 1, 1987

259.482e Perimeter of horizontal surface.
Sec. 2e. The perimeter of a horizontal surface is constructed by swinging an arc with a radius as specified by this section from the center point of each end of the primary surface of each runway of an airport and connecting adjacent arcs by a line tangent to those arcs. The radius of an arc for a utility runway or for other than a utility runway with a visual approach equals 5,000 feet. The radius of an arc for any other runway equals 10,000 feet. The radius of the arc specified for the end of a runway shall not be less than the longest radius for the other end of the runway. If a 5,000 foot arc is encompassed by a tangent connecting adjacent 10,000 foot arcs, the 5,000 foot arc shall be disregarded in constructing the perimeter of the horizontal surface.

History: Add. 1986, Act 296, Eff. Apr. 1, 1987

259.483 Building permits; public utility structures, emergency repair.
Sec. 3. No application for a permit shall be required for the emergency repair or replacement of nonconforming public utility structures, other than buildings, to insure continuity of proper customer service, when the height of such structures is not increased by such emergency repair or replacement: Provided further, That any combination of circumstances calling for immediate action or remedy in the repair or replacement of such nonconforming public utility structures shall be deemed an emergency.

History: 1959, Act 259, Eff. Mar. 19, 1960

259.484 Structure extending more than 1,000 feet above ground elevation at structure's site; conditions to issuance of permit to erect, add to, or replace.

Sec. 4. (1) Unless the commission conducts an airspace study and finds noninterference to air navigation, the commission shall not issue a permit to erect, add to, or replace a structure that will extend more than 1,000 feet above ground elevation at the structure's site. A person shall not erect, add to, or replace a structure for which a permit is required, which structure exceeds the height allowed by the permit.

(2) The commission may issue a permit to erect or add to a structure that will extend more than 1,000 feet above the ground elevation at the site of the structure proposed to be erected or added to if the proposed structure will not be higher than 50 feet above the height of the highest structure in existence on March 19, 1960, which highest structure is within a distance of 1 mile from the location of the structure proposed to be erected or added to.

History: 1959, Act 259, Eff. Mar. 19, 1960 ;-- Am. 1986, Act 296, Eff. Apr. 1, 1987

259.485 Application for permit; statement of location and maximum height; applicability of height restrictions.

Sec. 5. (1) It is not necessary that ownership of, option for, or other possessory right to a specific location site be held by the applicant before application for a permit is filed with the commission. A permit, among other things, shall state the specific location and the maximum height allowed for the structure.

(2) The height restrictions of this act do not apply to the alteration of a structure owned by an applicant who is before the federal communications commission under the federal communications commission's mass media docket numbers 80-90 and 84-231, which alteration is a result of those proceedings.

History: 1959, Act 259, Eff. Mar. 19, 1960 ;-- Am. 1986, Act 296, Eff. Apr. 1, 1987

259.486 Permit; specification of visual or aural identification; compliance with federal laws or regulations; high intensity white obstruction lights; demolition or removal of structure; violation
Sec. 6. (1) A permit shall specify the obstruction markers, markings, lighting, or other visual or aural identification required to be installed on or in the vicinity of the structure, if any. The identification characteristics required shall conform to federal laws and regulations.

(2) Unless waived by the commission due to federal permit requirements or other valid reasons, the obstruction lights for a structure more than 800 feet above the ground elevation at the structure's site shall be high intensity white obstruction lights.

(3) If ordered by the commission, the owner of a nonconforming structure that is permanently out of service or partially dismantled, destroyed, deteriorated, or decayed shall demolish or remove that structure.

(4) Failure to maintain obstruction lights in an operable condition is a violation of this act.

History: 1959, Act 259, Eff. Mar. 19, 1960 ;-- Am. 1986, Act 296, Eff. Apr. 1, 1987

259.487 Application for permit; investigation; considerations; notice of determination; hearing.
Sec. 7. (1) Upon receiving an application for a permit, the commission shall investigate as necessary to process the application properly under this act. In an investigation under this section, the commission shall consider the safety and welfare of persons and property in the air and on the ground and that consideration shall be paramount to a consideration of economic and technical factors.

(2) If, upon the investigation, the commission determines that a permit should not be issued or that the height or location should be other than as applied for, the commission shall notify the applicant in writing of the commission's determination. The notification may be served by delivering it personally to the applicant or by sending it by first-class

mail to the applicant at the address specified in the application. The determination is final 20 days after notification of the determination is served, unless the applicant, within the 20-day period, requests in writing that a hearing be held before the commission with reference to the application. A hearing under this section shall be open to the public. Any person interested may appear and be heard either in person or by counsel and may present pertinent evidence and testimony.

History: 1959, Act 259, Eff. Mar. 19, 1960 ;-- Am. 1986, Act 296, Eff. Apr. 1, 1987

259.488 Building permits; conduct, controlling statute and rules for conduct of public hearings.

Sec. 8. All public hearings shall be conducted as prescribed by Act No. 327 of the Public Acts of 1945, as amended, being sections 259.1 to 259.208 of the Compiled Laws of 1948, and the rules and regulations promulgated thereunder.

History: 1959, Act 259, Eff. Mar. 19, 1960
Admin Rule: R 259.201 et seq. of the Michigan Administrative Code.

259.489 Appeal.

Sec. 9. Within 10 days after the issuance of an order or rule of the commission, a person aggrieved by the order or rule may appeal to or have the action of the commission reviewed by the circuit court of Ingham county in the manner provided for the review of orders of other administrative bodies of this state.

History: 1959, Act 259, Eff. Mar. 19, 1960 ;-- Am. 1986, Act 296, Eff. Apr. 1, 1987

259.490 Action to enjoin, restrain, correct, or abate violation.

Sec. 10. In addition to any other remedy, the commission may institute in a court of competent jurisdiction an action to enjoin, restrain, correct, or abate a violation of this act or of a rule or order of the commission issued pursuant to this act. The court may grant the relief necessary under this act and the rules and orders of the commission issued pursuant to this act.

History: 1959, Act 259, Eff. Mar. 19, 1960 ;-- Am. 1986, Act 296, Eff. Apr. 1, 1987

259.491 Rules; forms.
Sec. 11. The commission shall adopt and promulgate, and may from time to time amend or rescind, reasonable rules for the administration of this act in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. Publication and distribution of changes in the rules shall be at the commission's expense. The commission shall prescribe and furnish forms necessary for the administration of this act.

History: 1959, Act 259, Eff. Mar. 19, 1960 ;-- Am. 1986, Act 296, Eff. Apr. 1, 1987
Admin Rule: R 259.201 et seq. and R 259.241 et seq. of the Michigan Administrative Code.

259.492 Violation of act; penalty.
Sec. 12. Whoever violates or fails to comply with the provisions of this act shall be guilty of a misdemeanor punishable by a fine of not more than $500.00, or by imprisonment for not more than 1 year, or both. Each day that such violation or failure continues is a separate offense.

History: 1959, Act 259, Eff. Mar. 19, 1960

259.493 Tall structure act; short title.
Sec. 13. This act shall be known and may be cited as the “tall structure act”.

History: 1959, Act 259, Eff. Mar. 19, 1960

COMMUNITY AIRPORTS
Act 206 of 1957

AN ACT to authorize 2 or more counties, cities, townships and incorporated villages, or any combination thereof, to incorporate an airport authority for the planning, promoting, acquiring, constructing, improving, enlarging, extending, owning, maintaining and operating the landing, navigational and building facilities necessary thereto of 1 or more community airports; to provide for changes in the membership therein; to authorize an authority or the counties, cities, townships and incorporated villages that form an authority to levy taxes for such

purposes; to provide for the operation and maintenance and issuing notes therefor; to authorize condemnation proceedings; and to prescribe penalties and provide remedies.

History: 1957, Act 206, Eff. Sept. 27, 1957 ;-- Am. 1987, Act 153, Imd. Eff. Oct. 29, 1987 ;-- Am. 1998, Act 174, Eff. Mar. 23, 1999
Popular Name: Community Airport Authority Act

The People of the State of Michigan enact:

259.621 Airport authority; formation; purpose; selection and location of site for physical facilities.
Sec. 1. Any 2 or more counties, cities, incorporated villages, or townships, or any combination thereof, by resolution of their respective legislative bodies, may join to form an airport authority for the purpose of planning, promoting, acquiring, constructing, improving, enlarging, extending, owning, maintaining, and operating the landing, navigational, and building facilities necessary thereto, either within or without their limits, of 1 or more community airports. A site for the physical facilities of the airport authority shall not be selected without the approval of 2/3 of the total membership of the airport authority board and shall be located within the boundaries of the airport authority.

History: 1957, Act 206, Eff. Sept. 27, 1957 ;-- Am. 1958, Act 216, Eff. Sept. 13, 1958 ;-- Am. 1969, Act 32, Imd. Eff. July 10, 1969 ;-- Am. 1982, Act 312, Imd. Eff. Oct. 14, 1982
Popular Name: Community Airport Authority Act

259.622 Airport authority; body corporate, powers.
Sec. 2. The airport authority shall be a body corporate with power to sue or be sued in any court of this state and may exercise any and all powers necessary and incident to the acquisition, construction, improvement, enlargement, extension, ownership, maintenance and operation of the landing, navigational and building facilities necessary thereto of 1 or more community airports.

History: 1957, Act 206, Eff. Sept. 27, 1957
Popular Name: Community Airport Authority Act

259.623 Resolution creating airport authority; county, city, incorporated village, or township subsequently becoming member of airport authority; release from membership; resolutions; conditions. Sec. 3. (1) The resolution creating the airport authority shall designate the counties, cities, incorporated villages, and townships to be included therein and shall set forth the fact that a sum of money not to exceed 1 mill of their assessed valuation as last equalized by the state may be requested and certified by the airport authority board annually for the purpose of planning, promoting, acquiring, constructing, improving, enlarging, extending, owning, maintaining, and operating the necessary landing, navigational, and building facilities of 1 or more community airports. The resolution also shall provide that the requested money or any portion of the requested money may be pledged by the governing body of the airport authority for the payment of revenue bonds under Act No. 94 of the Public Acts of 1933, as amended, being sections 141.101 to 141.139 of the Michigan Compiled Laws. The authority shall be deemed to be a charter authority within the meaning of section 6 of article 9 of the state constitution of 1963. The resolution may provide that the airport authority shall become operative if a specified number of the proposed number of members bodies approve it. The resolution may fix a time within which the respective local units must act in order to be included in the airport authority. The resolution may designate a date for the appointed representatives to convene.

(2) Any county, city, incorporated village, or township may subsequently become a member of any airport authority formed under this act upon resolution adopted by the governing body of the municipality and acceptance by resolution adopted by majority vote of the entire governing board of the airport authority. Any county, city, incorporated village, or township which is or becomes a member of an airport authority, upon request and upon resolution of its governing body, duly accepted by a 2/3 majority vote of the entire governing board of the airport authority, may be released from membership in the airport authority. A county, city, incorporated village, or township may not be released from membership in any airport authority formed under this act until all outstanding obligations of the airport authority that have been incurred after the time of the admission to membership of the county,

city, incorporated village, or township and that part of prior obligations as may be agreed to by the board and the governing body of the county, city, incorporated village, or township have been paid, or adequate provision has been made for the payment thereof.

History: 1957, Act 206, Eff. Sept. 27, 1957 ;-- Am. 1969, Act 32, Imd. Eff. July 10, 1969 ;-- Am. 1982, Act 312, Imd. Eff. Oct. 14, 1982
Popular Name: Community Airport Authority Act

259.624 Ad valorem property tax; authorization; limitation; computing total tax to be levied; approval of tax by electors; use of revenues.

Sec. 4. (1) The legislative bodies of the counties, cities, incorporated villages, and townships creating the airport authority may raise by an ad valorem property tax, to be levied on the taxable property within their respective jurisdictions, a sum of money to be used to assist in the planning, promoting, acquiring, constructing, improving, enlarging, extending, owning, maintaining, and operating the landing, navigational, and building facilities necessary thereto of the community airport authorized by this act. The tax shall not exceed 1 mill on each dollar of the state equalized valuation of each county, city, incorporated village, or township. In computing the total tax to be levied, the assessed valuation of any unit of government joining the airport authority shall not be used more than once.

(2) The ad valorem property tax authorized by this section shall not be levied unless approved by the majority of the qualified electors of the member local unit voting thereon. A tax approved pursuant to this subsection may be levied until the local unit is released from membership in the authority or until the authority is dissolved, whichever occurs first. However, this subsection shall not be considered to prohibit the use of revenues from ad valorem property tax levies of mills within the member local unit's charter or statutory limitation to pay an appropriation required by the airport authority.

History: 1957, Act 206, Eff. Sept. 27, 1957 ;-- Am. 1958, Act 216, Eff. Sept. 13, 1958 ;-- Am. 1969, Act 32, Imd. Eff. July 10, 1969 ;-- Am. 1982, Act 312, Imd. Eff. Oct. 14,

1982
Popular Name: Community Airport Authority Act

259.625 Airport authority board; number, appointment, and representation of members; election of officers; conducting business at public meeting; public notice; appointment of committees; selection and employment of officers and employees; engaging necessary services; reimbursement of expenses.
Sec. 5. The airport authority shall be directed and governed by an airport authority board consisting of not less than 4 members, the appointment and representation of which shall consider population as well as other factors and shall be specified in each of the resolutions creating the airport authority. On the date appointed in the adopting resolutions, or not more than 30 days after the creation of the airport authority, the members appointed to the airport authority board shall convene to elect a temporary chairperson and secretary. As soon as possible the full airport authority board shall hold its first meeting and organize by electing a chairperson and vice-chairperson who shall be members of the board, and a secretary and treasurer who need not be members. The business which the board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended. The board may also appoint an executive committee, consisting of the chairperson and 2 other members, to carry on the active administrative duties of the airport authority, which executive committee shall hold office during the pleasure of the airport authority board. The airport authority board may also appoint an airport advisory committee whose duty shall be to advise the airport authority board in regard to technical problems of airport operation and in regard to state and federal policies. The airport authority board may also select and employ other officers and employees and engage services as shall be considered necessary. A member of the airport authority board shall serve without compensation but shall be reimbursed for actual expenses incurred in the discharge of official duties.

History: 1957, Act 206, Eff. Sept. 27, 1957 ;-- Am. 1958, Act 216, Eff. Sept. 13, 1958 ;-- Am. 1969, Act 32, Imd. Eff. July 10, 1969 ;-- Am. 1978, Act 410, Imd. Eff. Sept. 28, 1978 ;-- Am. 1982, Act 312, Imd. Eff. Oct. 14, 1982
Popular Name: Community Airport Authority Act

259.626 Airport authority board; meetings; quorum; record; availability of writings to public; system of accounts; treasurer; bond; rules and policies.

Sec. 6. After organization the airport authority board shall hold meetings at the call of the chairperson. The chairperson shall call a meeting upon request of 3 members of the board. A majority of the appointed members shall constitute a quorum. The board shall keep a written or printed record of each meeting, which record and any other writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The board shall also provide for a system of accounts to conform to a uniform system required by law and for the auditing at least once a year of the accounts of the treasurer by a competent certified public accountant. The board shall require of the treasurer a suitable bond by a responsible bonding company, the bond to be paid for by the board. The airport advisory committee, with the approval of the airport authority board, shall adopt rules and policies governing the professional work of an airport and the eligibility and qualifications of the airport's staffs, which may conform, as nearly as practicable, to the applicable standards recommended by the American association of airport executives, the federal aviation administration, and the civil aeronautics board.

History: 1957, Act 206, Eff. Sept. 27, 1957 ;-- Am. 1969, Act 32, Imd. Eff. July 10, 1969 ;-- Am. 1978, Act 410, Imd. Eff. Sept. 28, 1978 ;-- Am. 1982, Act 312, Imd. Eff. Oct. 14, 1982
Popular Name: Community Airport Authority Act

259.627 Airport authority board; preparation, contents, and adoption of budget; determining fair and equitable share of each county, city, and township; appropriation by village; payment of sums certified by board; liability; reports.

Sec. 7. (1) Not later than April 1 of each year the airport authority board shall prepare a budget containing an itemized statement of the estimated current expenses and the expenses for capital outlay, including the amount necessary to pay the principal and interest of any outstanding bonds or other obligations of the authority maturing during the ensuing fiscal year or which have previously matured and are unpaid, and an estimate of the estimated revenue of the airport authority from all sources for the ensuing fiscal year. Airport authorities consisting only of 2 or more counties shall have until September 1 of each year to prepare this budget. The board shall adopt such budget as shall be deemed necessary and shall ascertain what appropriations are required from the several counties, cities, townships, and villages to meet their respective shares of the amount of the budget in excess of the estimated revenues.

(2) In determining the fair and equitable share of each county, city, and township, the board shall establish the ratio that the state equalized valuation of each for the year in which the appropriation is required bears to the total state equalized valuation for the year in which the appropriation is required of all the counties, cities, and townships included in the airport authority and use the applicable ratio in determining the amount of appropriation required from a county, city, or township. Any village included in the airport authority shall appropriate its proportionate share of the amount apportioned to the township in which it is located, and in determining the division between the township and village, the amount of their respective state equalized valuations for the year the appropriation is required shall be used as the basis for the determination. The board shall certify to each participating county, city, township, and village the amount to be raised by them, and the respective counties, cities, townships, and villages shall include such amounts in their next ensuing budgets and shall pay the amounts so certified from any funds they have available or from the proceeds of a tax which they are authorized to levy, in an amount sufficient therefor, but not exceeding 1 mill. Payment of sums so certified shall be due and payable to the airport authority 120 days subsequent to the date upon which local taxes become due and payable in counties, cities, villages, and townships participating in the airport authority. Each county, city, township, and village shall be liable for the amount so certified.

(3) The board shall also render to each participating county, city, township, and village, on each July 1, during the operation of the airport a certified report of the operation of the airport. Each report shall state the condition of the finances, the amount of money expended, and the money received from all sources. The board shall also file a copy of the report with the department of treasury together with any other information the department of treasury may require. Within 30 days after the formation of any new airport authority, and annually on July 1 thereafter, the airport authority board shall file with the secretary of state a report as the secretary of state may require, showing the date of formation, the names of the member communities, and any other information as the report may call for.

History: 1957, Act 206, Eff. Sept. 27, 1957 ;-- Am. 1969, Act 32, Imd. Eff. July 10, 1969 ;-- Am. 1982, Act 312, Imd. Eff. Oct. 14, 1982 ;-- Am. 1983, Act 182, Imd. Eff. Oct. 25, 1983
Popular Name: Community Airport Authority Act

259.627a Applicability of section; levy of ad valorem property tax; election; resolution; form of proposition; collection; certification; payment; expenses; adoption of budget; dissolution of authority.
Sec. 7a. (1) This section applies only to an authority formed under this act that is composed of 1 county and another member or members all located wholly within the boundaries of that county. This section shall apply to such an authority in addition to any provisions of this act that are not inconsistent with this section, and in case of a conflict between this section and any other provisions of this act which are inconsistent with this section, this section shall prevail.

(2) Sections 4 and 7 shall not apply to an authority governed by this section, except that the revenue from the tax authorized to be levied pursuant to this section may be used for the same purposes described in section 4 for which the revenue may be used from a tax authorized to be levied pursuant to section 4. A member of the authority may voluntarily make an appropriation to the authority. The board of an authority governed by this section may levy an ad valorem property tax on taxable property within the county at a rate of not to exceed 1 mill upon approval

of the majority of the qualified electors within the county voting on the question.

(3) An election on the question of whether to levy a tax authorized pursuant to subsection (2) may be called by resolution of the board of the authority. The secretary of the board of the authority shall file a copy of the resolution of the board calling the election with the county clerk, the county election scheduling committee, and the board of county election commissioners not less than 45 days before the date of the election. The resolution calling the election shall contain the proposition to be submitted to the electors. The calling of an election in the manner provided in this section, but prior to the effective date of this section, is ratified. Approval by the electors of a proposition in substantially the following form shall constitute authorization for the authority to impose the tax and to use the proceeds for any 1 or more of the purposes described in section 4:

"Shall the _____ Authority be authorized to levy upon property in _____ County a tax not to exceed _____ mill ($_____ per $1,000.00) in any 1 year, on assessed valuation as finally equalized, to be used to assist in acquiring, constructing, improving, enlarging, owning, maintaining, and operating property and facilities at _____ Airport(s)?

The county clerk, each city and township clerk, and all other county, city, and township officials, shall undertake those steps to properly submit the proposition to the electors in the county at the election specified in the resolution of the authority. The election shall be conducted and canvassed in accordance with the Michigan election law, Act No. 116 of the Public Acts of 1954, being sections 168.1 to 168.992 of the Michigan Compiled Laws. The results of the election shall be certified to the board of the authority promptly after the date of the election. The authority shall not call more than 1 election within a calendar year for the approval of the tax authorized by subsection (2) without the approval of the legislative bodies of a majority of the members of the authority. If no election or nomination to any state, county, district, or other local office is on the ballot in a given political

subdivision within the county on the day of the election regarding the airport authority proposition, and if in that subdivision there is no ballot proposition, proposal, or question submitted by that subdivision, the authority shall pay all, or if the authority proposition is not the only proposition, proposal, or question before the electorate, a pro rata portion of the reasonable costs of the election incurred by that political subdivision as determined by the county clerk.

(4) The tax authorized by this section shall be levied and collected as are all ad valorem property taxes in the state, and the secretary of the board of the authority shall at the appropriate times certify to the proper tax assessing or collecting officers of each city and township in the county the amount of taxes to be levied and collected each year for the authority by each city and township. The board of the authority shall determine on which tax roll of the city or township, if there is more than 1 roll, that the tax authorized by this section shall be collected. However, the tax shall not be levied on a July tax roll unless certified by the authority not later than the immediately preceding June 15, and shall not be levied on a December tax roll unless certified not later than the immediately preceding October 1, except that a tax authorized by this section and approved at an election held on November 3, 1987, may be levied on a December 1987 tax roll. Each tax assessing and collecting officer shall levy and collect the taxes certified by the authority and pay those taxes to the county treasurer in accordance with the same schedule as is applicable pursuant to section 43 of the general property tax act, Act No. 206 of the Public Acts of 1893, being section 211.43 of the Michigan Compiled Laws, with respect to the delivery of county taxes. The county treasurer shall account for and deliver to the authority the tax collections for authority purposes, received by the county treasurer from local collecting officers, within 10 business days after the county treasurer receives the funds. If a tax is certified for levy on a December 1987 tax roll, the reasonable and actual expenses incurred by a township, county, or city in assessing and collecting the tax on that roll, to the extent these expenses are in addition to the expense of collection and assessing any other taxes at the same time and exceed the amount of any fees imposed for the collection of the tax, shall be billed to and paid by the authority.

(5) The budget of the authority, other than the first budget, shall be adopted before commencement of the fiscal year to which the budget relates.

(6) The resolution creating the airport authority may establish or may have established conditions under which the authority shall be dissolved.

History: Add. 1987, Act 153, Imd. Eff. Oct. 29, 1987
Popular Name: Community Airport Authority Act

259.628 Airport authority board; self-liquidating bonds; issuance; liability; amount required of municipality as revenues of authority; sale of bonds; petition for referendum; resolution; election; ballots; governing bodies as board of canvassers; certification of election results.

Sec. 8. For the purpose of acquiring, purchasing, constructing, improving, enlarging, or repairing such community airports, the airport authority board may issue self-liquidating bonds of the authority in accordance with Act No. 94 of the Public Acts of 1933, as amended, being sections 141.101 to 141.139 of the Michigan Compiled Laws. The bonds shall not impose any liability upon the counties, cities, villages, and townships included in the airport authority, other than on the amounts which are assessed against the respective municipalities as provided for by this act, which amounts or any portion thereof may be pledged by the governing body of the airport authority for the payment of the bonds for a period not exceeding 40 years. The amount herein required to be paid by any municipality under the provisions of this act shall be considered to be a part of the revenues of the airport authority as that term is defined in section 3(f) of Act No. 94 of the Public Acts of 1933, as amended, being section 141.103 of the Michigan Compiled Laws. The bonds shall be sold for not less than par and shall bear interest at a rate not in excess of the maximum rate permitted under section 12 of Act No. 94 of the Public Acts of 1933, as amended, being section 141.112 of the Michigan Compiled Laws. If a petition for referendum is filed with the secretary of the airport authority in accordance with the provisions of section 33 of Act No. 94 of the Public Acts of 1933, as amended, being section 141.133 of the Michigan Compiled Laws, the governing body of the airport authority shall adopt a resolution

establishing the date of the election, which shall be not less than 60 days nor more than 90 days after the adoption of the resolution. The secretary of the authority, within 5 days after the adoption of the resolution, shall transmit a certified copy of the resolution to the governing body of each member community. The governing bodies of the member communities immediately shall provide for an election in accordance with the resolution passed by the authority, in which the question of issuing the bonds and pledging the authority's revenues, including all or any part of the amounts assessed against the respective municipalities as provided for by this act, shall be submitted. The ballots for use in the election shall be provided by the authority and the election shall be conducted in the respective communities except that if any part or all of a village belonging to an airport authority is located in a township belonging to the same authority, the township election shall include that part of the village located in it and the village shall not be required to hold an election except in that portion of the village not located in a township belonging to the authority. The governing bodies of the member communities shall act as a board of canvassers and shall certify the results of the election to the airport authority board, within 5 days after the date of the election, on forms provided by the airport authority. The airport authority board shall compile and tabulate the vote as required from the member communities and certify the result of the election by resolution upon the records of the authority. A majority of the total valid votes cast at such an election voting “yes” on the question submitted shall constitute an approval of the issuance of the bonds.

History: 1957, Act 206, Eff. Sept. 27, 1957 ;-- Am. 1969, Act 32, Imd. Eff. July 10, 1969 ;-- Am. 1982, Act 312, Imd. Eff. Oct. 14, 1982
Popular Name: Community Airport Authority Act

259.628a Violation of MCL 168.1 to 168.992 applicable to petitions; penalties.

Sec. 8a. A petition under section 8, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed

for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

History: Add. 1998, Act 174, Eff. Mar. 23, 1999
Popular Name: Community Airport Authority Act

259.629 Airport authority board; borrowing money and issuing notes; maturity; purpose; resolution; notes issued subject to MCL 141.2101 to 141.2821.

Sec. 9. The airport authority board operating any airport under the provisions of this act, by resolution adopted by a majority vote of the entire governing board, may borrow money and issue notes, maturing not more than 1 year from the date of their issuance. Borrowing pursuant to this section shall be for the purpose of meeting current expenses of operation and maintenance of the airport. The resolution shall provide for the pledging of income and revenues of the airport authority not previously pledged for the payment of the notes and shall also provide for a special sinking fund into which there shall first be paid, as collected, a sufficient sum from the revenues of the airport authority pledges to retire both the principal and interest of the notes at maturity. The resolution may also provide for the pledging of other assets of the airport authority as additional security for the payment of the notes. Notes issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

History: 1957, Act 206, Eff. Sept. 27, 1957 ;-- Am. 1982, Act 312, Imd. Eff. Oct. 14, 1982 ;-- Am. 2002, Act 301, Imd. Eff. May 9, 2002
Popular Name: Community Airport Authority Act

259.630 Airport authority board; purchase, lease, or acceptance of property; condemnation of private property; powers of board; taxation of buildings or personal property located on community airport; taxes due as debt.

Sec. 10. (1) For the purposes of the authority, the airport authority board may purchase, lease, accept by gift or devise real or personal property, or condemn private property. Condemnation shall be exercised by the authority in the same manner as provided the state aeronautics commission by section 104 of Act No. 327 of the Public Acts of 1945,

being section 259.104 of the Michigan Compiled Laws, or under such other appropriate acts as shall be passed for the purpose of instituting and prosecuting condemnation proceedings for airport or landing field purposes. The authority board may sell, exchange, lease, hold, manage, and control such property. It may convey its property or any part thereof without monetary consideration to a nonprofit corporation organized for the purpose of owning, maintaining, and operating a public airport or permit the use of such property by such corporation. The conveyance or permission for use shall be upon condition that the corporation maintain and operate an airport upon any land so conveyed or use of which is permitted, and that the corporation shall conform to the rules and standards provided by Act No. 327 of the Public Acts of 1945, as amended, being sections 259.1 to 259.208 of the Michigan Compiled Laws. If land is acquired by condemnation, the provisions of Act No. 87 of the Public Acts of 1980, as amended, being sections 213.51 to 213.76 of the Michigan Compiled Laws, shall be adopted and used for the purpose of instituting and prosecuting the condemnation proceedings.

(2) All buildings or personal property located on the community airport may be taxed in the same manner as taxes assessed to owners of real property, except that such taxes shall not become a lien against the property. When due, such taxes shall constitute a debt due from the owner of the buildings or personal property to the township, city, village, county, and school district in which the airport is located and shall be recoverable by direct action of assumpsit.

History: 1957, Act 206, Eff. Sept. 27, 1957 ;-- Am. 1958, Act 216, Eff. Sept. 13, 1958 ;-- Am. 1969, Act 32, Imd. Eff. July 10, 1969 ;-- Am. 1982, Act 312, Imd. Eff. Oct. 14, 1982
Popular Name: Community Airport Authority Act
Admin Rule: R 259.201 et seq. of the Michigan Administrative Code.

259.631 Community airport; definition.

Sec. 11. As used in this act, “community airport” means any location, either on land or water, which is used for the landing or take-off of aircraft, which provides facilities for the shelter, supply or care of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport

facilities, all appurtenant rights of way and runway clear zones as designated by the civil aeronautics authority, whether heretofore or hereafter established.

History: 1957, Act 206, Eff. Sept. 27, 1957
Popular Name: Community Airport Authority Act

AIRPORT AUTHORITIES
Act 73 of 1970

AN ACT to provide for the creation of airport authorities; to provide for certain counties and cities within certain limitations of state-owned airports to create an airport authority; to provide for the membership of authorities; to provide for the powers and duties of the authorities; to provide for the transfer of employees of state airports to the employment of an authority; to provide for the transferring of state-owned lands to the authority; to provide for the retention of certain rights, powers and privileges by the state in state-owned airport facilities; to provide for a referendum; and to repeal acts and parts of acts.

History: 1970, Act 73, Imd. Eff. July 16, 1970

The People of the State of Michigan enact:

259.801 Airport authority; formation, charter; population specifications.

Sec. 1. Within 90 days of the effective date of this act, counties, any portion of whose boundaries are within 10 miles of any state-owned airport and any city located within the boundaries of any such counties and having a population of over 100,000, by a resolution passed by each of their legislative bodies by a majority of the entire membership of each board or council voting separately shall join to form an airport authority, hereafter referred to as the “authority”. The authority shall be deemed to be a charter authority within the meaning of section 6 of article 9 of the state constitution.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.802 Airport authority board; number, appointment, and qualifications of members.

Sec. 2. The authority shall be directed and governed by an airport authority board. The airport authority board shall consist of 3 members from each city designated in section 1, appointed by the mayor with the advice and consent of the city council; 3 members from the balance of each county having a city with a population over 100,000 located primarily within its boundaries, appointed by a majority of the county board of commissioners; and 2 members from each other county comprising the authority, appointed by their respective legislative bodies by a majority of the full membership of the appointing legislative body. A board member shall be an elector of his or her respective appointing city or county and may be a member of the appointing legislative body.

History: 1970, Act 73, Imd. Eff. July 16, 1970 ;-- Am. 1982, Act 271, Imd. Eff. Oct. 5, 1982 ;-- Am. 1998, Act 214, Imd. Eff. July 1, 1998

259.803 Airport authority board; members, term, vacancy.

Sec. 3. Of the county members first appointed, 1 member shall be appointed for 4 years and 1 member for 3 years. Of the city members, 1 shall be appointed for 2 years, 1 for 3 years and 1 for 4 years. After the initial appointments expire all members shall be appointed for 4 years. All members appointed shall serve until they are reappointed or a successor named at the end of their term. If a member is unable to complete his term of office, a successor shall be appointed in the same manner as the original appointment to complete the term. In the case of the appointment of a successor, he shall serve until another is appointed or he is reappointed.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.804 Airport authority board; removal of member.

Sec. 4. The legislative body of a county or the city council appointing members to the board may remove any member appointed by it by a 3/4 vote of its full membership.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.805 Additional counties joining authority.
Sec. 5. Any additional county contiguous to the original counties forming the authority may subsequently become a member of the authority upon resolution adopted by the governing body of the county and acceptance thereof by resolution adopted by majority vote of the board. The number of members to be added to the board when an additional county becomes a member of the authority shall be determined by the board.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.806 Airport authority board; first meeting; election of officers; conducting business at public meeting; notice; corporate seal; executive committee; expenses; quorum; legal majority.
Sec. 6. By October 14, 1970, the board shall hold its first meeting and organize by electing a chairperson and vice-chairperson who are members of the board, and a secretary and treasurer who need not be board members and additional officers who need or need not be members of the board as the board considers necessary. The business which the board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. The board may also adopt a corporate seal and appoint an executive committee, consisting of the chairperson and 1 member from each of the governmental units comprising the authority other than that represented by the chairperson to perform those duties as the board assigns. The members of the executive committee shall hold office during the pleasure of the board. Members of the board and executive committee shall serve without compensation from the authority, but shall be reimbursed by the authority for actual expenses incurred in the discharge of official duties. A simple majority of the board members shall constitute a quorum for the conduct of the business of the board. A simple majority of the full membership of the board shall constitute a legal majority on all voting issues before the board.

History: 1970, Act 73, Imd. Eff. July 16, 1970 ;-- Am. 1978, Act 409, Imd. Eff. Sept. 28, 1978

259.807 Airport authority as body corporate; other airports; powers.
Sec. 7. The authority shall be a public body corporate with powers to sue or be sued in any court of this state and have the power and duty of planning, promoting, extending, owning, maintaining, acquiring, purchasing, constructing, improving, enlarging and operating all publicly-owned airports and airport facilities hereinafter established to be operated within the territorial jurisdiction of the authority. Any existing publicly-owned airport or airport facility now or hereafter within the jurisdictional confines of the authority may elect to come within the operational jurisdiction of the authority unless prohibited by legal restrictions or limitations, upon acceptance by the authority under mutually agreeable terms and conditions.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.808 Airport authority board; meetings; records; availability of certain writings to public; system of accounts; audit; treasurer's bond; executive director; rules and policies; interest in contract prohibited; personal liability.
Sec. 8. (1) After organization, the board shall hold meetings at the call of the chairperson. The board shall adopt a schedule of regular monthly meetings and adopt a regular meeting date, place, and time. The chairperson shall call a special meeting upon request of 3 members of the board in the manner required by Act No. 267 of the Public Acts of 1976. The board shall keep a written or printed record of each meeting, which record and any other writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The board shall provide for a system of accounts to conform to a uniform system required by law and for the auditing at least once a year of the accounts of the treasurer by a competent certified public accountant. The board shall require of the treasurer a suitable bond by a responsible bonding company, the cost of the premium of bond to be paid for by the board. The board may appoint an executive

director and shall adopt rules and policies governing professional work and services offered by airports and airport facilities under the board's jurisdiction.

(2) A board member or a person holding appointment by the board shall not be interested directly or indirectly in a contract entered into under the law. A board member shall not be subject to personal liability on account of liability of the authority.

History: 1970, Act 73, Imd. Eff. July 16, 1970 ;-- Am. 1978, Act 409, Imd. Eff. Sept. 28, 1978

259.809 Airport authority; powers, duties and limitations; elections.
Sec. 9. In exercising its powers and duties, the authority and the cities and counties comprising the authority shall be vested with and be subject to the same powers, duties and limitations as provided by Act No. 206 of the Public Acts of 1957, as amended, being sections 259.621 to 259.631 of the Compiled Laws of 1948 and Act No. 327 of the Public Acts of 1945, as amended, being sections 259.1 to 259.208 of the Compiled Laws of 1948 unless the provisions of this act are applicable. When the provisions of this act or any act which the authority or the counties comprising the authority are subject to calls for an election or the submission of an issue or proposition to the election process, the provisions of Act No. 116 of the Public Acts of 1954, as amended, being sections 168.1 to 168.992 of the Compiled Laws of 1948, shall apply unless provisions of this act are applicable.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.810 Budget; contents; adoption; annual report.
Sec. 10. On or before June 1 of each year the board shall prepare a budget containing an itemized statement of the estimated current operational expenses and the expenses for capital outlay including funds for the operation and development of all airports under the jurisdiction of the board, including the amount necessary to pay the principal and interest of any outstanding bonds or other obligations of the authority maturing during the ensuing fiscal year or which have previously matured and are unpaid, and an estimate of the estimated revenue of the

authority from all sources for the ensuing fiscal year. The fiscal year of the authority shall be from July 1 to June 30. The board shall adopt such budget as shall be deemed necessary and shall ascertain what appropriations are required from the several counties comprising the authority to meet their respective shares of the amount of the budget in excess of the estimated revenues. The authority shall file a copy of their annual report with the state aeronautics commission.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.811 Local units contributions; certification, payment; tax, rate, limitation.

Sec. 11. The board shall certify to each participating county the amount to be raised by them, and the counties comprising the authority shall include the certified amount to be raised in their next ensuing budget and shall pay the amounts so certified from any funds they have available including the proceeds of a tax the county is authorized to levy on the taxable property within their respective jurisdiction. The tax shall not exceed 3/4 mill on each dollar of assessed valuation as last equalized by the state. In computing the total tax to be levied, the assessed valuation of any unit of government within the county shall not be used more than once. The limitation of section 6 of article 9 of the state constitution shall not apply to taxes imposed by the board and levied by the counties comprising the authority.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.812 Revenue bonds; purpose.

Sec. 12. For the purpose of acquiring, purchasing, constructing, improving, enlarging or repairing airports and airport facilities created within or hereafter acquired by the authority, the board may issue self-liquidating bonds of the authority in accordance with the provisions of Act No. 94 of the Public Acts of 1933, as amended, being sections 141.101 to 141.139 of the Compiled Laws of 1948.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.813 State employees; transfer provisions, rights.
Sec. 13. Employees of the airport division of the state aeronautics commission employed at the state-owned airport on the date the authority is established may transfer to the employment of the authority. The authority shall accept the transfers without a break in employment. Employees transferring shall be retained in positions at least comparable to positions held by employees on the date of transfer and without a reduction in compensation or loss in fringe benefits or accumulation thereof. The authority shall by a 3/5 vote of the board elect to come under the provisions of Act No. 135 of the Public Acts of 1945, as amended, being sections 38.601 to 38.668b of the Compiled Laws of 1948 and shall adopt the provision of Act No. 88 of the Public Acts of 1961, as amended, being sections 38.1101 to 38.1105 of the Compiled Laws of 1948. Employees of the airport division of the state aeronautics commission, who transfer to the employment of the authority on the effective date the authority is established pursuant to this section, and become members of the municipal employees retirement system, shall be entitled to all accrued credits and benefits provided by Act No. 88 of the Public Acts of 1961, as amended.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.814 Operative sections.
Sec. 14. In the event that an authority is formed as prescribed in section 1, sections 15, 16, 17, 18, 19, 20 and 22 shall become operative.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.815 Capital city airport; transfer.
Sec. 15. The state administrative board shall transfer to the authority subject to conditions and restrictions herein approximately 1,135 acres of land in fee simple, 238 acres in easements and land now under lease, including all options, easements, rights of way, and all improvements thereto, except as noted herein and equipment necessary to the operation of the airport as listed in the final agreement now owned by the state to the authority.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.816 Terminal building; transfer.

Sec. 16. The state administrative board shall, subject to restrictions of this act, transfer and convey the terminal building and all buildings and other properties and interests and liabilities of the control and management of the board of control to the authority.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.817 Repealed. 1990, Act 192, Imd. Eff. July 24, 1990.

Compiler's Notes: The repealed section pertained to reservation by state of space in terminal building, and provided parking for state employees.

259.818 Property rights reserved by state; descriptions.

Sec. 18. (1) The state shall have the use of the fueling rights, ramps, aircraft parking, and motor vehicle parking rights, and the use of a plot of land without charge located in the southeast aviation development area with assured ingress and egress to the area for aircraft and motor vehicles, described more fully as follows:

A portion of DeWitt township, Clinton county, T5N, R2W described as:

That part of the southeast 1/4 of section 31, T5N-R2W, DeWitt township, Clinton county, Michigan, described as: Beginning at a point which is south 89 degrees 58'32" east 788.10 feet, north 00 degrees 29'35" east 465.39 feet along the centerline of Capital City Boulevard and south 89 degrees 30'25" east 90.0 feet from the south 1/4 corner of said section 31; thence south 83 degrees 37'55" east 200.00 feet; thence north 16 degrees 58'32" east 205.20 feet to a point on a curve to the left, radius of 82.50 feet a distance of 88.53 feet (chord bearing north 76 degrees 14'08" east 84.34 feet) to a point of tangent; thence north 45 degrees 29'43" east 249.79 feet; thence south 44 degrees 30'17" east 340.00 feet; thence south 45 degrees 29'43" west 451.10 feet; thence north 83 degrees 37'55" west 439.27 feet; thence north 00 degrees 29'35" east parallel to the centerline of Capital City Boulevard 140.72 feet to the point of beginning and a point of ending. Contains 4.75 acres more or less.

Also a part of the southeast 1/4 of said section 31, T5N-R3W, described as: Beginning at a point which is south 89°58'32", east 788.10 feet, north 00°29'35", east 333.95 feet and south 83°37'55", east 658.66 feet from south 1/4 corner of said section 31; thence north 45°29'43", east along the southeasterly road right of way line of the east airfield access road a distance of 369.75 feet; thence south 44°30'17", east 200 feet; thence south 0°, west (due south) 161.62 feet; thence north 83°37'55", east 406.40 feet to the point of beginning and a point of ending. Contains 1.60 acres more or less.

Also, a parcel of land in the southeast 1/4 of section 31, T5N-R2W, DeWitt township, Michigan described as: Beginning at a point which is south 89 58'32" east 788.10 feet, north 00 29'35" east 465.39 feet, and south 89 30'25" east 90.0 feet from the south 1/4 corner of said section 31; thence south 83 37'55" east 200.00 feet; thence north 16 58'32" east 151.70 feet; thence north 89 30'25" west 241.99 feet; thence south 00 29'35" west 125.00 feet to the point of beginning; containing 0.69 Acres more or less. Parcel description to be in accordance with survey for transfer agreement.

(2) The state reserves for the state health department the use of all properties or a part thereof in the southwest 1/4 of section 32, T5N, R2W, DeWitt township, Clinton county, Michigan, except the north 500 feet thereof, containing 130 acres more or less, and also the north 620 feet more or less of the west 3,000 feet of section 5, T4N, R2W, Lansing township, Ingham county, Michigan, lying north of the Chesapeake and Ohio railroad (formerly Pere Marquette) containing 31 acres more or less; so long as not used for airport purposes, which shall be reserved for use by the Michigan department of health for the purposes of grazing, cropping, or other agricultural purposes.

History: 1970, Act 73, Imd. Eff. July 16, 1970 ;-- Am. 1990, Act 192, Imd. Eff. July 24, 1990

259.819 State's free use of facilities.

Sec. 19. The state shall have the free use of runways, taxiways, ramp facilities and public areas, under the jurisdiction of the authority,

necessary to the operation of its aircraft. The authority is prohibited from charging the state landing fees, tie-down fees or other similar fees.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.820 Transfer of existing contracts and agreements.
Sec. 20. All contracts and rental agreements between the state aeronautics commission, the terminal building board of control and contracting parties relevant of space, services, facilities or business enterprises in existence at the time of the formation of the authority shall be transferred to the authority and all terms and conditions of the contracts and agreements shall be continued until terminated or renegotiated by the terms of the contracts and agreements.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.821 Act contingent as to federal funding.
Sec. 21. The provisions of this act shall be contingent upon the federal aviation agency finding that the authority created by this act is a public agency or public body corporate capable of assuming the obligations of the covenants which may have been entered into between the aeronautics commission and the federal aviation agency relative to sponsored project applications and contracts entered into between the agencies.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.822 Repeal.
Sec. 22. Act No. 143 of the Public Acts of 1956, being sections 259.611 to 259.617 of the Compiled Laws of 1948, is repealed.

History: 1970, Act 73, Imd. Eff. July 16, 1970

259.823 Referendum.
Sec. 23. Within 60 days of the effective date of this act, petitions may be filed with the secretary of state, signed by a number of registered electors from a county within the authority equal to at least 5% of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected within the petitioning county, requesting

that the county's participation in the authority be submitted for approval by a majority of the electors of the county voting at the next general election in the manner provided by law.

History: 1970, Act 73, Imd. Eff. July 16, 1970

C. MOBILE HOME PARKS

STATE HOUSING DEVELOPMENT AUTHORITY ACT OF 1966 (EXCERPTS) Act 346 of 1966

AN ACT to create a state housing development authority; to define the powers and duties of the authority; to establish a housing development revolving fund; to establish a land acquisition and development fund; to establish a rehabilitation fund; to establish a conversion condominium fund; to create certain other funds and provide for the expenditure of certain funds; to authorize the making and purchase of loans, deferred payment loans, and grants to qualified developers, sponsors, individuals, mortgage lenders, and municipalities; to establish and provide acceleration and foreclosure procedures; to provide tax exemption; to authorize payments instead of taxes by nonprofit housing corporations, consumer housing cooperatives, limited dividend housing corporations, mobile home park corporations, and mobile home park associations; and to prescribe criminal penalties for violations of this act.

History: 1966, Act 346, Eff. Mar. 10, 1967 ;-- Am. 1970, Act 129, Imd. Eff. July 29, 1970 ;-- Am. 1977, Act 130, Imd. Eff. Oct. 25, 1977 ;-- Am. 1978, Act 192, Imd. Eff. June 4, 1978 ;-- Am. 1979, Act 49, Imd. Eff. July 7, 1979 ;-- Am. 1980, Act 284, Imd. Eff. Oct. 10, 1980 ;-- Am. 1981, Act 173, Imd. Eff. Dec. 10, 1981 ;-- Am. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983 ;-- Am. 1984, Act 215, Imd. Eff. July 10, 1984 ;-- Am. 2004, Act 480, Imd. Eff. Dec. 28, 2004

Chapter 8

125.1497 Applicability of chapter to mobile home park corporations.
Sec. 97. This chapter shall apply to mobile home park corporations receiving benefits under this act.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983

125.1497a Mobile home park corporation; incorporation and qualification requirements.

Sec. 97a. A mobile home park corporation shall be incorporated and qualified pursuant to the provisions of the corporation laws of this state and this chapter.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983

125.1497b Corporate name.

Sec. 97b. The term "mobile home park corporation" shall be included as part of the corporate name set forth in the certificate of incorporation or certificate of authority.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983

125.1497c Mobile home park corporation; articles of incorporation.

Sec. 97c. In addition to other requirements of law, the articles of incorporation of any mobile home park corporation shall provide all of the following:

(a) That the mobile home park corporation has been organized exclusively to provide housing facilities for persons of low and moderate income, or for persons whose income does not exceed limits established in this act, and for social, recreational, commercial, and communal facilities as may be necessary to serve and improve a residential area in which authority-aided or federally-aided housing is located or planned to be located, thereby enhancing the viability of the housing.

(b) That every stockholder of the mobile home park corporation shall be deemed, by the subscription to or receipt of stock in the corporation, to have agreed that he or she at no time shall receive from the corporation in repayment of his or her investment any sums in excess of the face value of the investment plus cumulative dividends at a rate which the

authority determines to be reasonable and proper, computed from the initial date on which money was paid or property delivered in consideration for the proprietary interest of the stockholders; and that upon the dissolution of the mobile home park corporation, any surplus in excess of those amounts shall be paid to the authority or to any other regulating governmental body as the authority directs.

(c) That the operations of the mobile home park corporation may be supervised by the authority or by any other governmental body as the authority directs, and that the mobile home park corporation shall enter into agreements with the authority or with the governmental body as the authority from time to time requires. These agreements shall provide for regulation by the authority or the governmental body of the planning, development, and management of any housing project undertaken by the mobile home park corporation and the disposition of the property and franchises of the corporation.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983 ;-- Am. 1984, Act 215, Imd. Eff. July 10, 1984

125.1497d Articles of incorporation; appointment of new directors to board of directors; majority; conditions.

Sec. 97d. The articles of incorporation shall provide that the authority may appoint to the board of directors of the mobile home park corporation a number of new directors, which number shall be sufficient to constitute a majority of the board, notwithstanding any other provisions of the articles or any other provisions of law, if any 1 of the following occurs:

(a) The mobile home park corporation has received a loan or advance as provided for in this act and the authority determines that the loan or advance is in jeopardy of not being repaid.

(b) The mobile home park corporation has received a loan or advance as provided for in this act and the authority determines that the proposed housing project for which the loan or advance was made is in jeopardy of not being constructed.

(c) The authority determines that a portion of the net income or net earnings of the mobile home park corporation, in excess of that permitted by other provisions of this act, shall inure to the benefit of any private individual, firm, corporation, partnership, or association.

(d) The authority determines that the mobile home park corporation is in violation of the rules promulgated under section 22.

(e) The authority determines that the mobile home park corporation is in violation of any agreements entered into with the authority providing for regulation by the authority of the planning, development, and management of any housing project undertaken by the mobile home park corporation or the disposition of the property and franchises of the corporation.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983
Admin Rule: R 125.101 et seq. of the Michigan Administrative Code.

125.1497e Articles of incorporation; approval of terms.

Sec. 97e. Before any mobile home park corporation can receive any benefits under this act, the authority must approve the terms of the articles of incorporation.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983

125.1497f "Surplus" construed.

Sec. 97f. As used in this chapter, the term "surplus" shall not be deemed to include any increase in assets of any mobile home park corporation organized in accordance with the provisions of this chapter, by reason of reduction of mortgage, by amortization or similar payments, or realized from the sale or disposition of any assets of a mobile home park corporation to the extent such surplus can be attributed to any increase in market value of any real property or tangible personal property accruing during the period the assets were owned and held by the mobile home park corporation.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983

Chapter 9

125.1498 Applicability of chapter to mobile home park associations.
Sec. 98. This chapter shall apply to mobile home park associations receiving benefits under this act.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983

125.1498a Mobile home park association; included entities; approval; membership.
Sec. 98a. A mobile home park association includes general or limited partnerships, limited liability companies, joint ventures, or trusts, as any such entities may be approved by resolution of the authority. Members of a mobile home park association shall include each and all persons with a legal or beneficial interest of any kind in a mobile home park association or its assets.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983 ;-- Am. 1996, Act 475, Imd. Eff. Dec. 26, 1996

125.1498b Mobile home park association name.
Sec. 98b. The term “mobile home park association” shall be included as part of the name of any mobile home park association.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983

125.1498c Mobile home park association; provisions of partnership agreement, joint venture agreement, trust agreement, or other document of basic organization.
Sec. 98c. In addition to other requirements of law, the partnership agreement, joint venture agreement, trust agreement, or other document of basic organization of the mobile home park association shall provide all of the following:

(a) That the mobile home park association has been organized exclusively to provide housing facilities for persons of low and moderate income, or for persons whose income does not exceed limits established in this act, and for social, recreational, commercial, and communal facilities as may be necessary to serve and improve a residential area in which authority-aided or federally-aided housing is located or is planned to be located, thereby enhancing the viability of such housing.

(b) That every member of the mobile home park association shall be deemed, by acceptance of a beneficial interest in the mobile home park association or by executing the document of basic organization, to have agreed that he or she at no time shall receive from the mobile home park association any return in excess of the face value of the investment attributable to his or her respective interest plus cumulative dividend payments at a rate which the authority determines to be reasonable and proper, computed from the initial date on which money was paid or property delivered in consideration for the interest; and that upon the dissolution of the mobile home park association, any surplus in excess of those amounts shall be paid to the authority or to any other regulating governmental body as the authority directs.

(c) That the operations of the mobile home park association may be supervised by the authority or by any other governmental body the authority directs, and that the mobile home park association shall enter into agreements with the authority or with the governmental body as the authority from time to time requires pursuant to rules promulgated under section 22. The agreements shall provide for regulation by the authority or the governmental body of the planning, development, and management of any housing project undertaken by the mobile home park association and the disposition of the property and franchises of the mobile home park association.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983 ;-- Am. 1984, Act 215, Imd. Eff. July 10, 1984
Admin Rule: R 125.101 et seq. of the Michigan Administrative Code.

125.1498d Document of basic organization; managing agent; appointment; powers; conditions.

Sec. 98d. The partnership agreement, joint venture agreement, trust agreement, or other document of basic organization shall provide that the authority may appoint a managing agent of the mobile home park association and its members, who may be an officer, employee, or agent of the authority. The managing agent appointed shall have complete power to act as agent and attorney-in-fact for the mobile home park association and its members, in connection with any assets or liability of the mobile home park association, to fulfill any obligations the mobile home park association may have to the authority, if any 1 of the following occurs:

(a) The mobile home park association has received a loan or advance as provided for in this act and the authority determines that the loan or advance is in jeopardy of not being repaid.

(b) The mobile home park association has received a loan or advance as provided for in this act and the authority determines that the proposed housing project for which the loan or advance was made is in jeopardy of not being constructed.

(c) The authority determines that a portion of the net income or net earnings of the mobile home park association, in excess of that permitted by other provisions of this act, shall inure to the benefit of any private individual, firm, corporation, partnership, trust, or association.

(d) The authority determines that the mobile home park association is in violation of the rules promulgated under section 22.

(e) The authority determines that the mobile home park association is in violation of any agreements entered into with the authority providing for regulation by the authority of the planning, development, and management of any housing project undertaken by the mobile home park association or the disposition of the property and franchises of the mobile home park association.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983
Admin Rule: R 125.101 et seq. of the Michigan Administrative Code.

125.1498e Document of basic organization; approval of terms.
Sec. 98e. Before any mobile home park association can receive any benefits as a result of qualifying under this act, the authority must approve the terms of the partnership agreement, joint venture agreement, trust agreement, or other document of basic organization.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983

125.1498f "Surplus" construed.
Sec. 98f. As used in this chapter, the term "surplus" shall not be deemed to include any increase in assets of any mobile home park association organized in accordance with the provisions of this chapter, by reason of reduction of mortgage, by amortization or similar payments, or realized from the sale or disposition of any assets of a mobile home park association to the extent such surplus can be attributed to any increase in market value of any such real property or tangible personal property accruing during the period the assets were owned and held by the mobile home park association.

History: Add. 1982, Act 534, Imd. Eff. Dec. 31, 1982 ;-- Am. 1983, Act 217, Imd. Eff. Nov. 16, 1983

THE MOBILE HOME COMMISSION ACT
Act 96 of 1987

AN ACT to create a mobile home commission; to prescribe its powers and duties and those of local governments; to provide for a mobile home code and the licensure, regulation, construction, operation, and management of mobile home parks, the licensure and regulation of retail sales dealers, warranties of mobile homes, and service practices of dealers; to provide for the titling of mobile homes; to prescribe the powers and duties of certain agencies and departments; to provide remedies and penalties; to declare the act to be remedial; to repeal this act on a specific date; and to repeal certain acts and parts of acts.

History: 1987, Act 96, Imd. Eff. July 6, 1987

The People of the State of Michigan enact:

125.2301 Short title.
Sec. 1. This act shall be known and may be cited as “the mobile home commission act”.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Compiler's Notes: For transfer of powers and duties of the mobile home commission from the department of commerce to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

125.2302 Definitions.
Sec. 2. As used in this act:

(a) “Campground” means a campground as defined in section 12501 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.12501 of the Michigan Compiled Laws.

(b) “Code” means all or a part of the mobile home code promulgated pursuant to section 5.

(c) “Commission” means the mobile home code commission.

(d) “Department” means the department of commerce.

(e) “Installer and repairer” means a person, including a mobile home dealer, who for compensation installs or repairs mobile homes.

(f) “Local government” means a county or municipality.

(g) “Mobile home” means a structure, transportable in 1 or more sections, which is built on a chassis and designed to be used as a dwelling with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

(h) “Mobile home dealer” means a person other than a manufacturer engaged in the business of buying mobile homes for resale, exchange, lease, or rent or offering mobile homes for sale, lease, rent, or exchange to customers.

(i) “Mobile home park” means a parcel or tract of land under the control of a person upon which 3 or more mobile homes are located on a continual, nonrecreational basis and which is offered to the public for that purpose regardless of whether a charge is made therefor, together with any building, structure, enclosure, street, equipment, or facility used or intended for use incident to the occupancy of a mobile home.

(j) “Municipality” means a city, village, or township.

(k) “Person” means an individual, partnership, association, trust, or corporation, or any other legal entity or combination of legal entities.

(l) “Recreational vehicle” means a vehicle primarily designed and used as temporary living quarters for recreational, camping, or travel purposes, including a vehicle having its own motor power or a vehicle mounted on or drawn by another vehicle.

(m) “Seasonal mobile home park” means a parcel or tract of land under the control of a person upon which 3 or more mobile homes are located on a continual or temporary basis but occupied on a temporary basis only, and which is offered to the public for that purpose regardless of whether a charge is made therefor, together with any building, enclosure, street, equipment, or facility used or intended for use incident to the occupancy of a mobile home. Seasonal mobile home park does not include a campground licensed pursuant to sections 12501 to 12516 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.12501 to 333.12516 of the Michigan Compiled Laws.

(n) “Security interest”, “security agreement”, “secured party”, and “termination statement” have the same meanings as in the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.1101 to 440.11102 of the Michigan Compiled Laws.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2303 Mobile home commission; creation; appointment, qualifications, and terms of members; vacancy; compensation and expenses; quorum; action by commission; meetings; chairperson and vice-chairperson; removal of member; disclosure of pecuniary interest.

Sec. 3. (1) The mobile home commission is created within the department of commerce.

(2) The commission consists of 11 members appointed by the governor with the advice and consent of the senate, each of whom shall be a citizen of this state.

(3) The members of the commission shall include each of the following:

(a) A representative of an organization whose membership consists of mobile home residents.

(b) A representative of financial institutions.

(c) Two operators of a licensed mobile home park having 100 or more sites and 1 operator of a licensed mobile home park having less than 100 sites.

(d) A representative of organized labor.

(e) An elected official of a local government.

(f) A licensed mobile home dealer.

(g) One resident of a licensed mobile home park having 100 or more sites and 1 resident of a licensed mobile home park having less than 100 sites.

(h) A manufacturer of mobile homes.

(4) A person appointed to be a member under subsection (3)(a), (d), (e), (g), or a member of that person's immediate family shall not have more than a 1% ownership interest in or income benefit from a manufacturer of mobile homes, a retail seller of mobile homes, a licensed mobile home park, or a supplier of ancillary products or services to the mobile home industry.

(5) The term of each member shall be for 3 years. A vacancy in the office of a member shall be filled by the governor for the remainder of the unexpired term, not more than 1 month after the vacancy is created, in the same manner as the original appointment.

(6) The per diem compensation of the commission and the schedule for reimbursement of expenses shall be established annually by the legislature.

(7) Six members of the commission constitute a quorum for all purposes, notwithstanding the existence of a vacancy in the commission's membership. Action may be taken by the commission by a vote of a majority of the members appointed and serving. Meetings of the commission may be called by the chairperson or by 3 members on 3 business days' actual notice. At least 1 meeting shall be held each calendar quarter. The commission may hold meetings anywhere in this state.

(8) The commission shall elect a member of the commission as its chairperson and another member as its vice-chairperson. The duties and powers of the chairperson and vice-chairperson shall be as prescribed in the commission's rules.

(9) A member of the commission may be removed from office by the governor for inefficiency, neglect of duty, or misconduct or malfeasance in office. A member of the commission who has a direct pecuniary interest in a matter before the commission shall disclose that interest before the commission taking action with respect to the matter, which disclosure shall become a part of the record of the commission's official proceedings.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2304 Powers of commission; duties of director; prohibition; exception.

Sec. 4. (1) The commission may do all of the following:

(a) After consultation with and considering comments from representatives of the manufactured housing industry and other interested parties, recommend rules to the department to implement and administer this act.

(b) Act for the purpose of establishing a uniform policy relating to all phases of mobile home businesses, mobile home parks, and seasonal mobile home parks.

(c) Determine the sufficiency of local mobile home ordinances which are designed to provide local governments with superintending control over mobile home businesses, mobile home parks, or seasonal mobile homes parks.

(d) Conduct public hearings relating to the powers prescribed in this subsection.

(2) The director or an authorized representative of the director shall do all of the following:

(a) After consultation with and considering comments from representatives of the manufactured housing industry and other interested parties, promulgate rules to implement and administer this act.

(b) Conduct hearings relating to violations of this act or rules promulgated under this act.

(c) Make investigations to determine compliance with this act and rules promulgated under this act.

(d) Provide assistance to the commission as the commission requires.

(e) On not less than a quarterly basis, the director or an authorized representative of the director shall report to the commission on the expenditure of all fees collected under this act and the relation of such expenditures to the enforcement and administration of this act.

(3) The commission shall not act for the purpose of regulating mobile homes that are not located within a mobile home park or a seasonal mobile home park, except as relates to the business, sales, and service practices of mobile home dealers and the business practices of mobile home installers and repairers.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 2006, Act 328, Imd. Eff. Aug. 10, 2006
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2305 Mobile home code; promulgation; rules.
Sec. 5. (1) After consultation with and considering comments from representatives of the manufactured housing industry and other interested parties, the department shall promulgate the mobile home code subject to section 4. The code shall consist of rules governing all of the following:

(a) The licensure, density, layout, permits for construction, construction of mobile home parks including standards for roads, utilities, open space, or proposed recreational facilities, and safety measures sufficient to protect health, safety, and welfare of mobile home park residents, except water supply, sewage collection and treatment, and drainage facilities which are regulated by the department of environmental quality.

(b) The business, sales, and service practices of mobile home dealers.

(c) The business practices of mobile home installers and repairers.

(d) The licensure and regulations of mobile home installers and repairers.

(e) The setup and installation of mobile homes inside mobile home parks or seasonal mobile home parks.

(f) The regulation of the responsibilities, under the mobile home warranty, of the mobile home components manufacturer, the mobile home assembler or manufacturer, and the mobile home dealer, including the time period and relationships of each under the warranty, and the remedies available, if any, if the responsible parties cease to operate as a business.

(g) Abuses relating to all of the following:

(i) Consumer deposits, except utility deposits from consumers who are direct customers of utilities regulated by the Michigan public service commission.

(ii) Detailed listing of furnishings and fixtures by a manufacturer of a new mobile home or a mobile home dealer for a used mobile home.

(iii) Disclosure and delivery of manufacturer's warranties.

(iv) Used mobile homes. A mobile home dealer shall provide detailed listing of its service records for used mobile homes which are being sold by the dealer and of which the dealer has knowledge.

(h) Applications for and issuance of certificates of title for mobile homes.

(2) As part of the code, the department shall also promulgate rules governing the licensure, density, layout, permits for construction, and construction of seasonal mobile home parks, including standards for roads, utilities, open space, proposed recreational facilities, and safety measures sufficient to protect the health, safety, and welfare of seasonal mobile home park residents, except water supply, sewage collection and treatment, and drainage facilities, which shall be regulated by the department of environmental quality.

(3) The rules promulgated for seasonal mobile home parks may impose a less stringent standard than the rules promulgated for mobile home parks.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 2006, Act 328, Imd. Eff. Aug. 10, 2006
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2306 Promulgation of rules by department of environmental quality; representatives of local government to act in advisory capacity; procedures for effective coordination.
Sec. 6. (1) After consultation with and considering comments from representatives of the manufactured housing industry and other interested parties, the department of environmental quality shall promulgate rules for mobile home parks and seasonal mobile home parks setting forth minimum standards regulating:

(a) Water supply system.

(b) Sewage collection and disposal system.

(c) Drainage.

(d) Garbage and rubbish storage and disposal.

(e) Insect and rodent control.

(f) General operation, maintenance, and safety.

(g) Certification of compliance under section 17.

(2) Representatives of local government shall act in an advisory capacity in the promulgation of the code.

(3) The commission shall consult with appropriate state and local governments in developing the procedures for effective coordination of efforts. The commission shall recommend procedures to the governor and the legislature for coordinating state agency decisions and activities pertaining to this act.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 2006, Act 328, Imd. Eff. Aug. 10, 2006
Admin Rule: R 325.3311 et seq. of the Michigan Administrative Code.

125.2307 Higher standard proposed by local government; filing; implementation; review; approval; adoption by ordinance; relation of ordinance to specific section of code; standard not subject to filing requirement; design of ordinance; standard for setup or installation of mobile homes; prohibited standards; aesthetic standards.
Sec. 7. (1) A local government which proposes a standard related to mobile home parks or seasonal mobile home parks, or related to mobile homes located within a mobile home park or a seasonal mobile home park that is higher than the standard provided in this act or the code; or a standard related to the business, sales, and service practices of mobile home dealers, or the business of mobile home installers and repairers, that is higher than the standard provided in this act or the code shall file the proposed standard with the commission. The commission may promulgate rules to establish the criteria and procedure for implementation of higher standards by a local government. The commission shall review and approve the proposed standard unless the standard is unreasonable, arbitrary, or not in the public interest. If the commission does not approve or disapprove the proposed standard within 60 days after it is filed with the commission, the standard shall be considered approved unless the local government grants the commission additional time to consider the standard. After the proposed standard is approved, the local government may adopt the standard by ordinance. The ordinance shall relate to a specific section of the code.

(2) A local government standard related to mobile homes not located within a mobile home park or seasonal mobile home park need not be filed with the mobile home commission, unless the standard relates to the business, sales, and service practices of mobile home dealers, or the business of mobile home installers and repairers.

(3) A local government ordinance shall not be designed as exclusionary to mobile homes generally whether the mobile homes are located inside or outside of mobile home parks or seasonal mobile home parks.

(4) A local government ordinance shall not contain a standard for the setup or installation of mobile homes that is incompatible with, or is more stringent than, either of the following:

(a) The manufacturer's recommended setup and installation specifications.

(b) The mobile home setup and installation standards promulgated by the federal department of housing and urban development pursuant to the national manufactured housing construction and safety standards act of 1974, 42 U.S.C. 5401 to 5426.

(5) In the absence of any setup or installation specifications or standards for foundations as set forth in subsection (4)(a) or (b), the local government standards for site-built housing shall apply.

(6) A local government ordinance shall not contain roof configuration standards or special use zoning requirements that apply only to, or excludes, mobile homes. A local government ordinance shall not contain a manufacturing or construction standard that is incompatible with, or is more stringent than, a standard promulgated by the federal department of housing and urban development pursuant to the national manufactured housing construction and safety standards act of 1974, 42 U.S.C. 5401 to 5426. A local government ordinance may include reasonable standards relating to mobile homes located outside of mobile home parks or seasonal mobile home parks which ensure that mobile homes compare aesthetically to site-built housing located or allowed in the same residential zone.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2308 Exemptions.

Sec. 8. This act shall not apply to property used for housing agricultural labor forces or campgrounds.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2309 Rules establishing fees and charges for licenses or permits; application of fees and charges; funding for commission; rules to adjust fees; mobile home code fund; creation; administration; disposition of fees and money; unexpended funds.

Sec. 9. (1) After consultation with and considering comments from representatives of the manufactured housing industry and other interested parties, the department shall promulgate rules to establish fees and charges for the issuance of licenses or permits under section 5.

(2) The fees and charges under this act shall be applied solely to the implementation of the act and shall constitute the total funding for the commission except as provided in 1959 PA 243, MCL 125.1035 to 125.1043.

(3) A fee shall not be charged for an investigation conducted pursuant to section 36.

(4) A fee shall not be charged or collected by the commission in excess of that necessary to administer and enforce this act.

(5) The department may promulgate rules to adjust the fees established in subsection (1) and in sections 16, 21, 30a, and 30c such that revenues obtained under this act equal appropriations by the legislature for the purpose of administering this act. However, the adjusted fees shall not exceed the fees stated in sections 16, 21, 30a, and 30c.

(6) To accomplish the objectives of this act, a mobile home code fund is created. Fees established by the act for the issuance of licenses, plans approval, permits, certificates of title, and affidavits of affixture are intended to bear a reasonable relation to the cost, including overhead, of the service. The state treasurer is the custodian of the fund and may invest the surplus of the fund in investments that in the state treasurer's judgment are in the best interest of the fund. Earnings from those investments shall be credited to the fund. The state treasurer shall report to the director and the legislature the amount of interest credited and the balance of the fund as of September 30 of each year. The director shall supervise and administer the fund. Fees received by the department and

money collected under the act shall be deposited in the fund and shall be appropriated by the legislature for the operation of the bureau of construction codes and fire safety and indirect overhead expenses in the department. Funds that are unexpended at the end of each fiscal year shall be returned to the mobile home code fund.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 2006, Act 328, Imd. Eff. Aug. 10, 2006
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2310 Reproducing documents requested as public record.
Sec. 10. Upon request and at reasonable charges as the commission prescribes, the department shall furnish to a person a reproduction pursuant to the records media act, certified under the seal of office if requested, of a document that is retained as a matter of public record, except that the department shall not charge or collect a fee for a reproduction of a document furnished to a public official for use in his or her official capacity.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 1992, Act 203, Imd. Eff. Oct. 5, 1992

125.2311 Preliminary plan for development of mobile home park or seasonal mobile home park; submission; contents; review; preliminary approval.
Sec. 11. (1) A person who desires to develop a mobile home park or a seasonal mobile home park shall submit a preliminary plan to the appropriate municipality, local health department, county road commission, and county drain commissioner for preliminary approval. The preliminary plan shall include the location, layout, general design, and a general description of the project. The preliminary plan shall not include detailed construction plans.

(2) The municipality may grant preliminary approval if the proposed mobile home park or seasonal mobile home park conforms to applicable laws and local ordinances not in conflict with this act and laws and ordinances relative to:

(a) Land use and zoning.

(b) Municipal water supply, sewage service, and drainage.

(c) Compliance with local fire ordinances and state fire laws.

(3) The county drain commissioner shall review and may approve outlet drainage. The county road commission shall review and may approve ingress and egress roads. The county road commission and the county drain commissioner shall adopt and publish standards to implement this subsection. The county road commission and the county drain commissioner shall not have authority as to interior streets and drainage in the mobile home park or seasonal mobile home park, unless the streets or drains are dedicated to the public.

(4) The local health department shall grant preliminary approval, under the guidance of the department of public health, for on-site water and sewage service and general site suitability.

(5) If a reviewing agency as provided in this section has not returned the preliminary plan to the developer, either approved, modified, or disapproved within 60 days after it receives the preliminary plan, the preliminary plan shall be considered approved.

(6) Coordination of approvals by state and local governments shall be provided by the director of public health before it may grant construction approval.

(7) The developer shall submit the preliminary approval with the final plans to the department of public health for review before the department of commerce may issue a construction permit.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2312 Submission of legal documents and final plans draft; application fee; review; approval; issuance of construction permit.

Sec. 12. (1) When all preliminary approvals are made, the developer shall submit the legal documents and the final plans draft to the department.

(2) The nonrefundable fee for an application for plans approval and a permit for new mobile home park construction or for the expansion of an existing licensed mobile home park is $185.00 plus an additional $4.00 for each home site over 25 home sites, to a maximum of $1,000.00. The nonrefundable fee for an application for an extension of a permit to construct is $185.00.

(3) The nonrefundable fee for the construction of a new home condominium or the expansion of an existing home condominium is $505.00, plus an additional $4.00 for each home condominium home site over 25 home sites that is to be constructed.

(4) The nonrefundable fee for an existing licensed mobile home park that converts to a home condominium with an increase in the number of home sites is $505.00, plus an additional $4.00 for each home condominium home site over 25 home sites, to a maximum of $1,480.00.

(5) The nonrefundable fee for an application for a permit to construct for an alteration to an existing mobile home park is $50.00.

(6) The department shall review the filing and within 90 days after filing issue its approval or disapproval. Upon the approval of all the reviewing agencies, the department shall issue a permit to construct the mobile home park or seasonal mobile home park.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 2006, Act 328, Imd. Eff. Aug. 10, 2006

125.2313 Construction permit required.

Sec. 13. (1) A person shall not construct a mobile home park or seasonal mobile home park without obtaining a permit issued by the department.

(2) Construction may begin upon the granting of a permit to construct by the department.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2314 Affidavit.

Sec. 14. Upon completion of the construction of the mobile home park or seasonal mobile home park, the owner or operator of the park and a registered professional engineer or architect shall file with the department an affidavit certifying that the mobile home park or seasonal mobile home park, lot, and work were completed in accordance with the approved specifications and plans.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2316 License to operate mobile home park or seasonal mobile home park required; grant and renewal; fees; licensure of campground as seasonal mobile home park.

Sec. 16. (1) A person shall not operate a mobile home park or seasonal mobile home park without a license.

(2) Upon completion, review, and approval of certifications, the department shall grant a license to operate a mobile home park or seasonal mobile home park.

(3) A 3-year license shall be granted and renewed by the department based upon the certifications and recommendations of the appropriate agencies and local governments. The fee for the 3-year license to operate a mobile home park is $225.00, plus an additional $3.00 for each home site in excess of 25 home sites in the mobile home park, or any lesser amount established pursuant to section 9(5). The fee for a 3-year license to operate a seasonal mobile home park is $120.00, plus an additional $1.50 for each home site in excess of 25 home sites in the seasonal mobile home park, or any lesser amount established pursuant to section 9(5).

(4) If a person submits a timely application for renewal of a license and pays the appropriate fee, the person may continue to operate a mobile home park or seasonal mobile home park unless notified that the application for renewal is not approved.

(5) A campground which is currently licensed under sections 12501 to 12516 of the public health code, 1978 PA 368, MCL 333.12501 to 333.12516, was previously licensed under the licensing provisions of 1959 PA 243, MCL 125.1035 to 125.1043 as a seasonal trailer park and which currently meets the seasonal trailer park construction standards under 1959 PA 243, MCL 125.1035 to 125.1043, may apply for and shall be licensed as a seasonal mobile home park under this act if the campground meets all other requirements for licensure under this act as a seasonal mobile home park.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 2006, Act 328, Imd. Eff. Aug. 10, 2006

125.2316a Occupancy of mobile home in seasonal mobile home park.
Sec. 16a. Mobile homes located in a seasonal mobile home park may be occupied on a full-time basis from April 1 to October 31, but shall not be occupied for more than 15 consecutive days in any 30-day period from November 1 to March 31.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2317 Inspection of mobile home parks and seasonal mobile home parks; issuance of license.
Sec. 17. (1) The department of environmental quality or its authorized representative shall conduct a physical inspection of mobile home parks and seasonal mobile home parks in accordance with standards established by the department of environmental quality. If the mobile home park or seasonal mobile home park is approved, the department shall issue a license pursuant to section 16.

(2) Except for purposes of issuing a license or renewing a license pursuant to this act, a local government may not make an inspection

unless it has reason to believe that this act, the code, or rules promulgated pursuant to this act were violated.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 2006, Act 328, Imd. Eff. Aug. 10, 2006
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2318 Variances.

Sec. 18. (1) A variance in the design and construction of a mobile home park or seasonal mobile home park may be granted upon notice of the request to the local government and the department of public health at the time of filing with the department of commerce. If the local government grants a variance which would permit activities violative of the minimum standards of the code, the local government shall file with the department a copy of the variance order and an explanation of the reason for the granting of the order. The department may approve or disapprove the variance or revoke the variance upon notice and hearing.

(2) After a public hearing the department may grant a specific variance to a substantive requirement of the code if the literal application of the substantive requirement would result in an exceptional, practical difficulty to the applicant, and if the specific condition justifying the variance is neither so general nor recurrent in nature as to make an amendment of the code with respect to the condition reasonably practical or desirable.

(3) The department may attach in writing a condition in connection with the granting of a variance that in its judgment is necessary to protect the health, safety, and welfare of the people of this state. The variance shall not exceed the minimum necessary to alleviate the exceptional, practical difficulty.

(4) A variance to a local ordinance, zoning requirement, or local rule may be granted only by a local government.

(5) A variance to a rule promulgated under this act may be granted only by the commission.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2321 Licensing mobile home dealers, installers, or repairers; initial or renewal license; application; consent to service of process; duration and expiration of license; license fee; license of successor; continuation of sales.

Sec. 21. (1) A mobile home dealer shall not engage in the retail sale of a mobile home without a license.

(2) A mobile home dealer, mobile home installer, or repairer may obtain an initial or renewal license by filing with the commission an application together with consent to service of process in a form prescribed by the commission pursuant to section 35.

(3) An initial or renewal license under this act shall be issued for 3 years. Licenses shall expire on October 1.

(4) The license fee for a mobile home dealer is $450.00 or any other lesser amount established pursuant to section 9(5).

(5) The license fee for a mobile home installer or repairer is $150.00 or any other lesser amount established pursuant to section 9(5).

(6) A licensed mobile home dealer, mobile home installer, or repairer may file an application for the license of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. The commission may grant or deny the application.

(7) A licensee who submits a timely application for renewal of a license and pays the appropriate fee may continue sales of mobile homes unless notified that the application for renewal is not approved.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 2006, Act 328, Imd. Eff. Aug. 10, 2006
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2322 Mobile home dealer; surety bond; deposit; rules.
Sec. 22. The commission may promulgate rules to require a licensed mobile home dealer to post a surety bond in an amount up to $10,000.00 for each sales location and may determine conditions of the bond. An appropriate deposit of cash or securities shall be accepted in lieu of a bond which is required.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2323 Mobile home dealer; accounts and other records.
Sec. 23. A licensed mobile home dealer shall make and keep accounts, and other records as the commission prescribes by rule. The records required shall be preserved for 3 years unless the commission otherwise prescribes by rule for particular types of records. If the information contained in a record filed with the commission is or becomes inaccurate or incomplete in any material respect, the licensee promptly shall file a correcting amendment.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2324 Mobile home dealer; prohibited conduct.
Sec. 24. A mobile home dealer shall not:

(a) Advertise or represent a mobile home as other than calendar or model year.

(b) Misapply consumer deposits on a mobile home or a mobile home park.

(c) Fail to place deposits, down payments, or similar payments for the purchase or right to purchase a mobile home in a separate escrow account subject to return upon cancellation of the purchase order by the prospective purchaser under the rules or orders as the commission promulgates or issues unless the dealer shall post a bond or a deposit of cash or securities for protection of these payments in an amount acceptable to the commission.

(d) Fail to disclose to the department any direct or indirect business relationships with financial and loan institutions, banks, and insurance companies.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2325 Installation and setup of mobile home; rules; licensing requirements.

Sec. 25. (1) The commission shall promulgate rules relating to the responsibility of the mobile home dealer, mobile home installer, and the mobile home park or seasonal mobile home park owner for installation and setup of a mobile home.

(2) A person licensed under any of the following acts shall not be required to be licensed as a mobile home installer and repairer in order to perform work on mobile homes for which the person is licensed, unless the work performed also includes the setup, installation, or general repair of mobile homes:

(a) The electrical administrative act, Act No. 217 of the Public Acts of 1956, being sections 338.881 to 338.892 of the Michigan Compiled Laws.

(b) Act No. 266 of the Public Acts of 1929, being sections 338.901 to 338.917 of the Michigan Compiled Laws.

(c) The Forbes mechanical contractors act, Act No. 192 of the Public Acts of 1984, being sections 338.971 to 338.988 of the Michigan Compiled Laws.

(3) The electrical administrative act, Act No. 217 of the Public Acts of 1956, being sections 338.881 to 338.892 of the Michigan Compiled Laws, Act No. 266 of the Public Acts of 1929, being sections 338.901 to 338.917 of the Michigan Compiled Laws, and the Forbes mechanical contractors act, Act No. 192 of the Public Acts of 1984, being sections 338.971 to 338.988 of the Michigan Compiled Laws, shall not apply to

the setup or installation of a mobile home and the following connections or replacement or repair of the following connections, by a licensed mobile home installer and repairer:

(a) Factory-installed electrical wiring, devices, appliances, or appurtenances to available electrical meters or pedestals.

(b) Factory-installed piping, fixtures, plumbing appliances, and plumbing appurtenances to sanitary drainage or storm drainage facilities, venting systems, or public or private water supply systems.

(c) Factory-installed process piping, heating and cooling equipment, and systems or supply lines to available service meters or mains.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2327 Mobile home, mobile home site, or equipment; fraudulent practices.
Sec. 27. (1) A person shall not, in connection with the offer, sale, purchase, or rental of a mobile home, mobile home site, or equipment, relating thereto:

(a) Employ a devise, scheme, or artifice to defraud.

(b) Make an untrue statement of material fact or omit to state a material fact necessary to make the statement not misleading, in the light of the circumstances under which it is made.

(2) A person shall not willfully authorize, direct, or aid in publication, advertisement, distribution, or circulation of a statement or representation concerning a mobile home, mobile home site, or equipment relating thereto, which misrepresents the facts concerning the mobile home, mobile home site, or equipment relating thereto.

(3) A person with knowledge that an advertisement, pamphlet, prospectus, or letter concerning a mobile home, mobile home site, or

equipment relating thereto contains a written statement that is false or fraudulent, shall not issue, circulate, publish, or distribute the advertisement, pamphlet, prospectus, or letter concerning a mobile home, mobile home site, or equipment relating thereto.

(4) A person shall not willfully make any material misrepresentation in the sale of a mobile home, mobile home site, or equipment relating thereto.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2328 Owner or operator of mobile home park or seasonal mobile home park; unfair or deceptive practices; action by tenant; violation of water utility tariffs; qualification of owner for regulation as water utility; report.
Sec. 28. (1) An owner or operator of a mobile home park or seasonal mobile home park shall not engage, or permit an employee or agent to engage, in any of the following unfair or deceptive methods, acts, or practices:

(a) Directly or indirectly charging or collecting from a person an entrance fee.

(b) Requiring a person to directly or indirectly purchase a mobile home from another person as a condition of entrance to, or lease or rental of, a mobile home park or seasonal mobile home park space.

(c) Directly or indirectly charging or collecting from a person a refundable or nonrefundable exit fee.

(d) Requiring or coercing a person to purchase, rent, or lease goods or services from another person as a condition of any of the following:

(i) Entering into a park or lease.

(ii) Selling a mobile home through the park owner or operator, or his or her agent or designee upon leaving a mobile home park or seasonal mobile home park.

(iii) Renting space in a mobile home park or seasonal mobile home park.

(e) Directly or indirectly charging or collecting from a person money or other thing of value for electric, fuel, or water service without the use of that service by a resident or tenant being first accurately and consistently measured, unless that service is included in the rental charge as an incident of tenancy.

(f) Conspiring, combining, agreeing, aiding, or abetting in the employment of a method, act, or practice that violates this act.

(g) Renting or leasing a mobile home or site in a mobile home park or seasonal mobile home park without offering a written lease.

(h) Subject to section 28a, prohibiting a resident from selling his or her mobile home on-site for a price determined by that resident, if the purchaser qualifies for tenancy and the mobile home meets the conditions of written park rules or regulations. This subdivision does not apply to seasonal mobile home parks.

(i) Subject to reasonable mobile home park or seasonal mobile home park rules governing the location, size, and style of exterior television antenna, prohibiting a person from installing or maintaining an exterior television antenna on a mobile home within the park unless the mobile home park or seasonal mobile home park provides park residents, without charge, a central television antenna for UHF-VHF reception.

(2) A tenant of a mobile home park or seasonal mobile home park may bring an action on his or her own behalf for a violation of this section.

(3) If the commission has reason to suspect that the owner of a mobile home park or seasonal mobile home park is engaged in conduct that violates existing water utility tariffs or qualifies the owner of a mobile

home park or seasonal mobile home park for regulation as a water utility, the commission shall promptly send a written report of the alleged violation to the Michigan public service commission.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 1988, Act 337, Eff. May 1, 1989 ;-- Am. 1993, Act 241, Imd. Eff. Nov. 15, 1993

125.2328a Rules or regulations governing physical condition and aesthetic characteristics of mobile homes; applicability of subsection (1)(f); expense of moving mobile home to comparable site; termination of tenancy for just cause; appraisal and sale of mobile home; burden of showing compliance with subsection (1).

Sec. 28a. (1) Mobile home park rules or regulations may include provisions governing the physical condition of mobile homes and the aesthetic characteristics of mobile homes in relation to the mobile home park in which they are located, subject to all of the following:

(a) The age or size of a mobile home shall not be used as the sole basis for refusing to allow an on-site, in-park sale or for refusing to allow the mobile home to remain on-site. The burden of going forward in a suit against the mobile home park owner or operator for violation of this subdivision is on the resident.

(b) The standards incorporated in the written park rules or regulations governing the physical condition and aesthetic characteristics of mobile homes in the mobile home park shall apply equally to all residents.

(c) A mobile home sold on-site shall conform with Act No. 133 of the Public Acts of 1974, being sections 125.771 to 125.774 of the Michigan Compiled Laws.

(d) Any charge connected to the on-site, in-park sale of a mobile home, other than the inspection fee permitted under subdivision (e) and the commission or fee charged by a mobile home dealer licensed under this act who is engaged by the seller to transact the sale, is an entrance or exit fee in violation of section 28.

(e) A park owner or operator may charge a reasonable fee to inspect the mobile home before sale. The charge shall not be more than $30.00, or the amount charged for building permit inspections by the municipality in which the mobile home is located, whichever is higher.

(f) The standards governing the physical condition of mobile homes and the aesthetic characteristics of mobile homes in the mobile home park, as incorporated in the written park rules, shall not be designed to defeat the intent of this section.

(2) Subsection (1)(f) shall not apply if the mobile home park is changing its method of doing business and provides not less than 1 year's notice, unless a different notice period is otherwise provided by law, of the proposed change to all affected mobile home park residents. A change in a mobile home park's method of doing business includes, but is not limited to, any of the following:

(a) Conversion to a mobile home park condominium pursuant to the condominium act, Act No. 59 of the Public Acts of 1978, being sections 559.101 to 559.275 of the Michigan Compiled Laws.

(b) Conversion to total rental of both mobile home site and park-owned mobile homes.

(c) Changes in use of the land on which the mobile home park is located.

(3) Notwithstanding subsection (1) or (2), a mobile home park may require a mobile home to be moved to a comparable site within the mobile home park, at the expense of the mobile home park.

(4) If, after termination of a resident's tenancy for just cause as provided in chapter 57a of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.5771 to 600.5785 of the Michigan Compiled Laws, the resident of a mobile home park sells his or her mobile home to the owner or operator of the mobile home park, or to any entity in which the owner or operator has any interest, the resident shall have the right to have the mobile home's value appraised and, if so

appraised, the sale price of the mobile home shall not be less than the appraised value.

(5) Except as provided in subsection (1)(a), a mobile home park owner or operator, or both, has the burden of going forward to show compliance with subsection (1).

History: Add. 1988, Act 337, Eff. May 1, 1989

125.2328b Children and pets; enforcement of rules.
Sec. 28b. A mobile home park rule that does either of the following shall not be enforced against a resident, unless the rule was proposed and in force before the resident was approved for tenancy in the mobile home park:

(a) Prohibits those children who were previously approved under prior park rules from residing in the mobile home park. A rule prohibiting children, or additional children, shall not be enforced against persons who were residents of the mobile home park at the time the rule was adopted until after 1 year's notice to those persons.

(b) Prohibits a resident from keeping those pets which were previously approved under prior park rules, except dangerous animals.

History: Add. 1988, Act 337, Eff. May 1, 1989

125.2328c Action to terminate tenancy; liquidated damages.
Sec. 28c. (1) A lease or rental agreement or rules or regulations that are adopted pursuant to a lease or rental agreement may include a provision that requires liquidated damages to be awarded to the prevailing party in a contested action to terminate a tenancy in a mobile home park for just cause under section 5775 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.5775 of the Michigan Compiled Laws.

(2) A provision allowed under subsection (1) may require liquidated damages of not more than $500.00 for an action in the district court and

not more than $300.00 for each appellate level. Liquidated damages shall not be construed to be a penalty.

History: Add. 1988, Act 337, Eff. May 1, 1989

125.2329 Shutoff of utility service for nonpayment; notice.
Sec. 29. A utility company shall notify the department 10 days before shutoff of service for nonpayment, including sewer, water, gas, or electric service, when the service is being supplied to the licensed owner or operator of a mobile home park or seasonal mobile home park for the use and benefit of the park's tenants.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2330 Mobile home subject to certificate of title provisions.
Sec. 30. (1) After December 31, 1978, every mobile home located in this state shall be subject to the certificate of title provisions of this act, except for any new mobile home owned by a manufacturer or licensed mobile home dealer and held for sale.

(2) After December 31, 1978, a certificate of title for a mobile home issued by the secretary of state before January 1, 1979, pursuant to Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, shall be considered to be a certificate of title issued by the department under this act and shall be subject to all of the provisions of this act respecting certificates of title.

(3) After December 31, 1978, a mobile home shall not be sold or transferred except by transfer of the certificate of title for the mobile home pursuant to this act.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2330a Certificate of title; application; form; fee; signature; acknowledgment; contents; bond; examination of application; determination; investigation; additional information; rejection of application; duplicate, replacement, or corrected title; placing or terminating lien on title; placing name on title; fee.

Sec. 30a. (1) An owner of a mobile home which is subject to the certificate of title provisions of this act shall make application to the department for the issuance of a certificate of title for the mobile home upon the appropriate form furnished by the department, accompanied by a fee of $90.00 or any lesser amount established pursuant to section 9(5). The application shall bear the signature of the owner written in ink, shall be acknowledged by the owner before a person authorized to take acknowledgments, and shall contain:

(a) The name and address of the owner.

(b) A description of the mobile home, including the name of the manufacturer, the year and model, and the manufacturer's serial number or, in the absence of a serial number, a number assigned by the department. A number assigned by the department shall be permanently placed on the mobile home in the manner and place designated by the department.

(c) A statement of the names and addresses of the holders of any security interests in the mobile home, in the order of their priority.

(d) Further information as may reasonably be required by the department to enable it to determine whether the owner of the mobile home is entitled to a certificate of title for the mobile home.

(2) If the department is not satisfied as to the ownership of the mobile home, before issuing a certificate of title for it, the department may require the applicant to file a properly executed surety bond in a form prescribed by the department, executed by the applicant and a company authorized to conduct a surety business in this state. The bond shall be in an amount equal to twice the value of the mobile home as determined by the department and shall be conditioned to indemnify or reimburse the department, any prior owner, any holder of a security interest in the mobile home, and any subsequent purchaser of the mobile home, and their successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, by reason of the issuance of a certificate of title to the mobile home or on account of any defect in the

right, title, or interest of the applicant in and to the mobile home. Each interested person has a right of action to recover on the bond for a breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of 5 years, or before 5 years if the currently valid certificate of title is surrendered to the department, unless the department has received notification of the pendency of an action to recover on the bond.

(3) The department shall examine and determine the genuineness, regularity, and legality of an application for a certificate of title for a mobile home and of any other application lawfully made to the department, and may in all cases make investigation or require additional information as may be considered necessary, and shall reject any application if not satisfied of the genuineness, regularity, or legality of it or the truth of any statement contained in it, or for any other reason, when authorized by law.

(4) The fee for obtaining a duplicate, replacement, or corrected title, for placing or terminating a lien on the title, or for placing a name on the title is $15.00 or any other lesser amount established pursuant to section 9(5).

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 2006, Act 328, Imd. Eff. Aug. 10, 2006

125.2330b Certificate of title; issuance; contents; mailing or delivering to owner or other person.

Sec. 30b. (1) The department upon receipt of the required application and fees shall issue a certificate of title except as otherwise provided.

(2) The certificate of title shall contain upon its face the date issued, the name and address of the owner, a description of the mobile home as determined by the department, a statement of all security interests in the mobile home as set forth in the application, the date on which the application was filed, and other information as the department may require.

(3) The certificate of title shall contain forms for assignment of title or interest and warranty of title by the owner with space for notation of security interests in the mobile home at the time of a transfer to be signed in ink, and other forms as the department may consider necessary to facilitate the effective administration of this section. The certificate shall bear the seal of the department.

(4) The certificate of title shall be mailed or delivered to the owner or other person as the owner may direct in a separate instrument, in the form as the department shall prescribe.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 2006, Act 142, Imd. Eff. May 22, 2006

125.2330c Transfer or assignment of title or interest; indorsement; mailing or delivering certificate; effective date of transfer; issuance of new certificate; fee; reservation or creation of security interest; mobile home dealer as transferee; transfer of dealer's title or interest.

Sec. 30c. (1) If the owner of a mobile home transfers or assigns the owner's title or interest to the mobile home, the owner shall indorse an assignment of the mobile home with warranty of title with a statement of all security interests in the mobile home, and shall cause the certificate to be mailed or delivered to the department or to the purchaser or transferee at the time of the delivery to the purchaser or transferee of the mobile home.

(2) Upon the delivery of a mobile home and the transfer, sale, or assignment of the title or interest in a mobile home, the effective date of the transfer of title or interest shall be the date of execution of either the application for title or the certificate of title.

(3) The purchaser or transferee, unless the purchaser or transferee is a licensed dealer, shall cause to be presented to the department the certificate of title accompanied by the applicable fee, as follows:

(a) Except as provided in subdivision (b) or (c), $90.00.

(b) Except as provided in subdivision (c), $15.00, if the sale, assignment, or other transfer will require the addition or deletion from the certificate of title of any of the following:

(i) The owner's spouse.

(ii) A person related to the owner within the fourth degree of consanguinity as computed by the civil law method.

(iii) A person related to the owner's spouse within the fourth degree of consanguinity as computed by the civil law method.

(c) Any other lesser amount established pursuant to section 9(5).

(4) Upon presentation of the certificate of title accompanied by the applicable fee, a new certificate of title shall be issued. A certificate of title issued under subsection (3) and this subsection shall be mailed or delivered to the owner or any other person the owner may direct in a separate instrument in a form as prescribed by the department.

(5) If a security interest is reserved or created at the time of the transfer, the parties shall comply with section 30d.

(6) If the transferee of a mobile home is a mobile home dealer who holds the mobile home for resale, the dealer shall not be required to forward the certificate of title to the department, but the dealer shall retain possession of the assigned certificate of title. Upon transfer of the dealer's title or interest to another person, the dealer shall execute and acknowledge an assignment and warranty of title upon the certificate of title and deliver it to the person to whom the transfer is made if the person is a licensed dealer; otherwise application for a new title shall be made by the transferor as provided in section 30a(1).

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 2006, Act 142, Imd. Eff. May 22, 2006 ;-- Am. 2006, Act 328, Imd. Eff. Aug. 10, 2006

125.2330d Creation of security interest in mobile home; assignment of security interest; assignee named as holder of security interest; perfection of security interest; termination statement; issuance of new certificate.

Sec. 30d. (1) All of the following apply if an owner named in a certificate of title creates a security interest in the mobile home described in the certificate:

(a) The owner shall immediately execute an application in the form prescribed by the department showing the name and address of the holder of the security interest and deliver the certificate of title, the application, and a copy of the application which need not be signed, to the holder of the security interest.

(b) The holder of the security interest shall cause the certificate of title, the application, the required fee, and the copy of the application to be mailed or delivered to the department.

(c) The department shall indicate on the copy of the application the date and place of filing of the application and return the copy to the person presenting it.

(d) Upon receipt of the certificate of title, application, and the required fee, the department shall issue a new certificate in the form provided in section 30b, setting forth the name and address of each holder of a security interest in the mobile home for which a termination statement has not been filed and the date on which the application first stating the security interest was filed, and mail the certificate to the owner.

(2) A holder of a security interest may assign, absolutely or otherwise, the security interest to a person other than the owner without affecting the interest of the owner or the validity of the security interest, but a person without notice of the assignment is protected in dealing with the holder of the security interest as the holder of the security interest. The assignee may have its interest as the holder of the security interest shown on the certificate of title by providing the department with a copy of the assignment instrument but the failure of the assignee to do so does not

affect the validity of the security interest or the assignment of the security interest.

(3) Receipt by the department of a properly tendered application for a certificate of title on which a security interest in a mobile home is to be indicated, whether the application is tendered under this act, is a condition of perfection of a security interest in the mobile home and is equivalent to filing a financing statement under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, with respect to the mobile home. When a security interest in a mobile home is perfected, it has priority over the rights of a lien creditor, as defined in section 9102 of the uniform commercial code, 1962 PA 174, MCL 440.9102.

(4) If there is not an outstanding obligation or commitment to make advances, incur obligations, or otherwise give value, secured or to be secured by a security interest in a mobile home, the secured party shall, within 30 days after satisfaction of the obligation, execute a termination statement in the form prescribed by the department and mail or deliver the termination statement to the owner or other person as the owner may direct. An owner who is not a dealer holding the mobile home for resale shall promptly cause the certificate, all termination statements, and an application for certificate of title to be mailed or delivered to the department. The department shall issue a new certificate.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 2005, Act 38, Imd. Eff. June 7, 2005

125.2330e Termination of owner's interest by enforcement of security agreement; duty of transferee; duty of holder of security interest; mailing or delivering certificate; application for new certificate; affidavit; issuance of new certificate; demand for outstanding certificate.

Sec. 30e. (1) If the interest of the owner in a mobile home is terminated by the enforcement of a security agreement, the transferee of the owner's interest shall promptly mail or deliver to the department the last certificate of title, if the transferee has possession of it, an application for a new certificate in the form prescribed by the department, and an affidavit made by or on behalf of the holder of the security interest so

enforced that the mobile home was repossessed, that the interest of the owner was lawfully terminated by enforcement of the security agreement, and whether the holder has delivered the last certificate of title to the transferee of the owner's interest, naming the transferee, or if not, the reason delivery was not made and the then location of the certificate of title so far as known to the holder. If the holder of the security interest succeeds to the interest of the owner and holds the mobile home for resale, the holder shall not be required to secure a new certificate of title but, upon transfer to another person, shall promptly mail or deliver to the transferee or to the department the certificate, if in the holder's possession, the affidavit, and other documents required to be sent to the department by the transferee.

(2) If the interest of the owner in a mobile home is terminated by sale pursuant to a levy of execution, attachment, or other process of a court, the transferee of the owner's interest shall promptly mail or deliver to the department the last certificate of title, if the transferee has possession of it, an application for a new certificate of title in the form prescribed by the department and an affidavit, upon a form prescribed by the department, made by the officer of the court who conducted the sale, setting forth the date of the sale, and the name of the purchaser and whether the officer has delivered the certificate of title to the purchaser and if not, the reason delivery was not made and the then location of the certificate of title so far as known to the officer.

(3) A person holding a certificate of title where the interest of the owner named in the certificate has been terminated in the manner provided by subsection (1) or (2) shall mail or deliver the certificate to the department upon its request. The delivery of the certificate pursuant to the request of the department does not affect the rights of the person surrendering the certificate, and the action of the department in issuing a new certificate of title is not conclusive upon any rights of an owner or holder of a security interest named in the old certificate.

(4) The department, upon receipt of an application for a new certificate of title by a transferee in the manner provided by subsection (1) or (2), with proof of the transfer, the required fee, and any other documents

required by law, shall issue a new certificate of title in the name of the transferee as owner, setting forth all security interests noted on the last certificate of title as having priority over the security agreement so enforced and shall mail or deliver the new certificate to the owner. If the outstanding certificate of title is not delivered, the department shall make demand for the outstanding certificate of title from the holder.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2330f Filing surrendered certificate of title; maintaining file for period of 10 years.

Sec. 30f. The department shall retain and appropriately file every surrendered certificate of title. The file shall be maintained so as to permit the tracing of title of the mobile home designated in a surrendered certificate for a period of 10 years.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2330g Cancellation of or refusal to issue certificate of title; grounds; notice; hearing.

Sec. 30g. (1) The department may cancel or refuse to issue a certificate of title:

(a) If the department is satisfied that the certificate of title was fraudulently or erroneously issued.

(b) If the department determines that the holder of the certificate has made or is making an unlawful use of the certificate.

(c) If the department determines that the required fee has not been paid and the fee is not paid upon reasonable notice or demand.

(d) If the department is authorized under any other provision of this act.

(e) Upon receipt of notification from another state or foreign country that a certificate of title issued by the department has been surrendered by the owner in conformity with the laws of the other state or foreign country.

(f) If it is shown by satisfactory evidence that delivery of a mobile home in the possession of a dealer was not made to the applicant to whom the certificate was issued.

(2) Before a cancellation under subsection (1)(a), (b), or (d) is made, the person affected shall be given notice and an opportunity to be heard.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2330h Rules.

Sec. 30h. The commission in consultation with the secretary of state shall promulgate rules, which shall further define and distinguish between the term mobile home as used in this act and the term trailer coach as used in the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2330i Affixation of mobile home to real property; ownership interest.

Sec. 30i. (1) If a mobile home is affixed to real property in which the owner of the mobile home has the ownership interest, the owner may deliver all of the following to the department:

(a) An affidavit of affixture on a form provided by the department that contains all of the following:

(i) The name and address of the owner.

(ii) A description of the mobile home that includes the name of the manufacturer of the mobile home, the year of manufacture, the model, the manufacturer's serial number and, if applicable, the number assigned by the department.

(iii) A statement that the mobile home is affixed to the real property.

(iv) The legal description of the real property to which the mobile home is affixed.

(v) The name of each holder of a security interest in the mobile home, together with the written consent of each holder to the termination of the security interest and the cancellation of the certificate of title under subsection (2), if applicable.

(b) The certificate of title for the mobile home, the manufacturer's certificate of origin if a certificate of title has not been issued by the department, or sufficient proof of ownership as provided in section 30a or 30e.

(c) A fee in an amount prescribed in section 30a for a certificate of title.

(2) When the department receives an affidavit and certificate of title under subsection (1), the department shall cancel the certificate of title for the mobile home. The department shall not issue a certificate of title for a mobile home described in subsection (1) except as provided in subsection (8).

(3) The owner of the mobile home shall deliver a duplicate original of the executed affidavit under subsection (1) to the register of deeds for the county in which the real property is located. The register of deeds shall record the affidavit.

(4) The department shall maintain the affidavit under subsection (1) for a period of 10 years from the date of filing.

(5) When the department receives an affidavit under subsection (1), the mobile home is considered to be part of the real property, sections 30 to 30h do not apply to that mobile home, any security interest in the mobile home is terminated, a lienholder shall perfect and enforce a new security interest or lien on the mobile home only in the manner provided by law for perfecting and enforcing a lien on real property, and the owner may convey the mobile home only as part of the real property to which it is affixed.

(6) If a mobile home is affixed to real property before July 14, 2003, a person who is the holder of a lien or security interest in both the mobile home and the real property to which it is affixed on July 14, 2003 may enforce its liens or security interests by accepting a deed in lieu of foreclosure or in the manner provided by law for enforcing liens on the real property. The lien or security interest on a mobile home described in this subsection is perfected against the mobile home if the holder of the lien or security interest in both the mobile home and the real property to which it is affixed on July 14, 2003 has perfected a lien on the real property as provided under law for perfecting a lien on real property. The date of perfection of the lien or security interest of the mobile home is the date of perfection of the lien on the real property to which the mobile home is affixed on July 14, 2003.

(7) If the holder of a lien or security interest becomes the owner of a mobile home affixed to real property through the process of real property foreclosure or through a deed in lieu of foreclosure under subsection (6), the holder shall submit an affidavit described in subsection (1) to the department after the redemption period for the foreclosure expires or the deed in lieu of foreclosure is recorded and the department shall cancel the certificate of title for the mobile home.

(8) If an owner of both the mobile home and the real property described in subsection (1) intends to detach the mobile home from the real property, the owner shall do both of the following:

(a) Before detaching the mobile home, record an affidavit of detachment in the office of the register of deeds in the county in which the affidavit is recorded under subsection (3).

(b) Apply for a certificate of title for the mobile home on a form prescribed by the department. The application shall include a duplicate original executed affidavit of detachment and proof that there are no security interests or liens on the mobile home or the written consent of each lienholder of record to the detachment and a fee in the amount prescribed in section 30a for a certificate of title.

(9) An owner of an affixed mobile home shall not detach it from the real property before a certificate of title for the mobile home is issued by the department. If a certificate of title is issued by the department, the mobile home is no longer considered part of the real property and sections 30 to 30h apply.

(10) This section applies to all transactions, liens, and mortgages within its scope even if the transaction, lien, or mortgage was entered into or created before July 14, 2003.

(11) As used in this section:

(a) A mobile home is "affixed" to real property if it meets all of the following:

(i) The wheels, towing hitches, and running gear are removed.

(ii) It is attached to a foundation or other support system.

(b) "Ownership interest" means the fee simple interest in real property or an interest as the lessee under a ground lease for the real property that has a term that continues for at least 20 years after the recording of the affidavit under subsection (3).

History: Add. 2003, Act 44, Imd. Eff. July 14, 2003 ;-- Am. 2005, Act 162, Imd. Eff. Oct. 4, 2005
Compiler's Notes: Enacting section 1 of Act 44 of 2003 provides:“Enacting section 1. It is the intent of this legislature that a security interest or lien on a mobile home affixed to real property may be perfected in the manner provided under law for perfecting a lien on real property, and not exclusively by a notation of the security interest or lien on the certificate of title.”

125.2331 Action to rescind transaction and recover damages.

Sec. 31. A person who offers, sells, or purchases a mobile home or equipment or a mobile home site in violation of this act or the code may have an action brought against him or her to rescind the transaction and recover damages.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2332 Certain conditions, stipulations, or provisions voided.
Sec. 32. A condition, stipulation, or provision binding a person to waive compliance with this act or a rule promulgated or order issued under this act is void.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2333 Statute of limitations; rejection of valid rescission as bar to action.
Sec. 33. A person may not bring an action under this act more than 3 years after the contract of sale, except that a person suing because of a violation of section 27 may not bring an action more than 6 years after the date of sale. A person may not bring an action if he or she previously rejected a valid rescission offer made at least 30 days after the transaction, except that a person suing under section 24 shall bring an action for rescission within 1 year.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2335 Service of process.
Sec. 35. (1) A person who applies for a license or permit under this act which is for other than a domestic corporation shall file with the commission, in a form the commission prescribes, an irrevocable consent appointing the commission to be its attorney to receive service of lawful process in any noncriminal action or proceeding against it or its successor, executor, or administrator, which arises under this act or a rule promulgated or order issued under this act after the consent is filed, with the same force and validity as if served personally on the person filing the consent.

(2) When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this act or a rule promulgated or order issued under this act, whether or not consent to service of process was filed and personal jurisdiction over him or her cannot otherwise be obtained in this state, that conduct shall be considered

equivalent to his or her appointment of the commission to be his or her attorney to receive service of lawful process in a noncriminal action or proceeding against him or her or his or her successor, executor, or administrator which grows out of that conduct and which is brought under this act or a rule promulgated or order issued under this act, with the same force and validity as if served on the person personally.

(3) Service under subsection (1) or (2) may be made by filing a copy of the process in the office of the commission together with a $25.00 fee. The service is not effective unless the plaintiff, which may be the commission in an action or proceeding instituted by it, immediately sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his or her last known address or takes other steps which are reasonably calculated to give actual notice, and the plaintiff's affidavit or compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2336 Powers of department, prosecuting attorney, or law enforcement officer; evidence; copies of pleadings; assistance to local government or state agency.

Sec. 36. (1) The department, a prosecuting attorney, or a law enforcement officer of a municipality may:

(a) Make public or private investigations within or without this state he or she considers necessary to determine if a person violated or is about to violate this act or a rule promulgated or order issued under this act. The department may inspect any premises licensed under this act for violation of this act, the code, or rules promulgated pursuant to this act.

(b) Require a licensee to file a written statement in response to a complaint of an alleged violation of this act or the rules promulgated under this act received by a local government and forwarded to the licensee. The statement shall state the facts and circumstances concerning the matter raised in the complaint. If the licensee does not

make the required statement within 15 days after the licensee receives the letter requiring the written statement, the department, upon its own action or upon petition by the prosecuting attorney or law enforcement officer of the municipality issuing the letter, may issue an order directing a response by the licensee.

(2) A prosecuting attorney or a law enforcement officer of a municipality shall present any evidence of an alleged violation of this act or rule promulgated under this act to the department. The department may refer the evidence as is available concerning violations of this act to the attorney general or the proper prosecuting attorney who, with or without a reference, may institute appropriate criminal proceedings under this act.

(3) Before, or simultaneous with, the commencement of a criminal proceeding or a proceeding in which injunctive relief is sought by the local government, that local government shall serve copies of all pleadings in the matter upon the department.

(4) The department shall render assistance to a local government or state agency. The department may use all investigative powers conferred upon it to assist a local government.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2337 Administrative proceedings; notice; response; assurance of discontinuance.
Sec. 37. (1) Before commencement of administrative proceedings, the department may issue a statement of intent to commence proceedings to persons who are subjects of an investigation relating to possible violations of this act. The notice shall provide that the subjects of the investigation shall have opportunity to show why proceedings should not be commenced against them. If a response satisfactory to the department is received, then further proceedings under this act shall not be required.

(2) In connection with an investigation or proceeding held pursuant to this act, the department may accept an assurance from the person who is alleged to have violated the act, that the method, act, or practice which is allegedly in violation of the act will be discontinued. An assurance of discontinuance shall be in writing and filed with the department.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2338 Order to show cause; grounds; notice to show cause; stopping construction after notice and opportunity for hearing.
Sec. 38. (1) The department may issue an order to show cause why an order imposing sanctions or penalties allowed under this act should not be issued by the commission if the department finds that the order is in the public interest, and any of the following:

(a) An application filed pertaining to a license, a disclosure statement, or a related document filed with the department in connection with a mobile home license, is incomplete in any material respect or contains a statement which is false or misleading, in the light of the circumstances under which it is made.

(b) A provision of this act, or a rule, order, or condition lawfully imposed under this act, was not complied with or was violated in connection with the offering by the person filing the document; the developer, dealer, or operator; a partner, officer, director, proprietor, or manager of the developer, dealer, or operator; or a person directly or indirectly controlling, or directly controlled by, the developer, dealer, or operator.

(c) The project worked or tended to work a fraud or deception or would so operate, or the project would create an unreasonable risk to prospective tenants, as defined by rules promulgated by the commission.

(d) The developer, dealer, or operator; a partner, officer, director, proprietor, or manager of the developer, dealer, or operator; a person directly or indirectly controlling or directly controlled by the developer, dealer, or operator; or a person identified in the application for a license, or a disclosure statement, was within the past 10 years convicted of an

offense under this act, or is the subject of an administrative order issued under this act, or had a civil judgment entered against him or her as a result of a violation of this act or a rule promulgated or order issued pursuant to this act, and the department determines that the involvement of the person in the sale or development of the project creates an unreasonable risk to prospective tenants or mobile home purchasers.

(e) The developer, dealer, or operator; a partner, officer, director, proprietor, or manager of the developer; a person directly or indirectly controlling or directly controlled by the developer, dealer, or operator; or a person identified in the application for a license, or a disclosure statement, was convicted of a violation or the subject of an administrative order or civil judgment as a result of a violation of a statute regulating the offering of securities or franchises or licensing or regulating builders, real estate brokers, or real estate salespersons, or of violation of the land sales act, Act No. 286 of the Public Acts of 1972, being sections 565.801 to 565.835 of the Michigan Compiled Laws, or a rule promulgated or an order issued under that act.

(f) The applicant's method of business, construction, development, or sales includes or would include activities which are illegal.

(g) The applicant failed to pay the proper fee.

(h) The applicant failed to comply with the state warranty laws.

(2) When it appears to the department that a person engaged in an act or practice constituting a violation of this act or a rule promulgated or order issued under this act, the department may issue a notice to show cause why a cease and desist order should not be issued.

(3) After 10 days' notice and opportunity for hearing, the department may stop construction as to part or all of a project if continuing the building will cause irreparable harm to residents and prospective residents of the project.

History: 1987, Act 96, Imd. Eff. July 6, 1987 ;-- Am. 1988, Act 337, Eff. May 1, 1989
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2339 Entry and notice of order to show cause; hearing; powers of department for purpose of investigation or proceeding; order of circuit court for information; issuance of subpoenas or orders.
Sec. 39. (1) Upon the entry of an order to show cause under this act, the department shall promptly notify the applicant that the order was entered and of the reasons for the order and that upon receipt of written request the matter shall be set down for a hearing to commence within 45 days after the receipt of the order unless the applicant and the department consent to a later date. If a hearing is not requested within 15 days and none is ordered by the department, an appropriate order shall be entered and remain in effect until it is modified or vacated by the department. If a hearing is requested or ordered, the department may enter an appropriate order of its determination, after notice and hearing.

(2) For the purpose of an investigation or proceeding under this act, the department may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of records or other documents which the department deems relevant or material to the inquiry. Before any of the requirements of this subsection become operative, the department shall obtain an order of the circuit court for the information by a showing that there is good cause that a violation has taken place or is about to take place, and all of the subpoenas or orders shall issue from the circuit court.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2340 Effect of appeal.
Sec. 40. An appeal to a court of competent jurisdiction pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, shall not automatically stay a cease and desist order issued by the department or prevent the department from seeking an order in a court of competent jurisdiction enjoining the violation of a cease and desist order. In other cases, an appeal to the department pursuant to this act, or to a court of competent jurisdiction pursuant to Act No. 306 of the Public

Acts of 1969, shall act as a stay upon any other order, determination, decision, or action appealed from, unless the department establishes that immediate enforcement of the order, determination, decision, or action is necessary to avoid substantial peril to life or property.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2341 Injunction.
Sec. 41. The department, a prosecuting attorney, or municipal attorney may bring an action in a court of competent jurisdiction against a person to enjoin that person from engaging or continuing in a violation of this act, a rule promulgated under this act.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2342 Violation as misdemeanor; penalty.
Sec. 42. A person who violates this act or the code promulgated under this act is guilty of a misdemeanor punishable by a fine of not more than $500.00 per day for each separate violation or imprisonment for not more than 1 year, or both.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2343 Violation of act; penalties; disposition of fine; actions under other provisions not prohibited; pursuit of lawful rights.
Sec. 43. (1) If, after notice and a hearing as provided in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, a person is determined to have violated this act, the commission may impose 1 or more of the following penalties:

(a) Censure.

(b) Probation.

(c) Placement of a limitation on a license.

(d) Suspension of a license. The commission may request the appointment of a receiver when taking action under this subdivision.

(e) Revocation of a license. The commission may request the appointment of a receiver when taking action under this subdivision.

(f) Denial of a license.

(g) A civil fine of not more than $10,000.00.

(h) A requirement that restitution be made.

(2) A fine collected under this section shall be deposited with the state treasurer and credited to the mobile home commission fund.

(3) This section does not prohibit actions being taken under other sections of this act.

(4) The pursuit in court of the lawful rights of a licensee does not constitute a violation of this act, regardless of the outcome of the court action.

History: Add. 1988, Act 337, Eff. May 1, 1989

125.2343a Summary suspension of license.
Sec. 43a. If the department finds that the health, safety, or welfare requires emergency action, and incorporates that finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

History: Add. 1988, Act 337, Eff. May 1, 1989

125.2344 Remedies not mutually exclusive.
Sec. 44. The remedies provided for in this act are not mutually exclusive and the department may use as many remedies as it considers necessary.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2345 Other prosecution and enforcement not prohibited.
Sec. 45. (1) This act shall not be construed to prohibit the prosecution or punishment of a person for conduct which constitutes a crime by statute or at common law.

(2) This act shall not be construed to prohibit a municipality from enforcing its local ordinances or from taking any other appropriate action to protect the public health, safety, or welfare as authorized by law or its charter.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2348 Repeal of MCL 125.1101 to 125.1147.
Sec. 48. Subject to section 49, Act No. 419 of the Public Acts of 1976, being sections 125.1101 to 125.1147 of the Michigan Compiled Laws, is repealed.

History: 1987, Act 96, Imd. Eff. July 6, 1987

125.2349 Legislative intent and declarations.
Sec. 49. This act is intended to eliminate the confusion with respect to the legal status of Act No. 419 of the Public Acts of 1976 as a result of attorney general opinion no. 6438 of 1987. The legislature hereby makes the following declarations:

(a) The legislature, through the enactment of Act No. 299 of the Public Acts of 1986, intended to repeal section 47 of Act No. 419 of the Public Acts of 1976 and thereby maintain Act No. 419 of the Public Acts of 1976 in effect.

(b) This act is intended to remedy and cure any defect, actual or illusory, in the passage of Act No. 299 of the Public Acts of 1986.

(c) This act does not dissolve and recreate the mobile home commission created pursuant to Act No. 419 of the Public Acts of 1976 and the mobile home commission is intended to be the same mobile home

commission created and operating pursuant to Act No. 419 of the Public Acts of 1976, without interruption.

(d) This act validates all action taken by the department and the mobile home commission on and after January 10, 1987, if such action is otherwise valid under this act. All applications, complaints, and other proceedings commenced or continued on and after January 10, 1987 are deemed to be valid and commenced or continued under this act, if such applications, complaints, and other proceedings are otherwise valid under this act.

(e) Any administrative rules promulgated under Act No. 419 of the Public Acts of 1976 shall be considered to have remained in effect and without interruption pursuant to this act regardless of the repeal of Act No. 419 of the Public Acts of 1976.

(f) All rights, powers, duties, and liabilities of any person or entity under Act No. 419 of the Public Acts of 1976 shall continue, without interruption, under this act.

(g) This act is remedial and curative and shall apply from January 10, 1987 and is intended to be a continuation without interruption of Act No. 419 of the Public Acts of 1976.

History: 1987, Act 96, Imd. Eff. July 6, 1987
Admin Rule: R 125.1101 et seq. of the Michigan Administrative Code.

125.2350 Repealed. 1988, Act 337, Imd. Eff. Oct. 18, 1988.

Compiler's Notes: The repealed section contained a prospective repeal provision.

THE GENERAL PROPERTY TAX ACT (EXCERPT)
Act 206 of 1893

211.2a Mobile home as real property; assessment; exclusions; "travel trailer" and "camping trailer" defined.

Sec. 2a. (1) For purposes of section 2, a mobile home which is not covered by section 41 of Act No. 243 of the Public Acts of 1959, being

section 125.1041 of the Michigan Compiled Laws, and while located on land otherwise assessable as real property under this act, and whether or not permanently affixed to the soil, shall be considered real property and shall be assessed as part of the real property upon which the mobile home is located.

(2) As used in this section, "mobile home" does not include a travel trailer or camping trailer which is either parked in a campground licensed by this state for not more than 180 days in any calendar year, or parked upon private property, including a designated storage area of a licensed campground, for the sole purpose of storage.

(3) As used in this section, "mobile home" does not include a truck camper which is parked in a campground licensed by this state which is a portable structure, designed and constructed to be loaded onto, or affixed to, the bed or chassis of a truck, and which is used to provide temporary living quarters for recreational camping or travel.

(4) For purposes of this section, the following definitions shall apply:

(a) A travel trailer is a vehicular portable structure mounted on wheels and of a size and weight as not to require special highway movement permits when drawn by a stock passenger automobile or when drawn with a fifth wheel hitch mounted on a motor vehicle, and is primarily designed, constructed, and used to provide temporary living quarters for recreational camping or travel.

(b) A camping trailer is a vehicular portable temporary living quarters used for recreational camping or travel and of a size and weight as not to require special highway movement permits when drawn by a motor vehicle.

History: Add. 1953, Act 57, Eff. Oct. 2, 1953 ;-- Am. 1978, Act 379, Imd. Eff. July 27, 1978 ;-- Am. 1982, Act 539, Eff. Mar. 30, 1983
Popular Name: Act 206

D. PRESERVATION OF HISTORIC SITES, FARMLAND, OPEN SPACE, FLOODPLAINS, HIGH RISK EROSION AREA, SAND DUNES, NATURAL RIVERS, AND WILDERNESS

AGRICULTURAL PROPERTY RECAPTURE ACT
Act 261 of 2000

AN ACT to impose a state recapture tax on the change in use of certain agricultural property; to provide for the administration of this act; to prescribe the powers and duties of certain state and local officers; to provide for the collection and distribution of the recapture tax; and to prescribe penalties and provide remedies.

History: 2000, Act 261, Imd. Eff. June 29, 2000

The People of the State of Michigan enact:

211.1001 Short title.
Sec. 1. This act shall be known and may be cited as the "agricultural property recapture act".

History: 2000, Act 261, Imd. Eff. June 29, 2000

211.1002 Definitions.
Sec. 2. As used in this act:

(a) "Benefit period" means the period in years between the date of the first exempt transfer and the conversion by a change in use, not to exceed the 7 years immediately preceding the year in which the qualified agricultural property is converted by a change in use.

(b) "Benefit received on that property" means the sum of the number of mills levied in the local tax collecting unit on the qualified agricultural property in each year of the benefit period, multiplied by the difference in each year of the benefit period between the true cash taxable value of the property and the property's taxable value as determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(c) “Converted by a change in use” means 1 or more of the following:

(i) That due to a change in use the property is no longer qualified agricultural property as determined by the assessor of the local tax collecting unit.

(ii) If, prior to a transfer of qualified agricultural property, the purchaser files a notice of intent to rescind the qualified agricultural property exemption under section 7ee of the general property tax act, 1893 PA 206, MCL 211.7ee, with the local tax collecting unit and delivers a copy of that notice to the seller of the qualified agricultural property, the property has been converted by a change in use. The notice of intent to rescind the qualified agricultural property exemption shall be on a form prescribed by the department of treasury. If the sale is not consummated within 120 days of the filing of the notice under this subdivision or within 120 days of a subsequent filing of the notice under this subdivision, then the property is not converted by a change in use under this subdivision.

(d) “Exempt transfer” means a conveyance of property that is not a transfer of ownership pursuant to section 27a(7)(n) of the general property tax act, 1893 PA 206, MCL 211.27a.

(e) “Person” means an individual, partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

(f) “Qualified agricultural property” means that term as defined in section 7dd of the general property tax act, 1893 PA 206, MCL 211.7dd.

(g) “Recapture tax” means the agricultural property recapture tax imposed under this act.

(h) “Treasurer” means the state treasurer.

(i) “True cash taxable value” means the taxable value the property would have had if section 27a(7)(n) of the general property tax act, 1893 PA 206, MCL 211.27a, were not in effect.

History: 2000, Act 261, Imd. Eff. June 29, 2000

211.1003 Agricultural property recapture tax; imposition.
Sec. 3. (1) Beginning January 1, 2001, the agricultural property recapture tax provided under section 4 is imposed as provided in this section if the property meets all of the following conditions:

(a) The property was transferred after December 31, 1999.

(b) The taxable value of the property was not adjusted under section 27a(3) of the general property tax act, 1893 PA 206, MCL 211.27a, after the transfer described in subdivision (a) due to the provisions of section 27a(7)(n) of the general property tax act, 1893 PA 206, MCL 211.27a.

(c) The property is converted by a change in use after December 31, 2000.

(2) If a recapture tax is imposed because qualified agricultural property is converted by a change in use described under section 2(c)(i), the recapture tax is the obligation of the person who owned the property at the time the property was converted by a change in use. If a recapture tax is imposed on the owner of the property under this subsection, the recapture tax is a lien on the property subject to the recapture tax until paid. If the recapture tax is not paid within 90 days of the date the property was converted by a change in use, the treasurer may bring a civil action against the owner of the property as of the date the property was converted by a change in use. If the recapture tax remains unpaid on the March 1 in the year immediately succeeding the year in which the property is converted by a change in use, the property on which the recapture tax is due shall be returned as delinquent to the county treasurer of the county in which the property is located. Property returned as delinquent under this section, and upon which the recapture tax, interest, penalties, and fees remain unpaid after the property is returned as delinquent to the county treasurer, is subject to forfeiture, foreclosure, and sale for the enforcement and collection of the delinquent taxes as provided in sections 78 to 79a of the general property tax act, 1893 PA 206, MCL 211.78 to 211.79a.

(3) If a recapture tax is imposed because qualified agricultural property is converted by a change in use as described in section 2(c)(ii), the recapture tax is an obligation of the person who owned the property prior to the transfer and the recapture tax is due when the instruments transferring the property are recorded with the register of deeds. The register of deeds shall not record an instrument transferring the property before the recapture tax is paid.

History: 2000, Act 261, Imd. Eff. June 29, 2000

211.1004 Agricultural property recapture tax or benefit received on property.

Sec. 4. The recapture tax imposed under section 3 is the benefit received on that property.

History: 2000, Act 261, Imd. Eff. June 29, 2000

211.1005 Collection and deposit of recapture tax; notification of conversion date.

Sec. 5. (1) The recapture tax shall be collected by the county treasurer and deposited with the treasurer as provided in this section. By the fifteenth day of each month, the county treasurer shall, on a form prescribed by the treasurer, itemize the recapture taxes collected the preceding month and transmit the form and the recapture taxes collected to the treasurer. The county treasurer may retain the interest earned on the money collected pursuant to this act while held by the county treasurer as reimbursement for the costs incurred by the county in collecting and transmitting the recapture tax. The money retained by the county treasurer under this section shall be deposited in the treasury of the county in which the recapture tax is collected to the credit of the general fund.

(2) The assessor of the local tax collecting unit shall notify the county treasurer of the date the property is converted by a change in use.

History: 2000, Act 261, Imd. Eff. June 29, 2000

211.1006 Crediting proceeds of recapture tax to certain fund
Sec. 6. The treasurer shall credit the proceeds of the recapture tax collected by county treasurers under this act to the fund in which the proceeds from lien payments made under part 361 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.36101 to 324.36117, are deposited.

History: 2000, Act 261, Imd. Eff. June 29, 2000

211.1007 Administration of recapture tax by revenue division.
Sec. 7. This act shall be administered by the revenue division of the department of treasury under 1941 PA 122, MCL 205.1 to 205.31.

History: 2000, Act 261, Imd. Eff. June 29, 2000

QUALIFIED FOREST PROPERTY RECAPTURE TAX ACT
Act 379 of 2006

AN ACT to impose a state recapture tax on the change in use of certain qualified forest property; to provide for the administration of the recapture tax; to prescribe the powers and duties of certain state and local officers; to provide for the collection and distribution of the recapture tax; and to prescribe penalties and provide remedies.

History: 2006, Act 379, Imd. Eff. Sept. 27, 2006

The People of the State of Michigan enact:

211.1031 Short title.
Sec. 1. This act shall be known and may be cited as the "qualified forest property recapture tax act".

History: 2006, Act 379, Imd. Eff. Sept. 27, 2006

211.1032 Definitions.
Sec. 2. As used in this act:

(a) "Benefit period" means the period in years between the date of the first exempt transfer and the conversion by a change in use, not to exceed the 10 years immediately preceding the year in which the qualified forest property is converted by a change in use.

(b) "Benefit received on that property" means the sum of the number of mills levied in the local tax collecting unit on the qualified forest property in each year of the benefit period, multiplied by the difference in each year of the benefit period between the true cash taxable value of the property and the property's taxable value as determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(c) "Converted by a change in use" means that due to a change in use the property is no longer qualified forest property as determined by the assessor of the local tax collecting unit based on a recommendation from the department of natural resources.

(d) "Exempt transfer" means a conveyance of property that is not a transfer of ownership pursuant to section 27a(7)(o) of the general property tax act, 1893 PA 206, MCL 211.27a.

(e) "Forest products" means that term as defined in section 7jj of the general property tax act, 1893 PA 206, MCL 211.7jj.

(f) "Person" means an individual, partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

(g) "Qualified forest property" means that term as defined in section 7jj of the general property tax act, 1893 PA 206, MCL 211.7jj.

(h) "Recapture tax" means the qualified forest property recapture tax imposed under this act.

(i) "Treasurer" means the state treasurer.

(j) "True cash taxable value" means the taxable value the property would have had if section 27a(7)(o) of the general property tax act, 1893 PA 206, MCL 211.27a, were not in effect.

History: 2006, Act 379, Imd. Eff. Sept. 27, 2006

211.1033 Qualified forest property recapture tax; imposition.
Sec. 3. (1) Beginning January 1, 2007, the qualified forest property recapture tax provided under section 4 is imposed as provided in this section if the property is converted by a change in use after December 31, 2006.

(2) The recapture tax is the obligation of the person who owned the property at the time the property was converted by a change in use. If a recapture tax is imposed on the owner of the property under this subsection, the recapture tax is a lien on the property subject to the recapture tax until paid. If the recapture tax is not paid within 90 days of the date the property was converted by a change in use, the treasurer may bring a civil action against the owner of the property as of the date the property was converted by a change in use. If the recapture tax remains unpaid on the March 1 in the year immediately succeeding the year in which the property is converted by a change in use, the property on which the recapture tax is due shall be returned as delinquent to the county treasurer of the county in which the property is located. Property returned as delinquent under this section, and upon which the recapture tax, interest, penalties, and fees remain unpaid after the property is returned as delinquent to the county treasurer, is subject to forfeiture, foreclosure, and sale for the enforcement and collection of the delinquent taxes as provided in sections 78 to 79a of the general property tax act, 1893 PA 206, MCL 211.78 to 211.79a.

History: 2006, Act 379, Imd. Eff. Sept. 27, 2006

211.1034 Recapture tax; rate.
Sec. 4. The recapture tax under this act shall be imposed at the following rate:

(a) If the property is converted by a change in use and there have not been 1 or more harvests of forest products on that property consistent with the approved forest management plan, the recapture tax shall be calculated in the following manner:

(i) Multiply the property's state equalized valuation at the time the property is converted by a change in use by the total millage rate levied by all taxing units in the local tax collecting unit in which the property is located.

(ii) Multiply the product of the calculation under subparagraph (i) by 7.

(iii) Multiply the product of the calculation under subparagraph (ii) by 2.

(b) If the property is converted by a change in use and there have been 1 or more harvests of forest products on that property consistent with the approved forest management plan, the recapture tax shall be calculated in the following manner:

(i) Multiply the property's state equalized valuation at the time the property is converted by a change in use by the total millage rate levied by all taxing units in the local tax collecting unit in which the property is located.

(ii) Multiply the product of the calculation under subparagraph (i) by 7.

(c) In addition to the recapture tax calculated under subdivision (a) or (b), if property is converted by a change in use and the taxable value of the property was not adjusted under section 27a(3) of the general property tax act, 1893 PA 206, MCL 211.27a, after a transfer of ownership of the property due to the provisions of section 27a(7)(o) of the general property tax act, 1893 PA 206, MCL 211.27a, the recapture tax shall include the benefit received on that property.

History: 2006, Act 379, Imd. Eff. Sept. 27, 2006

211.1035 Recapture tax; collection; notification; credit to general fund.

Sec. 5. (1) The recapture tax shall be collected by the treasurer.

(2) The assessor of the local tax collecting unit shall notify the treasurer of the date the property is converted by a change in use.

(3) The treasurer shall credit the proceeds of the recapture tax collected under this act to the general fund of this state.

History: 2006, Act 379, Imd. Eff. Sept. 27, 2006

211.1036 Administration of act.

Sec. 6. This act shall be administered by the department of treasury under 1941 PA 122, MCL 205.1 to 205.31.

History: 2006, Act 379, Imd. Eff. Sept. 27, 2006

MICHIGAN FAMILY FARM DEVELOPMENT ACT (EXCERPTS) Act 220 of 1982

AN ACT to create a Michigan family farm development authority; to define the powers and duties of the authority; to authorize the making and purchase of loans, deferred payment loans, and grants to certain qualified beginning farmers; to provide tax exemptions; to provide for the issuance and purchase of notes and bonds; to provide for the establishment of funds; and to prescribe criminal penalties.

History: 1982, Act 220, Imd. Eff. July 10, 1982

285.253 Michigan family farm development authority; creation; purpose; appointment, qualifications, and terms of members; expenses; certificate of appointment or reappointment; powers; actions by authority; quorum; findings of fact; conducting business at public meeting; notice of meeting; chairperson and vice-chairperson; officers, agents, and employees; delegation of powers and duties.

Sec. 3. (1) The Michigan family farm development authority is created within the department of agriculture. The authority is created to establish and administer programs which assist beginning farmers in purchasing agricultural land, agricultural improvements, and depreciable agricultural property for the purpose of farming. The authority shall consist of the director of the department of agriculture, the director of the department of commerce, the state treasurer, and 4 public persons, 3 of which are practicing farmers and 1 who is a director or a member of the board of directors of a state or federally regulated financial institution and who has experience in agricultural financing, appointed by the governor with the advice and consent of the senate. Not more than 2 of the public persons appointed shall be members of the same political party. Of the members first appointed by the governor, 2 shall be designated to serve for a term of 3 years and 2 for a term of 4 years from the dates of their appointments. Upon completion of each term, a person shall be appointed for a term of 4 years, except that a vacancy shall be filled for the unexpired term. A member of the authority shall not receive compensation for services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of the member's duties. A member shall hold office until a successor has been appointed and has qualified. A certificate of appointment or reappointment of a member shall be filed with the authority and this certificate shall be conclusive evidence of the proper appointment of that member.

(2) The powers of the authority shall be vested in the members in office. Four members of the authority shall constitute a quorum for the purpose of conducting the authority's business, for exercising the authority's powers, and for other purposes. Action may be taken by the authority upon a vote of a majority of the quorum of the authority, unless the bylaws of the authority require a larger number. In the absence of fraud, a determination of the authority with respect to findings of fact made by the authority acting within the scope of its powers shall be conclusive, except with respect to the approval of the municipal finance commission as required by law. Meetings of the members of the authority may be held anywhere in this state. The business which the authority may perform shall be conducted at a public meeting of the authority held in compliance with the open meetings act, Act No. 267 of the Public Acts

of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

(3) The authority shall elect a chairperson and vice-chairperson. The authority shall employ an executive director, legal and technical experts, and other officers, agents, and employees, permanent and temporary, as the authority requires, and shall determine their qualifications, duties, and compensation. The authority may delegate to 1 or more agents or employees those powers or duties the authority considers proper.

History: 1982, Act 220, Imd. Eff. July 10, 1982

285.254 Performance of duties, implementation of powers, and selection of programs and projects; principles.

Sec. 4. In the performance of its duties, the implementation of its powers, and the selection of specific programs and projects to receive its assistance, the authority shall comply with all of the following principles:

(a) The authority shall not become an owner of agricultural land, agricultural improvements, or depreciable agricultural property, except that the authority may own agricultural land, agricultural improvements, or depreciable agricultural property on a temporary basis if necessary to implement its programs, to protect its investments by means of foreclosure or other means, or to facilitate transfer of agricultural land, agricultural improvements, and depreciable agricultural property for the use of beginning farmers.

(b) The authority shall exercise diligence and care in the selection of projects to receive its assistance and shall apply customary and acceptable business and lending standards in the selection and subsequent implementation of those projects. The authority may delegate primary responsibility for determination and implementation of the projects to an agency of the federal government if that agency assumes

an obligation to repay the loan, either directly or by insurance or guarantee.

History: 1982, Act 220, Imd. Eff. July 10, 1982

285.255 Powers of authority generally.

Sec. 5. The authority shall possess all powers necessary or convenient to carry out this act, including all the following powers and other powers granted by other provisions of this act:

(a) To sue and to be sued; to have a seal and to alter the seal at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to hold and possess real and personal property; and to make, amend, and repeal bylaws and rules.

(b) To undertake and carry out, in cooperation with other state agencies and local units of government, studies and analyses of family farms and beginning farmers within this state and ways of meeting the needs of family farms and beginning farmers, including data with respect to population and family groups and the distribution of population and family groups according to income, the amount and quality of available agricultural land and its distribution, and other factors affecting family farms and beginning farmers and the meeting of the needs of family farms and beginning farmers; to make the results of those studies and analyses available to the public and the agricultural industry; to engage in research; and disseminate information on farming.

(c) To agree and comply with conditions attached to federal financial assistance.

(d) To establish and collect fees and charges in connection with the sale of the authority's publications and the authority's loans, commitments, and servicing, including the reimbursement of costs of financing by the authority and service charges; and to use any accumulated fees, charges, and interest income for achieving any of the corporate purposes of the authority, to the extent that the fees, charges, and interest income are not

pledged to the repayment of bonds and notes of the authority or the interest on those bonds and notes.

(e) To make loans, which are unsecured or the repayments of which are secured by mortgages, security interests, or other forms of security; to participate in making of unsecured or secured loans and undertake commitments to make unsecured or secured loans; to sell mortgages and security interests at public or private sale; to modify or alter mortgages and security interests; to foreclose on a mortgage, security interest, or other form of security; to commence an action to protect or enforce a right conferred upon the authority by law, mortgage, security agreement, contract, or other agreement; to bid for and purchase property which was the subject of the mortgage, security interest, or other form of security, at a foreclosure or at any other sale, and to acquire or take possession of the property. Upon acquiring or taking possession of the property, the authority may complete, administer, and pay the principal and interest of obligations incurred in connection with the property, and may dispose of and otherwise deal with the property in any manner necessary or desirable to protect the interests of the authority in the property. Property acquired by the authority through foreclosure shall be offered by the authority for sale within 6 months after the authority has a right to possession of the property and shall be sold by the authority only for farming or other agricultural purposes.

(f) To set standards for family farms or beginning farmers which receive loans under this act and to provide for inspections to determine compliance with those standards.

(g) To accept gifts, grants, loans, appropriations, or other aid from the federal, state, or local government, from a subdivision, agency, or instrumentality of a federal, state, or local government, or from a person, corporation, firm, or other organization.

(h) As provided in section 4(a), to acquire or contract to acquire from a person, firm, corporation, municipality, or federal or state agency, by grant, purchase, or otherwise, leaseholds or real or personal property, or any interest in a leasehold or real or personal property; to own, hold,

clear, improve, and rehabilitate and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber any interest in a leasehold or real or personal property. This act shall not impede the operation and effect of local zoning, building, and housing ordinances; ordinances relating to subdivision control, land development, or fire prevention; or other ordinances having to do with agricultural land, farming, or the development of farming.

(i) To procure insurance against any loss in connection with the property and other assets of the authority.

(j) To invest, at the discretion of the authority, funds held in reserve or sinking funds, or money not required for immediate use or disbursement in obligations of this state or of the United States, in obligations the principal and interest of which are guaranteed by this state or the United States, or in other obligations as may be approved by the state treasurer.

(k) To promulgate rules necessary to carry out the purposes of this act and to exercise the powers expressly granted in this act. Rules shall be promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, except that in addition to the notice requirements of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, the authority shall furnish to each member of the legislature a copy of notice of a public hearing on proposed rules or proposed rule changes at least 10 days before the public hearing.

(l) To engage the services of private consultants on a contract basis for rendering professional and technical assistance and advice.

History: 1982, Act 220, Imd. Eff. July 10, 1982
Admin Rule: R 285.2101 et seq. of the Michigan Administrative Code.

285.258 Combining program with other state or federal programs.
Sec. 8. A program authorized by this act may be combined with any other state or federal program in order to facilitate the acquisition of

agricultural land, agricultural improvements, and depreciable agricultural property by beginning farmers.

History: 1982, Act 220, Imd. Eff. July 10, 1982

MICHIGAN RIGHT TO FARM ACT
Act 93 of 1981

AN ACT to define certain farm uses, operations, practices, and products; to provide certain disclosures; to provide for circumstances under which a farm shall not be found to be a public or private nuisance; to provide for certain powers and duties for certain state agencies and departments; and to provide for certain remedies for certain persons.

History: 1981, Act 93, Imd. Eff. July 11, 1981 ;-- Am. 1995, Act 94, Eff. Sept. 30, 1995

The People of the State of Michigan enact:

286.471 Short title.
Sec. 1. This act shall be known and may be cited as the "Michigan right to farm act".

History: 1981, Act 93, Imd. Eff. July 11, 1981

286.472 Definitions.
Sec. 2. As used in this act:

(a) "Farm" means the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products.

(b) "Farm operation" means the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products, and includes, but is not limited to:

(i) Marketing produce at roadside stands or farm markets.

(ii) The generation of noise, odors, dust, fumes, and other associated conditions.

(iii) The operation of machinery and equipment necessary for a farm including, but not limited to, irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(iv) Field preparation and ground and aerial seeding and spraying.

(v) The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.

(vi) Use of alternative pest management techniques.

(vii) The fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals.

(viii) The management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.

(ix) The conversion from a farm operation activity to other farm operation activities.

(x) The employment and use of labor.

(c) “Farm product” means those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds,

grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur, as determined by the Michigan commission of agriculture.

(d) "Generally accepted agricultural and management practices" means those practices as defined by the Michigan commission of agriculture. The commission shall give due consideration to available Michigan department of agriculture information and written recommendations from the Michigan state university college of agriculture and natural resources extension and the agricultural experiment station in cooperation with the United States department of agriculture natural resources conservation service and the consolidated farm service agency, the Michigan department of natural resources, and other professional and industry organizations.

(e) "Person" means an individual, corporation, partnership, association, or other legal entity.

History: 1981, Act 93, Imd. Eff. July 11, 1981 ;-- Am. 1987, Act 240, Imd. Eff. Dec. 28, 1987 ;-- Am. 1995, Act 94, Eff. Sept. 30, 1995

286.473 Farm or farm operation as public or private nuisance; review and revision of practices; finding; conditions.

Sec. 3. (1) A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture. Generally accepted agricultural and management practices shall be reviewed annually by the Michigan commission of agriculture and revised as considered necessary.

(2) A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation existed before a change in the land use or occupancy of land within 1 mile of the boundaries of the farm land, and if before that change in land use or occupancy of land, the farm or farm operation would not have been a nuisance.

(3) A farm or farm operation that is in conformance with subsection (1) shall not be found to be a public or private nuisance as a result of any of the following:

(a) A change in ownership or size.

(b) Temporary cessation or interruption of farming.

(c) Enrollment in governmental programs.

(d) Adoption of new technology.

(e) A change in type of farm product being produced.

History: 1981, Act 93, Imd. Eff. July 11, 1981 ;-- Am. 1987, Act 240, Imd. Eff. Dec. 28, 1987 ;-- Am. 1995, Act 94, Eff. Sept. 30, 1995

286.473a Repealed. 1999, Act 261, Eff. Mar. 10, 2000.

Compiler's Notes: The repealed section pertained to complaints generally.

286.473b Recovery of costs and expenses.

Sec. 3b. In any nuisance action brought in which a farm or farm operation is alleged to be a nuisance, if the defendant farm or farm operation prevails, the farm or farm operation may recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonably incurred by the farm or farm operation in connection with the defense of the action, together with reasonable and actual attorney fees.

History: Add. 1995, Act 94, Eff. Sept. 30, 1995

286.473c Property subject to disclosure; contents of statement.

Sec. 3c. (1) Certain real property is subject to those disclosures described in section 7 of the seller disclosure act, Act No. 92 of the Public Acts of 1993, being section 565.957 of the Michigan Compiled Laws. A seller of real property located within 1 mile of the property boundary of a farm or farm operation may voluntarily make available to the buyer the

following statement: “This notice is to inform prospective residents that the real property they are about to acquire lies within 1 mile of the property boundary of a farm or farm operation. Generally accepted agricultural and management practices may be utilized by the farm or farm operation and may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Michigan right to farm act.”.

(2) Certain subdivided land is subject to those disclosures described in section 8 of the land sales act, Act No. 286 of the Public Acts of 1972, being section 565.808 of the Michigan Compiled Laws.

History: Add. 1995, Act 94, Eff. Sept. 30, 1995

286.474 Investigation of complaints involving farm or farm operation; memorandum of understanding; generally accepted agricultural and management practices; unverified complaints; applicability of other statutes; preemption of local ordinance, regulation, or resolution; ordinance proposed by local unit of government; generally accepted agricultural and management practices for site selection and odor controls at new or expanding animal livestock facilities; advisory committee; manure management plan; duties of department; definitions.

Sec. 4. (1) Subject to subsection (2), the director shall investigate all complaints involving a farm or farm operation, including, but not limited to, complaints involving the use of manure and other nutrients, agricultural waste products, dust, noise, odor, fumes, air pollution, surface water or groundwater pollution, food and agricultural processing by-products, care of farm animals and pest infestations. Within 7 business days of receipt of the complaint, the director shall conduct an on-site inspection of the farm or farm operation. The director shall notify, in writing, the city, village, or township and the county in which the farm or farm operation is located of the complaint.

(2) The commission and the director shall enter into a memorandum of understanding with the director of the department of environmental quality. The investigation and resolution of environmental complaints

concerning farms or farm operations shall be conducted in accordance with the memorandum of understanding. However, the director shall notify the department of environmental quality of any potential violation of the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, or a rule promulgated under that act. Activities at a farm or farm operation are subject to applicable provisions of the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, and the rules promulgated under that act. The commission and the director shall develop procedures for the investigation and resolution for other farm-related complaints.

(3) If the director finds upon investigation under subsection (1) that the person responsible for a farm or farm operation is using generally accepted agricultural and management practices, the director shall notify, in writing, that person, the complainant, and the city, village, or township and the county in which the farm or farm operation is located of this finding. If the director identifies that the source or potential sources of the problem were caused by the use of other than generally accepted agricultural and management practices, the director shall advise the person responsible for the farm or farm operation that necessary changes should be made to resolve or abate the problem and to conform with generally accepted agricultural and management practices and that if those changes cannot be implemented within 30 days, the person responsible for the farm or farm operation shall submit to the director an implementation plan including a schedule for completion of the necessary changes. When the director conducts a follow-up on-site inspection to verify whether those changes have been implemented, the director shall notify, in writing, the city, village, or township and the county in which the farm or farm operation is located of the time and date of the follow-up on-site inspection and shall allow a representative of the city, village, or township and the county to be present during the follow-up on-site inspection. If the changes have been implemented, the director shall notify, in writing, the person responsible for the farm or farm operation, the complainant, and the city, village, or township and the county in which the farm or farm operation is located of this determination. If the changes have not been implemented, the director shall notify, in writing, the complainant and the city, village, or township

and the county in which the farm or farm operation is located that the changes have not been implemented and whether a plan for implementation has been submitted. Upon request, the director shall provide a copy of the implementation plan to the city, village, or township and the county in which the farm or farm operation is located.

(4) A complainant who brings more than 3 unverified complaints against the same farm or farm operation within 3 years may be ordered, by the director, to pay to the department the full costs of investigation of any fourth or subsequent unverified complaint against the same farm or farm operation. As used in this subsection, "unverified complaint" means a complaint in response to which the director determines that the farm or farm operation is using generally accepted agricultural and management practices.

(5) Except as provided in subsection (6), this act does not affect the application of state statutes and federal statutes.

(6) Beginning June 1, 2000, except as otherwise provided in this section, it is the express legislative intent that this act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act. Except as otherwise provided in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act.

(7) A local unit of government may submit to the director a proposed ordinance prescribing standards different from those contained in generally accepted agricultural and management practices if adverse effects on the environment or public health will exist within the local unit of government. A proposed ordinance under this subsection shall not conflict with existing state laws or federal laws. At least 45 days prior to enactment of the proposed ordinance, the local unit of government shall submit a copy of the proposed ordinance to the director. Upon receipt of the proposed ordinance, the director shall hold a public meeting in that

local unit of government to review the proposed ordinance. In conducting its review, the director shall consult with the departments of environmental quality and community health and shall consider any recommendations of the county health department of the county where the adverse effects on the environment or public health will allegedly exist. Within 30 days after the public meeting, the director shall make a recommendation to the commission on whether the ordinance should be approved. An ordinance enacted under this subsection shall not be enforced by a local unit of government until approved by the commission of agriculture.

(8) By May 1, 2000, the commission shall issue proposed generally accepted agricultural and management practices for site selection and odor controls at new and expanding animal livestock facilities. The commission shall adopt such generally accepted agricultural and management practices by June 1, 2000. In developing these generally accepted agricultural and management practices, the commission shall do both of the following:

(a) Establish an advisory committee to provide recommendations to the commission. The advisory committee shall include the entities listed in section 2(d), 2 individuals representing townships, 1 individual representing counties, and 2 individuals representing agricultural industry organizations.

(b) For the generally accepted agricultural and management practices for site selection, consider groundwater protection, soil permeability, and other factors determined necessary or appropriate by the commission.

(9) If generally accepted agricultural and management practices require the person responsible for the operation of a farm or farm operation to prepare a manure management plan, the person responsible for the operation of the farm or farm operation shall provide a copy of that manure management plan to the city, village, or township or the county in which the farm or farm operation is located, upon request. A manure management plan provided under this subsection is exempt from

disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) The department shall do all of the following:

(a) Annually submit to the standing committees of the senate and house of representatives with jurisdiction over issues pertaining to agriculture and local government a report on the implementation of this act.

(b) Make available on the department's website current generally accepted agricultural and management practices.

(c) Establish a toll-free telephone number for receipt of information on noncompliance with generally accepted agricultural and management practices.

(11) As used in this section:

(a) “Adverse effects on the environment or public health” means any unreasonable risk to human beings or the environment, based on scientific evidence and taking into account the economic, social, and environmental costs and benefits and specific populations whose health may be adversely affected.

(b) “Commission” means the commission of agriculture.

(c) “Department” means the department of agriculture.

(d) “Director” means the director of the department or his or her designee.

History: 1981, Act 93, Imd. Eff. July 11, 1981 ;-- Am. 1995, Act 94, Eff. Sept. 30, 1995 ;-- Am. 1999, Act 261, Eff. Mar. 10, 2000

MICHIGAN AGRICULTURAL PROCESSING ACT
Act 381 of 1998

AN ACT to define certain fruit, vegetable, dairy product, meat, and grain processing uses and practices; to provide for circumstances under which a processing operation is not considered to be a public or private nuisance; to provide for certain powers and duties for certain state agencies and departments; and to provide for certain remedies for certain persons.

History: 1998, Act 381, Imd. Eff. Oct. 23, 1998 ;-- Am. 2005, Act 282, Imd. Eff. Dec. 19, 2005

The People of the State of Michigan enact:

289.821 Short title.

Sec. 1. This act shall be known and may be cited as the “Michigan agricultural processing act”.

History: 1998, Act 381, Imd. Eff. Oct. 23, 1998

289.822 Definitions.

Sec. 2. As used in this act:

(a) "Dairy product" means all of the following:

(i) Dairy product as that term is defined in section 12 of the manufacturing milk law of 2001, 2001 PA 267, MCL 288.572.

(ii) Milk product as that term is defined in section 4 of the grade A milk law of 2001, 2001 PA 266, MCL 288.474.

(b) "Fruit and vegetable product" means those plant items used by human beings for human food consumption including, but not limited to, field crops, root crops, berries, herbs, fruits, vegetables, flowers, seeds, grasses, tree products, mushrooms, and other similar products, or any other fruit and vegetable product processed for human consumption as determined by the Michigan commission of agriculture.

(c) "Generally accepted fruit, vegetable, dairy product, meat, and grain processing practices" means those practices as defined by the Michigan commission of agriculture. The Michigan commission of agriculture shall give due consideration to available Michigan department of agriculture information and written recommendations from the Michigan state university college of agriculture and natural resources extension and the agricultural experiment station in cooperation with the United States department of agriculture, the United States food and drug administration, the Michigan department of environmental quality, and other professional and industry organizations.

(d) "Grain" means dry edible beans, soy beans, small grains, cereal grains, corn, grass seeds, hay, and legume seeds in a raw or natural state.

(e) "Person" means an individual, corporation, partnership, association, limited liability company, or other legal entity.

(f) "Processing" means the commercial processing or handling of fruit, vegetable, dairy, meat, and grain products for human food consumption and animal feed including, but not limited to, the following:

(i) The generation of noise, odors, waste water, dust, fumes, and other associated conditions.

(ii) The operation of machinery and equipment necessary for a processing operation including, but not limited to, irrigation and drainage systems and pumps and the movement of vehicles, machinery, equipment, and fruit and vegetable products, dairy products, meat, and grain products and associated inputs necessary for fruit and vegetable, dairy, and grain, food, meat, or feed processing operations on the roadway as authorized by the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(iii) The management, storage, transport, utilization, and land application of fruit, vegetable, dairy product, meat, and grain processing by-products consistent with generally accepted agricultural and management

practices as established under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(iv) The conversion from 1 processing operation activity to another processing operation activity.

(v) The employment and use of labor engaged in a processing operation.

(g) "Processing operation" means the operation and management of a business engaged in processing.

History: 1998, Act 381, Imd. Eff. Oct. 23, 1998 ;-- Am. 2005, Act 282, Imd. Eff. Dec. 19, 2005

289.823 Processing operation as public or private nuisance.
Sec. 3. (1) A processing operation shall not be found to be a public or private nuisance if the processing operation alleged to be a nuisance conforms to generally accepted fruit, vegetable, dairy product, meat, and grain processing practices as determined by the Michigan commission of agriculture. The Michigan commission of agriculture shall annually review and revise, as determined necessary, the generally accepted fruit, vegetable, dairy product, meat, and grain processing practices.

(2) Until the Michigan commission of agriculture establishes the generally accepted fruit, vegetable, dairy product, meat, and grain processing practices, a processing operation shall not be found to be a public or private nuisance in an action brought in a court of competent jurisdiction if the director of the department of agriculture has determined that the processing operation is in compliance with this act as described in section 4(3).

(3) A processing operation shall not be found to be a public or private nuisance if the processing operation existed before a change in the use or occupancy of land within 1 mile of the boundaries of the land upon which the processing operation is located and, before that change in use or occupancy of land, the processing operation would not have been found to be a nuisance. The determination of the circumstances

described in this subsection or subsection (1) or (2) is considered to be a finding as a matter of law and creates a rebuttable presumption that the processing operation is operating under generally accepted practices or that the processing operation is not a public or private nuisance.

(4) A processing operation that is in conformance with subsection (1) or (2) shall not be found to be a public or private nuisance as a result of any of the following:

(a) A change in ownership or size.

(b) Temporary cessation or interruption of processing.

(c) Adoption of new technology.

(d) A change in type of fruit, vegetable, dairy, meat, or grain product being processed.

History: 1998, Act 381, Imd. Eff. Oct. 23, 1998 ;-- Am. 2005, Act 282, Imd. Eff. Dec. 19, 2005

289.824 Nuisance complaints; exhaustion of administrative remedies; investigation; memorandum of understanding with department of environmental quality; resolution; notice of finding; determination; costs; "unverified nuisance complaint" defined.
Sec. 4. (1) The Michigan commission of agriculture shall request the director of the Michigan department of agriculture or his or her designee to investigate all nuisance complaints under this act involving a processing operation. If a person is granted a determination by the director of the department of agriculture under this act, the person is considered to have exhausted his or her administrative remedies with regard to that matter. A court shall not proceed with an action for nuisance brought against a processing operation until it finds that the complainant exhausted all administrative remedies.

(2) The Michigan commission of agriculture and the director of the Michigan department of agriculture may enter into a memorandum of

understanding with the Michigan department of environmental quality. The investigation and resolution of nuisance complaints shall be conducted pursuant to the memorandum of understanding. In the case where no generally accepted fruit, vegetable, dairy product, meat, and grain processing practices have been established, any nuisance complaint received by either the department of environmental quality or the department of agriculture shall be resolved under section 3 in the following manner:

(a) The department of environmental quality shall assess compliance of an operation or practice with the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, and shall conduct an inspection within 10 working days of receipt of the complaint.

(b) The department of agriculture shall assess the processing operation or practice under federal good manufacturing practices as adopted under the food law of 2000, 2000 PA 92, MCL 289.1101 to 289.8111, and shall conduct an inspection within 10 working days of receipt of the complaint.

(3) Based upon the determinations made in subsection (2), the department of agriculture shall make a finding as to whether a processing operation is in compliance with this act.

(4) If the director of the Michigan department of agriculture or his or her designee finds upon investigation that the person responsible for the processing operation is using generally accepted fruit, vegetable, dairy product, meat, and grain processing practices or otherwise in compliance with law as described in section 3(2), the director of the Michigan department of agriculture or his or her designee shall notify that person and the complainant of this finding in writing. If the director of the Michigan department of agriculture or his or her designee identifies the source or potential sources of the problem caused by the use of other than generally accepted fruit, vegetable, dairy product, meat, and grain processing practices or other than compliance with law as described in section 3(2), the director of the Michigan department of agriculture or his

or her designee shall advise the person responsible for the processing operation that necessary changes should be made to resolve or abate the problem and to conform with generally accepted fruit, vegetable, dairy product, meat, and grain processing practices or with applicable law as described in section 3(2). The director of the Michigan department of agriculture or his or her designee shall determine if those changes are implemented and shall notify the person responsible for the processing operation and the complainant of this determination in writing.

(5) A complainant who brings more than 3 unverified nuisance complaints against the same processing operation within 3 years may be ordered by the director of the Michigan department of agriculture to pay to the Michigan department of agriculture the full costs of investigation of any fourth or subsequent unverified nuisance complaint against the same processing operation. As used in this subsection, "unverified nuisance complaint" means a nuisance complaint in which the director of the department of agriculture or his or her designee determines that the processing operation is using generally accepted fruit, vegetable, dairy product, meat, and grain processing practices.

History: 1998, Act 381, Imd. Eff. Oct. 23, 1998 ;-- Am. 2005, Act 283, Imd. Eff. Dec. 19, 2005

289.825 Applicability of state and federal statutes.
Sec. 5. (1) This act does not affect the application of state statutes and federal statutes.

(2) For purposes of this section, “state statutes” includes, but is not limited to, any of the following:

(a) The county zoning act, 1943 PA 183, MCL 125.201 to 125.240.

(b) The township zoning act, 1943 PA 184, MCL 125.271 to 125.310.

(c) The city and village zoning act, 1921 PA 207, MCL 125.581 to 125.600.

(d) The natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.

History: 1998, Act 381, Imd. Eff. Oct. 23, 1998

RIGHT TO FOREST ACT
Act 676 of 2002

AN ACT to provide for circumstances under which certain forestry operations shall not be found to be a public or private nuisance; to provide for certain forestry management practices; to provide for certain powers and duties for certain state agencies and departments; and to provide remedies.

History: 2002, Act 676, Eff. Mar. 31, 2003

The People of the State of Michigan enact:

320.2031 Short title.
Sec. 1. This act shall be known and may be cited as the “right to forest act”.

History: 2002, Act 676, Eff. Mar. 31, 2003

320.2032 Legislative findings.
Sec. 2. The legislature finds:

(a) That forestry operations are valuable to the state's economy, provide jobs to its citizens, can be an effective wildlife management tool, are essential to the manufacture of forestry products that are used and enjoyed by the people of the state, and benefit the general welfare of the people of the state.

(b) That forestry operations are adversely affected by the random encroachment of urban and residential land uses throughout rural areas of the state.

(c) That, as a result of random encroachment, conflicts have arisen between traditional forestry land uses and urban and residential land uses.

(d) That conflicts between forestry and urban land uses threaten to permanently convert forestland to other uses, whereby the forestland resources are permanently lost to the economy and the human and physical environments of the state.

(e) That it is in the best interest of the state to ensure that forestry operations using generally accepted forestry management practices are not subject to public and private nuisance actions arising out of conflicts between the forestry operations and urban and residential land uses.

History: 2002, Act 676, Eff. Mar. 31, 2003

320.2033 Definitions.
Sec. 3. As used in this act:

(a) "Commission" means the commission of natural resources.

(b) "Department" means the department of natural resources.

(c) "Forest" means a tract of land that is at least 10% stocked by trees of any size, whether of commercial or noncommercial species, or formerly having tree cover and not currently developed for nonforest use, including woodlands, woodlots, windbreaks, and shelter belts.

(d) "Forestry operations" means activities related to the harvesting, reforestation, and other management activities, including, but not limited to, thinning, pest control, fertilization, and wildlife management, that are consistent with principles of sustainable forestry.

(e) "Generally accepted forestry management practices" means those forest management practices as prescribed by the commission. In prescribing generally accepted forestry management practices, the commission shall give due consideration to available department

information, written recommendations, and comments from the department and other interested persons that may include, but are not limited to, all of the following:

(i) The department of agriculture.

(ii) The Michigan state university extension.

(iii) The United States department of agriculture agencies, services, and programs.

(iv) College and university forestry programs.

(v) Professional, industry, and conservation organizations.

(f) "Landowner" means the possessor of a fee interest in land or a tenant, lessee, occupant, or other person in lawful control of land.

(g) "Sustainable forestry" means forestry practices that are designed to meet present and future wood product needs by employing a land stewardship ethic that integrates the reforestation, managing, growing, nurturing, and harvesting of trees for useful products with the conservation of soil, air and water quality, wildlife and fish habitat, and visual changes.

(h) "Timber" means live or dead trees, including, but not limited to, bark, foliage, wood, and firewood.

History: 2002, Act 676, Eff. Mar. 31, 2003

320.2034 Forestry operations as public or private nuisance.
Sec. 4. (1) Forestry operations shall not be found to be a public or private nuisance if the forestry operations alleged to be a nuisance conform to generally accepted forestry management practices. Generally accepted forestry management practices shall be reviewed annually by the commission and revised as considered necessary.

(2) Forestry operations voluntarily using sustainable forestry practices as approved by the commission shall not be found to be a public or private nuisance if the forestry operations existed before a change in the land use or occupancy of land within 1 mile of the boundaries of the forestland, and if before that change in land use or occupancy, the forestry operations would not have been a nuisance.

(3) Forestry operations that are in conformance with generally accepted forestry management practices shall not be found to be a public or private nuisance as a result of any of the following:

(a) A change in ownership or size.

(b) Cessation or interruption of forestry operations.

(c) Enrollment in governmental forestry or conservation programs.

(d) Adoption of new forestry technology.

(4) As used in this section, a public or private nuisance includes, but is not limited to, allegations of nuisance based on any of the following:

(a) Visual changes due to the removal of vegetation or timber.

(b) Noise from forestry equipment used in normal, generally accepted forestry management practices.

(c) Removal of vegetation or timber on a forest adjoining the property of another landowner.

(d) The use of chemicals normally utilized in forestry operations, and applied under generally accepted forestry management practices.

History: 2002, Act 676, Eff. Mar. 31, 2003

320.2035 Recovery of costs and attorney fees.
Sec. 5. In any nuisance action in which forestry operations are alleged to be a nuisance, if the defendant landowner or forestry operation prevails, the landowner or forestry operation may recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonably incurred by the landowner or forestry operation in connection with the defense of the action, together with reasonable and actual attorney fees.

History: 2002, Act 676, Eff. Mar. 31, 2003

320.2036 Land, farms, or farming operations subject to §§ 286.471 to 286.474.
Sec. 6. This act does not supersede, negate, or determine any protection of land, farms, or farming operations that are subject to the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

History: 2002, Act 676, Eff. Mar. 31, 2003

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPTS)
Act 451 of 1994

AN ACT to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.
History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996 ;-- Am. 2005, Act 116, Imd. Eff. Sept. 22, 2005
Compiler's Notes: Act 160 of 2004, which was approved by the governor and filed with the secretary of state on June 18, 2004, provided for the amendment of Act 451 of 1994 by amending Sec. 40103 and adding Sec. 40110a. The amended and added sections were effective June 18, 2004. On March 28, 2005, a petition seeking a referendum on Act 160 of 2004 was filed with the Secretary of State. Const 1963, art 2,

sec 9, provides that no law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election. A referendum on Act 160 of 2004 was presented to the electors at the November 2006 general election as Proposal 06-3, which read as follows:"PROPOSAL 06-3"A REFERENDUM ON PUBLIC ACT 160 OF 2004 — AN ACT TO ALLOW THE ESTABLISHMENT OF A HUNTING SEASON FOR MOURNING DOVES"Public Act 160 of 2004 would:"Authorize the Natural Resources Commission to establish a hunting season for mourning doves."Require a mourning dove hunter to have a small game license and a $2.00 mourning dove stamp."Stipulate that revenue from the stamp must be split evenly between the Game and Fish Protection Fund and the Fish and Wildlife Trust Fund."Require the Department of Natural Resources to address responsible mourning dove hunting; management practices for the propagation of mourning doves; and participation in mourning dove hunting by youth, the elderly and the disabled in the Department's annual hunting guide."Should this law be approved?"Yes [ ]"No [ ]"Act 160 of 2004 was rejected by a majority of the electors voting thereon at the November 2006 general election.
Popular Name: Act 451
Popular Name: NREPA

Subpart 11

CONSERVATION AND HISTORIC PRESERVATION EASEMENT

324.2140 Definitions.
Sec. 2140. As used in this subpart:

(a) "Conservation easement" means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.

(b) "Historic preservation easement" means an interest in land that provides a limitation on the use of a structure or site that is listed as a

national historic landmark under chapter 593, 49 Stat. 593, 16 U.S.C. 461 to 467, commonly known as the historic sites, buildings, and antiquities act; is listed on the national register of historic places pursuant to the national historic preservation act of 1966, Public Law 89-665, 16 U.S.C. 470 to 470a, 470b, and 470c to 470x-6; is listed on the state register of historic sites pursuant to Act No. 10 of the Public Acts of 1955, being sections 399.151 to 399.152 of the Michigan Compiled Laws; or is recognized under a locally established historic district created pursuant to the local historic districts act, Act No. 169 of the Public Acts of 1970, being sections 399.201 to 399.215 of the Michigan Compiled Laws, or requires or prohibits certain acts on or with respect to the structure or site, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the structure or site or in an order of taking, if the interest is appropriate to the preservation or restoration of the structure or site.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.2141 Conservation easement; enforcement; recordation.
Sec. 2141. A conservation easement granted to a governmental entity or to a charitable or educational association, corporation, trust, or other legal entity is enforceable against the owner of the land or body of water subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to particular land or a body of water, or the fact that the benefit may be assigned to another governmental entity or legal entity, including a conservation easement executed before March 31, 1981. The easement shall be recorded with the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value without actual notice.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.2142 Historic preservation easement; enforcement; recordation.
Sec. 2142. A historic preservation easement granted to a governmental entity or to a charitable or educational association, corporation, trust, or other legal entity whose purposes include the preservation or restoration of structures or sites described in section 2140(b) is enforceable against the owner of the structure or site subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to the particular structure or site, or the fact that the benefit may be assigned to another governmental entity or legal entity whose purposes include the preservation or restoration of structures or sites described in section 2140(b), including a historic preservation easement executed before March 31, 1981. The easement shall be recorded with the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value without actual notice.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.2143 Enforceability of restriction, easement, covenant, or condition.
Sec. 2143. This subpart does not render unenforceable a restriction, easement, covenant, or condition that does not have the benefit of this subpart.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.2144 Conservation easement or historic preservation easement as interest in real estate; document creating easement as conveyance; recordation; enforcement; assignment.
Sec. 2144. (1) A conservation easement or historic preservation easement is an interest in real estate, and a document creating 1 of those easements shall be considered a conveyance of real estate and shall be recorded in accord with Act No. 103 of the Public Acts of 1937, being sections 565.201 to 565.203 of the Michigan Compiled Laws, in relation to the execution and recording of instruments. The easement shall be

enforced either by an action at law or by an injunction or other equitable proceedings.

(2) A conservation easement may be assigned to a governmental or other legal entity, which shall acquire that interest in the same manner as the governmental entity or legal entity acquires an interest in land.

(3) A historic preservation easement may be assigned to a governmental or other legal entity whose purposes include the preservation or restoration of structures or sites described in section 2140(b), and the governmental or legal entity shall acquire that interest in the same manner as the governmental entity or legal entity acquires an interest in land.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Subpart 12

ACQUISITION OF SURFACE LANDS FOR WATER QUALITY CONTROL

324.2145 Iron ore mining; public interest; acquisition of property; conditions.

Sec. 2145. The business of mining and beneficiating low-grade iron ore, as defined in Act No. 77 of the Public Acts of 1951, being sections 211.621 to 211.626 of the Michigan Compiled Laws, and the business of the beneficiating and agglomerating of underground iron ore as defined in Act No. 68 of the Public Acts of 1963, being sections 207.271 to 207.279 of the Michigan Compiled Laws, are declared to be in the public interest and necessary to the public welfare, and the acquisition of private property for development of an adequate water supply, for development of the necessary storage, and for processing and treatment of liquid and solid wastes or other nonmarketable products resulting from the business is declared to be for a public purpose. The department may acquire by condemnation parcels of land that are needed for the establishment of areas, settling ponds, and basins for the storage,

processing, and treatment of the wastes or other products, together with the necessary appurtenant canals, pipelines, power lines, sluiceways, roadways, dams, and dikes. The department shall lease, convey, or exchange such parcels of land to any person engaged in or proposing to engage in the business of mining and beneficiating low-grade iron ore or beneficiating and agglomerating underground iron ore, or both, upon a showing to the satisfaction of the department that the person has acquired at least 75% of the necessary land and that the person has been unable to purchase the remaining necessary parcels at a fair market value, and upon the further showing to the satisfaction of the department that the remaining parcels are necessary for the development and operation of the water supply areas, settling ponds, and basins to prevent the unlawful pollution of waters of the state or to comply with the requirements of other public agencies of the state. This subpart does not authorize the taking of any property owned by a political subdivision of the state or devoted to or used for a public or railroad purpose or the taking of any private property lying within the limits of any incorporated city or village or lands within a recorded plat in an unincorporated village.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.2146 Condemnation of land; compensation to owners.

Sec. 2146. The department shall provide adequate compensation for any owner-occupied residences of owner-occupied or owner-operated farmland that it condemns pursuant to this subpart to enable the owners of the property to purchase like property suitable to their needs and in standard condition from the proceeds of the compensation, which shall at a minimum be equal to the valuation of the housing or agricultural land as of the date when proceedings for the condemnation were initiated by the department.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.2147 Lease or conveyance of land; conditions for issuance.
Sec. 2147. The department shall require as a condition for the issuance of any lease or conveyance authorized by this subpart the payment by the lessee of the full amount of compensation made or to be made by the department of the lands it has condemned. The lease shall contain provisions that protect the ownership of materials that are deposited upon the lands.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 305

NATURAL RIVERS

324.30501 Definitions.
Sec. 30501. As used in this part:

(a) "Free flowing" means existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other modification.

(b) "Natural river" means a river that has been designated by the department for inclusion in the wild, scenic, and recreational rivers system.

(c) "River" means a flowing body of water or a portion or tributary of a flowing body of water, including streams, creeks, or impoundments and small lakes thereon.

(d) "System" means all of those rivers or portions of rivers designated under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30502 Natural river; designation; purpose; long-range plans; publicity; cooperation.

Sec. 30502. The department, in the interest of the people of the state and future generations, may designate a river or portion of a river as a natural river area for the purpose of preserving and enhancing its values for water conservation, its free flowing condition, and its fish, wildlife, boating, scenic, aesthetic, floodplain, ecologic, historic, and recreational values and uses. The area shall include adjoining or related lands as appropriate to the purposes of the designation. The department shall prepare and adopt a long-range comprehensive plan for a designated natural river area that sets forth the purposes of the designation, proposed uses of lands and waters, and management measures designed to accomplish the purposes. State land within the designated area shall be administered and managed in accordance with the plan, and state management of fisheries, streams, waters, wildlife, and boating shall take cognizance of the plan. The department shall publicize and inform private and public landowners or agencies as to the plan and its purposes, so as to encourage their cooperation in the management and use of their land in a manner consistent with the plan and the purposes of the designation. The department shall cooperate with federal agencies administering any federal program concerning natural river areas, and with any watershed council established under part 311, when such cooperation furthers the interest of the state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30503 Qualifications for designation; categories of rivers.

Sec. 30503. A river qualifying for designation as a natural river area shall possess 1 or more of the natural or outstanding existing values cited in section 30502 and shall be permanently managed for the preservation or enhancement of such values. Categories of natural rivers shall be defined and established by the department, based on the characteristics of the waters and the adjoining lands and their uses, both as existing and as proposed, including such categories as wild, scenic, and recreational. The categories shall be specified in the designation and the long-range comprehensive plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30504 Land acquisition; purpose; interest acquired; consent.
Sec. 30504. The department may acquire lands or interests in lands adjacent to a designated natural river for the purpose of maintaining or improving the river and its environment in conformance with the purposes of the designation and the plan. Interests that may be acquired include, but are not limited to, easements designed to provide for preservation and to limit development, without providing public access and use. Lands or interests in lands shall be acquired under this part only with the consent of the owner.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30505 Federal financial assistance programs; leases; expenditures; purposes.
Sec. 30505. (1) The department may administer federal financial assistance programs for natural river areas.

(2) The department may enter into a lease or agreement with any person or political subdivision to administer all or part of their lands in a natural river area.

(3) The department may expend funds for works designed to preserve and enhance the values and uses of a natural river area and for construction, management, maintenance, and administration of facilities in a natural river area conforming to the purposes of the designation, if the funds are appropriated by the legislature.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30506 Public hearings; notice.
Sec. 30506. Before designating a river as a natural river area, the department shall conduct public hearings in the county seat of any county in which a portion of the designated natural river area is located. Notices of the hearings shall be advertised at least twice, not less than 30 days before the hearing, in a newspaper having general circulation in each such county and in at least 1 newspaper having general circulation in the state and 1 newspaper published in the Upper Peninsula.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30507 Land uses; zoning; local ordinances; state rule.
Sec. 30507. After designation of a river or portion of a river as a natural river area and following the preparation of the long-range comprehensive plan, the department may determine that the uses of land along the river, except within the limits of an incorporated municipality, shall be controlled by zoning contributing to accomplishment of the purposes of this part and the natural river plan. County and township governments are encouraged to establish these zoning controls and additional controls as may be appropriate, including, but not limited to, building and subdivision controls. The department may provide advisory, planning, and cooperative assistance in the drafting of ordinances to establish these controls. If the local unit does not, within 1 year after notice from the department, have in full force and effect a zoning ordinance or interim zoning ordinance established under authority of the acts cited in section 30510, the department, on its own motion, may promulgate a zoning rule in accordance with section 30512. A zoning rule may also be promulgated if the department finds that an adopted or existing zoning ordinance fails to meet adequately guidelines consistent with this part as provided by the department and transmitted to the local units concerned, does not take full cognizance of the purposes and objectives of this part, or is not in accord with the purposes of designation of the river as established by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30508 Zoning ordinance or rule; purpose.

Sec. 30508. A zoning ordinance adopted by a local unit of government or a zoning rule promulgated by the department shall provide for the protection of the river and its related land resources consistent with the preservation and enhancement of their values and the objectives set forth in section 30502. The ordinance or rule shall protect the interest of the people of the state as a whole. It shall take cognizance of the characteristics of the land and water concerned, surrounding development, and existing uses and provide for conservation of soil, water, stream bed and banks, floodplains, and adjoining uplands.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30509 Zoning ordinance or rule; establishment of districts; powers; distance.

Sec. 30509. The ordinance or rule shall establish zoning districts within which such uses of land as for agriculture, forestry, recreation, residence, industry, commerce, and additional uses may be encouraged, regulated, or prohibited. It may limit or prohibit the placement of structures of any class or designate their location with relation to the water's edge, to property or subdivision lines, and to flood flows and may limit the subdivision of lands for platting purposes. It may control the location and design of highways and roads and of public utility transmission and distribution lines, except on lands or other interests in real property owned by the utility on January 1, 1971. It may prohibit or limit the cutting of trees or other vegetation, but such limits shall not apply for a distance of more than 100 feet from the river's edge. It may specifically prohibit or limit mining and drilling for oil and gas, but such limits shall not apply for a distance of more than 300 feet from the river's edge. It may contain other provisions necessary to accomplish the objectives of this part. A zoning rule promulgated by the department shall not control lands more than 400 feet from the river's edge.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30510 Local zoning ordinance; conformance with applicable law; construction.

Sec. 30510. A local unit of government, in establishing a zoning ordinance, in addition to the authority and requirements of this part, shall conform to the township zoning act, 1943 PA 184, MCL 125.271 to 125.310, or the county zoning act, 1943 PA 183, MCL 125.201 to 125.240, including, but not limited to, the variance provisions of those acts. Any conflict shall be resolved in favor of the provisions of this part. The powers granted under this part shall be liberally construed in favor of the local unit or the department exercising them, in such manner as to promote the orderly preservation or enhancement of the values of the rivers and related land resources and their use in accordance with a long-range comprehensive general plan to ensure the greatest benefit to the state as a whole.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 17, Imd. Eff. Mar. 8, 2000
Popular Name: Act 451
Popular Name: NREPA

324.30511 Districts; valuation for tax purposes.

Sec. 30511. Upon adoption of a zoning ordinance or rule, certified copies of the maps showing districts shall be filed with the local tax assessing officer and the state tax commission. In establishing true cash value of property within the districts zoned, the assessing officer shall take cognizance of the effect of limits on use established by the ordinance or rule.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30512 Rules; enforcement; promulgation; variance; existing use.

Sec. 30512. (1) The department shall prescribe administrative procedures and rules and provide personnel as it considers necessary for the

enforcement of a zoning ordinance or rule enacted in accordance with this part. A circuit court, upon petition and a showing by the department that there exists a violation of a rule properly promulgated under this part, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

(2) The department shall promulgate a zoning rule to implement this part. The rule shall include procedures for receiving and acting upon applications from local units of government or landowners for change of boundaries or change in permitted uses in accordance with chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. An aggrieved party may seek judicial review under chapter 6 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306.

(3) A variance from a zoning rule promulgated by the department to implement this part may be applied for and granted pursuant to section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and the variance provisions of the zoning rule.

(4) The lawful use of any building or structure and of any land or premise as existing and lawful at the time of enactment of a zoning ordinance or rule or of an amendment of a zoning ordinance or rule may be continued although the use does not conform with the ordinance, rule, or amendment. The ordinance or rule shall provide for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon reasonable terms as set forth in the zoning ordinance or rule.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 17, Imd. Eff. Mar. 8, 2000
Popular Name: Act 451
Popular Name: NREPA

324.30513 National wild and scenic river system; administration.
Sec. 30513. This part does not preclude a component of the system from becoming a part of the national wild and scenic river system under the wild and scenic rivers act, Public Law 90-542, 16 U.S.C. 1271 to 1287. The department may enter into written cooperative agreements for joint

federal-state administration of rivers that may be designated under the wild and scenic rivers act.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30514 Area plans; approval; rules.

Sec. 30514. The department shall approve preliminary and final plans for site or route location, construction, or enlargement of utility transmission lines, publicly provided recreation facilities, access sites, highways, roads, bridges, or other structures and for publicly developed water management projects, within a designated natural river area, except within the limits of a city or incorporated village. The department may require any measure necessary to control damaging erosion or flow alteration during or in consequence of construction. The department shall promulgate rules concerning the approvals and requirements provided for in this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30515 Construction of part.

Sec. 30515. This part does not prohibit a reasonable and lawful use of any other natural resource that benefits the general welfare of the people of this state and that is not inconsistent with the purpose of this part.
History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 323

SHORELANDS PROTECTION AND MANAGEMENT, HIGH RISK EROSION AREAS AND ENVIRONMENTAL AREAS

324.32301 Definitions.

Sec. 32301. As used in this part:

(a) “Connecting waterway” means the St. Marys river, Detroit river, St. Clair river, or Lake St. Clair.

(b) “Environmental area” means an area of the shoreland determined by the department on the basis of studies and surveys to be necessary for the preservation and maintenance of fish and wildlife.

(c) “High-risk area” means an area of the shoreland that is determined by the department on the basis of studies and surveys to be subject to erosion.

(d) “Land to be zoned or regulated” or “land to be zoned” means the land in this state that borders or is adjacent to a Great Lake or a connecting waterway and that except for flood risk areas is situated within 1,000 feet landward from the ordinary high-water mark as defined in section 32501, land bordering or adjacent to waters affected by levels of the Great Lakes landward of the ordinary high-water mark as defined by section 30101(f), and land between the ordinary high-water mark and the water's edge.

(e) “Shoreland” means the land, water, and land beneath the water that is in close proximity to the shoreline of a Great Lake or a connecting waterway.

(f) “Shoreline” means that area of the shorelands where land and water meet.

(g) “Flood risk area” means the area of the shoreland that is determined by the department on the basis of studies and surveys to be subject to flooding from effects of levels of the Great Lakes and is not limited to 1,000 feet.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the

Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.32302 Shoreland engineering study; determinations.

Sec. 32302. By April 1, 1972, the department shall make or cause to be made an engineering study of the shoreland to determine all of the following:

(a) The high-risk areas.

(b) The areas of the shorelands that are platted or have buildings or structures and that require protection from erosion.

(c) The type of protection that is best suited for an area determined in subdivision (b).

(d) A cost estimate of the construction and maintenance for each type of protection determined in subdivision (c).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.32303 Engineering study.

Sec. 32303. Before January 1, 1975, the department shall make or cause to be made an engineering study of the shoreland to determine:

(a) Flood risk areas.

(b) The frequency with which a flood risk area can be expected to be flooded.

(c) Appropriate rules necessary to prevent damage or destruction to property.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32305 Use of high risk area; prevention of property loss; notice of determinations and recommendations.

Sec. 32305. The department pursuant to section 32302 shall determine if the use of a high-risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The department shall notify a local unit of government, the department of labor, the department of treasury, and the department of commerce or other affected state agencies of its determinations and recommendations relative to a high-risk area that is in a local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32306 Use of flood risk area; prevention of property loss; notice of determinations and recommendations.

Sec. 32306. The department pursuant to section 32303 shall determine if the use of a flood risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The department shall notify a local unit of government, the department of labor, the department of treasury, and the department of commerce or other affected state agencies of its determinations and recommendations relative to a flood risk area that is in a local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32308 County zoning.

Sec. 32308. Until July 1, 1975, a county, pursuant to rules promulgated under section 32313 and the county rural zoning enabling act, Act No.

183 of the Public Acts of 1943, being sections 125.201 to 125.232 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the county.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32309 City or village zoning.

Sec. 32309. Until July 1, 1975, a city or village, pursuant to rules promulgated under section 32313 and Act No. 207 of the Public Acts of 1921, being sections 125.581 to 125.592 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the city or village.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32310 Township zoning.

Sec. 32310. Until July 1, 1975, a township, pursuant to rules promulgated under section 32313 and the township rural zoning act, Act No. 184 of the Public Acts of 1943, being sections 125.271 to 125.301 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the township.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32311 Approval or disapproval of zoning ordinance regulating high risk area, flood risk area, or environmental area.

Sec. 32311. An existing zoning ordinance or a zoning ordinance or a modification or amendment to a zoning ordinance that regulates a high-risk area, a flood risk area, or an environmental area shall be submitted to the department for approval or disapproval. The department shall determine if the ordinance, modification, or amendment adequately prevents property damage or prevents damage to an environmental area, a high-risk area, or a flood risk area. If an ordinance, modification, or

amendment is disapproved by the department, it shall not have force or effect until modified by the local unit of government and approved by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32312 Rules; fee required with permit application or project; disposition of fees; violation; restraining order.
Sec. 32312. (1) The department, in order to regulate the uses and development of high-risk areas, flood risk areas, and environmental areas and to implement the purposes of this part, shall promulgate rules. If permits are required under rules promulgated under this part, the permits shall be issued pursuant to the rules and part 13. Except as provided under subsection (2), until October 1, 2011, if permits are required pursuant to rules promulgated under this part, an application for a permit shall be accompanied by a fee as follows:

(a) For a commercial or multi-family residential project, $500.00.

(b) For a single-family home construction, $100.00.

(c) For an addition to an existing single-family home or for a project that has a minor impact on fish and wildlife resources in environmental areas as determined by the department, $50.00.

(2) A project that requires review and approval under this part and under 1 or more of the following is subject to only the single highest permit fee required under this part or the following:

(a) Part 301.

(b) Part 303.

(c) Part 325.

(d) Section 3104.

(e) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(3) The department shall forward fees collected under this section to the state treasurer for deposit in the land and water management permit fee fund created in section 30113.

(4) A circuit court, upon petition and a showing by the department that a rule promulgated under subsection (1) has been violated, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 168, Imd. Eff. Oct. 9, 1995 ;-- Am. 1999, Act 106, Imd. Eff. July 7, 1999 ;-- Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 281.21 et seq. of the Michigan Administrative Code.

324.32312a Construction of above grade walls with movable brick.
Sec. 32312a. Notwithstanding any other provision of this part or the rules promulgated under this part, the department shall allow above grade walls to be constructed with movable brick.

History: Add. 1997, Act 126, Imd. Eff. Nov. 5, 1997
Popular Name: Act 451
Popular Name: NREPA

324.32313 Use and management plan; contents; hearings; submission of plan copies to governor and legislature.
Sec. 32313. (1) By October 1, 1972, the department shall, in compliance with the purposes of this part, prepare a plan for the use and management of shoreland. The plan shall include but not be limited to all of the following:

(a) An inventory and identification of the use and development characteristics of the shoreland; the general physical and man-influenced shoreline features; the existing and proposed municipal and industrial

water intakes and sewage and industrial waste outfalls; and high-risk areas and environmental areas.

(b) An inventory of existing federal, state, regional, and local plans for the management of the shorelands.

(c) An identification of problems associated with shoreland use, development, conservation, and protection.

(d) A provision for a continuing inventory of shoreland and estuarine resources.

(e) Provisions for further studies and research pertaining to shoreland management.

(f) Identification of the high-risk and environmental areas that need protection.

(g) Recommendations that do all of the following:

(i) Provide procedures for the resolution of conflicts arising from multiple use.

(ii) Foster the widest variety of beneficial uses.

(iii) Provide for the necessary enforcement powers to assure compliance with plans and to resolve conflicts in uses.

(iv) Provide criteria for the protection of shorelands from erosion or inundation, for aquatic recreation, for shore growth and cover, for low-lying lands, and for fish and game management.

(v) Provide criteria for shoreland layout for residential, industrial, and commercial development, and shoreline alteration control.

(vi) Provide for building setbacks from the water.

(vii) Provide for the prevention of shoreland littering, blight harbor development, and pollution.

(viii) Provide for the regulation of mineral exploration and production.

(ix) Provide the basis for necessary future legislation pertaining to efficient shoreland management.

(2) Upon completion of the plan, the department shall hold regional public hearings on the recommendations of the plan. Copies of the plan shall be submitted with the hearing records to the governor and the legislature.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32314 Agreements and contracts.

Sec. 32314. The department may enter into an agreement or make contracts with the federal government, other state agencies, local units of government, or private agencies for the purposes of making studies and plans for the efficient use, development, preservation, or management of the state's shoreland resources. Any study, plan, or recommendation shall be available to a local unit of government in this state that has shoreland. The recommendations and policies set forth in the studies or plans shall serve as a basis and guideline for establishing zoning ordinances and developing shoreland plans by local units of government and the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32315 Money, grants, or grants-in-aid; purpose.

Sec. 32315. For the purposes of this part, the department may receive, obtain, or accept money, grants, or grants-in-aid for the purpose of research, planning, or management of shoreland.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 337

FLOOD, DRAINAGE, AND BEACH EROSION CONTROL

324.33701 Flood, drainage, or beach erosion control; lands; acquisition; contract with federal government; terms.

Sec. 33701. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, pursuant to a resolution adopted by a 2/3 vote of the members of the county board of commissioners, is authorized to acquire any and all interests in lands necessary to any flood control, drainage, or beach erosion control project and is authorized to contract with the federal government or any agency of the federal government, whereby the federal government or agency will pay the whole or a part of the cost of flood control, drainage control, or beach erosion control projects or will perform the whole or any part of the work connected with the project, or both, which contract may include any specific terms, including, but not limited to, the holding and saving of the United States free from damages due to the construction works, required by act of congress or federal regulation as a condition for participation on the part of the federal government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.33702 Relief from assessment.

Sec. 33702. A contract entered into under section 33701 may provide that payments made or work done by the federal government or agency

of the federal government relieves it in whole or in part from assessment for the cost of the project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.33703 Contract; provisions.

Sec. 33703. A contract entered into under section 33701 may provide for the granting, without cost to the United States, of all lands, easements, and rights-of-way necessary for the construction of the project, except as otherwise provided by act of congress or federal regulation. Such a contract may also provide for the maintenance and operation of the project after completion in accordance with regulations prescribed by the secretary of the army.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.33704 Expenditures from municipal or county funds.

Sec. 33704. The township board of any township, the legislative body of any incorporated city or incorporated village, or the county board of commissioners of any county, pursuant to a resolution adopted by a 2/3 vote of its members, is authorized in connection with any contract entered into under section 33701 to make expenditures from its general fund, contingent fund or from any special funds available.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.33705 Assurances to federal government.
Sec. 33705. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, pursuant to a resolution adopted by a 2/3 vote of its members, is authorized to grant to the United States assurances as are required by federal flood control acts, by amendments to those acts, and by such other federal acts existing, or which may be enacted in the future, authorizing expenditure of federal funds for flood control, drainage, or beach erosion control projects.
History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.33706 Joint contracts for implementation of part.
Sec. 33706. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, may provide for joint participation and a joint contract or contracts in implementing this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.33707 Contracts; borrowing funds from federal government.
Sec. 33707. Contracts entered into under this part involving the financial ability of the incorporated city, incorporated village, township, or county to meet all obligations and liabilities imposed by the contracts as to cost of lands, easements, rights-of-way, construction, or the maintenance and operation costs of the project or projects are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Any incorporated city, incorporated village, or township, or the board of county road commissioners of any county when directed by the county board of commissioners, authorized to contract with the federal government or any agency of the federal government under this part, may borrow funds from the federal government or any agency of the federal government to implement this part, which borrowings shall be

subject to existing statutes and charter limitations that are applicable to the borrowing. The revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, applies to those borrowings.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2002, Act 219, Imd. Eff. Apr. 29, 2002
Popular Name: Act 451
Popular Name: NREPA

324.33708 Interest in lands; easement for flood plain; acquisition; declared public purposes.

Sec. 33708. For the accomplishment of the purposes of this part, any city, incorporated village, township, or board of county road commissioners may acquire any interest in land necessary to any flood control, drainage, or beach erosion control project, or to preserve flood plains, by purchase, gift, exchange, condemnation, or otherwise. If an easement to preserve a flood plain is acquired, the acquiring agency, in any instrument conveying such right or in any eminent domain proceedings instituted therefor, may acquire the further right to use the land subject to the easement, or any part of the easement, for any other public purpose, but only to the extent that the other uses are specifically enumerated in the conveyance or eminent domain proceedings. The legislative body of any city, incorporated village, or township, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, may institute and prosecute proceedings under the power of eminent domain in accordance with the laws of the state or any local charter relative to condemnation. Two or more adjoining cities, villages, or townships are authorized to maintain proceedings in accordance with the procedure prescribed by Act No. 81 of the Public Acts of 1925, being sections 123.71 to 123.73 of the Michigan Compiled Laws. The purposes contemplated by this part are declared to be public purposes within the meaning of the constitution, state laws, and charters relative to the power of eminent domain.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

LAND HABITATS
Part 351

WILDERNESS AND NATURAL AREAS

324.35101 Definitions.
Sec. 35101. As used in this part:

(a) "Natural area" means a tract of state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(i) Has retained or reestablished its natural character, or has unusual flora and fauna or biotic, geologic, scenic, or other similar features of educational or scientific value, but it need not be undisturbed.

(ii) Has been identified and verified through research and study by qualified observers.

(iii) May be coextensive with or part of a wilderness area or wild area.

(b) "Wild area" means a tract of undeveloped state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(i) Is less than 3,000 acres of state land.

(ii) Has outstanding opportunities for personal exploration, challenge, or contact with natural features of the landscape and its biological community.

(iii) Possesses 1 or more of the characteristics of a wilderness area.

(c) "Wilderness area" means a tract of undeveloped state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(i) Has 3,000 or more acres of state land or is an island of any size.

(ii) Generally appears to have been affected primarily by forces of nature with the imprint of the work of humans substantially unnoticeable.

(iii) Has outstanding opportunities for solitude or a primitive and unconfined type of recreation.

(iv) Contains ecological, geological, or other features of scientific, scenic, or natural history value.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 290, Imd. Eff. June 19, 1996
Popular Name: Act 451
Popular Name: NREPA

324.35102 Wilderness, wild, and natural areas; duty of department to identify, dedicate, and administer.
Sec. 35102. The department shall identify for dedication, dedicate, and administer wilderness areas, wild areas, and natural areas in accordance with this part. The department shall enlist the voluntary cooperation and support of interested citizens and conservation groups.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35103 Review of state land; identification of certain tracts; determination of dedication; proposed alteration or withdrawal of previously dedicated areas; filing proposals; procedure for making dedication or denying proposal; exchange of dedicated land; notice requirements.
Sec. 35103. (1) The department shall annually review all state land under its control and identify those tracts that in its judgment best exhibit the characteristics of a wilderness area, wild area, or natural area. The department shall determine which land in its judgment is most suitable for dedication as wilderness areas, wild areas, or natural areas. The

department shall administer the proposed land so as to protect its natural values.

(2) A citizen may propose to the department land that in his or her judgment exhibits the characteristics of a wilderness area, wild area, or natural area and is suitable for dedication by the department as such or may propose the alteration or withdrawal of previously dedicated areas. Land under control of the department that has been dedicated or designated before August 3, 1972 as a natural area, nature study area, preserve, natural reservation, wilderness, or wilderness study area shall be considered by the department and, if eligible, proposed for dedication. The proposals of the department shall be filed with both houses of the legislature.

(3) Within 90 days after land is proposed in accordance with subsections (1) or (2), the department shall make the dedication or issue a written statement of its principal reasons for denying the proposal. The department shall dedicate a wilderness area, wild area, or natural area, or alter or withdraw the dedication, by promulgating a rule. The department shall hold a public hearing relative to the dedication in the county where the land to be dedicated is located before a rule making the dedication may be promulgated. Not more than 10% of state land under the control of the department shall be dedicated pursuant to this subsection. All persons who have notified the department in writing during a calendar year of their interest in dedication of areas under this part shall be furnished by the department with a notice of all areas pending dedication or alteration or withdrawal from dedication during that calendar year.

(4) The department may exchange dedicated land for the purpose of acquiring other land that, in its judgment, is more suitable for the purposes of this part.

(5) Except as provided in subsection (4), prior to recommending the transfer of any land that is dedicated as a wilderness area, a wild area, or a natural area under this part, the department shall notify the citizens committee for Michigan state parks created in section 74102a and shall place a public notice in a newspaper of general circulation in the area in

which the dedicated land is located describing the proposed transfer. Except as provided in subsection (4), dedicated land shall not be transferred except as specifically authorized by law.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 290, Imd. Eff. June 19, 1996 ;-- Am. 2006, Act 307, Imd. Eff. July 20, 2006
Popular Name: Act 451
Popular Name: NREPA

324.35104 Proximity of wild and natural areas to certain urban centers; designation of private land or land controlled by other governmental units.

Sec. 35104. (1) The department shall attempt to provide, to the extent possible, wild areas and natural areas in relative proximity to urban centers of more than 100,000 population.

(2) Private land or land under the control of other governmental units may be designated by the department in the same way as a wilderness area, wild area, or natural area and administered by the department under a cooperative agreement between the owner and the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35105 Prohibited activities; easement.

Sec. 35105. (1) The following are prohibited on state land in a wilderness area, wild area, or natural area, or on state land proposed by the department for dedication in 1 of these categories during the 90 days a dedication is pending pursuant to section 35103:

(a) Removing, cutting, picking, or otherwise altering vegetation, except as necessary for appropriate public access, the preservation or restoration of a plant or wildlife species, or the documentation of scientific values and with written consent of the department.

(b) Except as provided in subsection (2), granting an easement for any purpose.

(c) Exploration for or extraction of minerals.

(d) A commercial enterprise, utility or permanent road.

(e) A temporary road, landing of aircraft, use of motor vehicles, motorboats, or other form of mechanical transport, or any structure or installation, except as necessary to meet minimum emergency requirements for administration as a wilderness area, wild area, or natural area by the department.

(f) Motorized equipment, except if the department approves its use for management purposes or conservation practices.

(2) If a right-of-way or an easement for ingress and egress was granted on land prior to the land's designation as a wilderness area, wild area, or natural area, upon request, the department may grant an easement along the route of the existing right-of-way or easement for the installation and maintenance of utilities for gas, electric, telephone, and cable services. In granting an easement under this section, the department shall require conditions necessary to protect the wilderness area, wild area, or natural area.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 290, Imd. Eff. June 19, 1996
Popular Name: Act 451
Popular Name: NREPA

324.35106 Landing aircraft or operating mechanical transport in wilderness, wild, or natural area.

Sec. 35106. A person who lands an aircraft or operates a motor vehicle, motorboat, or other form of mechanical transport in a wilderness area, wild area, or natural area without the express written consent of the department is guilty of a misdemeanor.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35107 Maintenance or restoration of wilderness, wild, or natural area.

Sec. 35107. (1) State land in a wilderness area, wild area, or natural area shall be maintained or restored so as to preserve its natural values in a manner compatible with this part.

(2) Grasslands, forested lands, swamps, marshes, bogs, rock outcrops, beaches, and wholly enclosed waters of this state that are an integral part of a wilderness area, wild area, or natural area shall be included within and administered as a part of the area.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35108 Posting signs; contents.

Sec. 35108. The department shall post signs in appropriate locations along the borders of a wilderness area, wild area, or natural area. The signs shall give notice of the area's dedication and may state those activities that are prohibited under section 35105 and those activities that are punishable as a misdemeanor pursuant to section 35106.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 290, Imd. Eff. June 19, 1996
Popular Name: Act 451
Popular Name: NREPA

324.35109 Acquisition of land.

Sec. 35109. The department may acquire land through purchase, gift, or bequest for inclusion in a wilderness area, wild area, or natural area.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35110 Taxation; audit of assessments; appropriation.

Sec. 35110. The local taxing authority is entitled to collect from the state a tax on a wilderness, wild, or natural area within its jurisdiction at its ad valorem tax rate or $2.00 per acre, whichever is less. The department

shall audit the assessments of wilderness, wild, or natural areas regularly to ensure that the properties are assessed in the same ratio as similar properties in private ownership. The legislature shall appropriate from the general fund for payments under this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35111 Saving clause.
Sec. 35111. (1) Nothing in this part affects or diminishes any right acquired or vested before August 3, 1972.

(2) Nothing in this part alters the status of land dedicated by the commission before August 3, 1972 until dedicated pursuant to section 35103, except that tax reverted lands are subject to section 35110. Purchased land dedicated by the commission before August 3, 1972 is subject to ad valorem taxes if dedicated pursuant to section 35103.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 353

SAND DUNES PROTECTION AND MANAGEMENT

324.35301 Definitions.
Sec. 35301. As used in this part:

(a) “Contour change” includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a critical dune area, except that which is involved in sand dune mining as defined in part 637.

(b) “Crest” means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 1-foot vertical rise in a

5-1/2-foot horizontal plane for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.

(c) “Critical dune area” means a geographic area designated in the “atlas of critical dune areas” dated February 1989 that was prepared by the department.

(d) “Department” means the department of environmental quality.

(e) “Foredune” means 1 or more low linear dune ridges that are parallel and adjacent to the shoreline of a Great Lake and are rarely greater than 20 feet in height. The lakeward face of a foredune is often gently sloping and may be vegetated with dune grasses and low shrub vegetation or may have an exposed sand face.

(f) “Model zoning plan” means the model zoning plan provided for in sections 35312 to 35324.

(g) “Planning commission” means the body or entity within a local government that is responsible for zoning and land use planning for the local unit of government.

(h) “Restabilization” means restoration of the natural contours of a critical dune to the extent practicable, and the restoration of the protective vegetative cover of a critical dune through the establishment of indigenous vegetation, and the placement of snow fencing or other temporary sand trapping measures for the purpose of preventing erosion, drifting, and slumping of sand.

(i) “Special use project” means any of the following:

(i) A proposed use in a critical dune area for an industrial or commercial purpose regardless of the size of the site.

(ii) A multifamily use of more than 3 acres.

(iii) A multifamily use of 3 acres or less if the density of use is greater than 4 individual residences per acre.

(iv) A proposed use in a critical dune area, regardless of size of the use, that the planning commission, or the department if a local unit of government does not have an approved zoning ordinance, determines would damage or destroy features of archaeological or historical significance.

(j) “Use” means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include sand dune mining as defined in part 637.

(k) “Zoning ordinance” means an ordinance of a local unit of government that regulates the development of critical dune areas within the local unit of government pursuant to the requirements of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.35302 Legislative findings.
Sec. 35302. The legislature finds that:

(a) The critical dune areas of this state are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of this state and to people from other states and countries who visit this resource.

(b) Local units of government should have the opportunity to exercise the primary role in protecting and managing critical dune areas in accordance with this part.

(c) The benefits derived from alteration, industrial, residential, commercial, agricultural, silvicultural, and the recreational use of critical dune areas shall occur only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.35303 Notice to local units of government and property owners; copy of "atlas of critical dune areas"; contents of notice; supplying addresses of property owners.

Sec. 35303. (1) As soon as practicable following July 5, 1989, the department shall notify by mail each local unit of government that has within its jurisdiction critical dune areas, and include a copy of the "atlas of critical dune areas" dated February 1989 and a copy of former Act No. 222 of the Public Acts of 1976 with the notice. By October 1, 1989, the department shall mail a copy of the same notice to each property owner of record who owns property within a critical dune area. The notices shall include the following information:

(a) That designated property within the local unit of government is a critical dune area that is subject to regulation under former Act No. 222 of the Public Acts of 1976.

(b) That a local unit of government may adopt a zoning ordinance that is approved by the department, or, if the local unit of government does not

have an approved ordinance, the use of the critical dune area will be regulated by the department under the model zoning plan.

(2) Upon the request of the department, a local unit of government shall supply to the department the address of each property owner of record who owns property within a critical dune area within its jurisdiction in a timely manner that enables the department to provide notice to the property owners as required under subsection (1).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35304 Permits for uses in critical dune areas; requirements; zoning ordinances; model zoning plan; special exceptions; permit application forms; assisting local units of government.
Sec. 35304. (1) A local unit of government that issues permits or the department if it issues permits as provided under subsection (5) shall issue the permits subject to all of the following requirements:

(a) A person proposing a use within a critical dune area shall file an application with the local unit of government, or with the department if the department is issuing permits under the model zoning plan. The application form shall include information that may be necessary to conform with the requirements of this part. If a project proposes the use of more than 1 critical dune area location within a local unit of government, 1 application may be filed for the uses.

(b) Notice of an application filed under this section shall be sent to a person who makes a written request to the local unit of government for notification of pending applications accompanied by an annual fee established by the local unit of government. The local unit of government shall prepare a monthly list of the applications made during the previous month and shall promptly mail copies of the list for the remainder of the calendar year to the persons who have requested notice. In addition, if the department issues permits under this part within a local unit of government, notice of an application shall be given to the local conservation district office, the county clerk, the county health

department, and the local unit of government in which the property is located. The monthly list shall state the name and address of each applicant, the location of the applicant's project, and a summary statement of the purpose of the use. The local unit of government may hold a public hearing on pending applications.

(c) The notice shall state that unless a written request is filed with the local unit of government within 20 days after the notice is mailed, the local unit of government may grant the application without a public hearing. Upon the written request of 2 or more persons that own real property within the local unit of government or an adjacent local unit of government, or that reside within the local unit of government or an adjacent local unit of government, the local unit of government shall hold a public hearing pertaining to a permit application.

(d) At least 10 days' notice of a hearing to be held pursuant to this section shall be given by publication in 1 or more newspapers of general circulation in the county in which the proposed use is to be located, and in other publications, if appropriate, to give notice to persons likely to be affected by the proposed use, and by mailing copies of the notice to the persons who have requested notice pursuant to subsection (1) and to the person requesting the hearing.

(e) After the filing of an application, the local unit of government shall grant or deny the permit within 60 days, or within 90 days if a public hearing is held. When a permit is denied, the local unit of government shall provide to the applicant a concise written statement of its reasons for denial of the permit, and if it appears that a minor modification of the application would result in the granting of the permit, the nature of the modification shall be stated. In an emergency, the local unit of government may issue a conditional permit before the expiration of the 20-day period referred to in subdivision (c).

(f) The local unit of government shall base a decision to grant or deny a permit required by this section on the model zoning plan or on any existing ordinance that is in effect in the local unit of government that

provides the same or a greater level of protection for critical dune areas and that is approved by the department.

(2) A local unit of government zoning ordinance regulating critical dune areas may be more restrictive of development and more protective of critical dune areas than the model zoning plan.

(3) As soon as possible following adoption of a zoning ordinance enacted pursuant to this part, the local unit of government shall submit to the department a copy of the ordinance that it determines meets the requirements of this part. If the local unit of government has an existing ordinance that it contends is at least as restrictive as the model zoning plan, that ordinance may be submitted to the department at any time. The department shall review zoning ordinances submitted under this section to assure compliance with this part. If the department finds that an ordinance is not in compliance with this part, the department shall work with the local unit of government to bring the ordinance into compliance and inform the local unit of the failure to comply and in what ways the submitted ordinance is deficient. Unless a local unit of government receives notice within 90 days of submittal that the ordinance they submit to the department under this subsection is not in compliance with this part, the local unit of government shall be considered to be approved by the department.

(4) A local unit of government may adopt, submit to the department, and obtain approval of a zoning ordinance based on the model zoning plan or an equivalent ordinance as provided in this section by June 30, 1990. If a local unit does not have an approved ordinance by June 30, 1990, the department shall implement the model zoning plan for that local unit of government in the same manner and under the same circumstances as provided in subsection (1). Notwithstanding any other provision of this part, a local unit of government may adopt a zoning ordinance at any time, and upon the approval of the department, that ordinance shall take the place of the model zoning plan implemented by the department.

(5) If a local unit of government in which a proposed use is to be located does not elect to issue permits or does not receive approval of a zoning

ordinance that regulates critical dune areas, the department shall implement the model zoning plan in the place of the local unit of government and issue special exceptions in the same circumstances as provided in this part for the issuance of variances by local units of government, and issue permits pursuant to subsection (1) and part 13.

(6) The department shall assist local units of government in developing ordinances that meet the requirements of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA

324.35305 Hearing; judicial review.
Sec. 35305. (1) If a person is aggrieved by a decision of the department in regard to the issuance or denial of a permit or special exception under this part, the person may request a formal hearing on the matter involved. The hearing shall be conducted by the department as a contested case hearing in the manner provided for in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) Following the hearing provided for under subsection (1), a decision of the department in regard to the issuance or denial of a permit or special exception under this part is subject to judicial review as provided for in Act No. 306 of the Public Acts of 1969.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35306 Lawful use of land or structure.
Sec. 35306. (1) The lawful use of land or a structure, as existing and lawful within a critical dune area at the time the department implements the model zoning plan for a local unit of government, may be continued although the use of that land or structure does not conform to the model zoning plan. The continuance, completion, restoration, reconstruction,

extension, or substitution of existing nonconforming uses of land or a structure may continue upon reasonable terms that are consistent, to the extent possible, with the applicable zoning provisions of the local unit of government in which the use is located.

(2) The lawful use of land or a structure, as existing and lawful within a local unit of government that has a zoning ordinance approved by the department, may, but is not required by this part to, be continued subject to the law pertaining to existing uses within the act that enables that local unit of government to zone and the applicable zoning provisions of the local unit of government.

(3) A use needed to obtain or maintain a permit or license that is required by law to continue operating an electric utility generating facility that is in existence on July 5, 1989 shall not be precluded under this part.

(4) Uses that have received all necessary permits from the state or the local unit of government in which the proposed use is located by July 5, 1989, are exempt for purposes for which a permit is issued from the operation of this part or local ordinances approved under this part. Such uses shall be regulated pursuant to local ordinances in effect by that date.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35307 Maps.

Sec. 35307. Upon adoption of an approved zoning ordinance, certified copies of the maps showing critical dune areas, and existing development and uses, shall be sent by the local unit of government to the state tax commission and the assessing office, planning commission, and governing board of the local unit of government, if requested by an entity listed in this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35308 Prohibited uses; exception.
Sec. 35308. (1) Except as provided in subsection (2), the following uses shall be prohibited in a critical dune area:

(a) A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation.

(b) Production facilities regulated under parts 615 and 625.

(2) Uses described in subsection (1) that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35309 Use permit and inspection fee; disposition of fees; authorization of separate fee; bond.
Sec. 35309. (1) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may establish a use permit and inspection fee.

(2) The department shall forward all fees it collects under this section to the state treasurer for deposit in the land and water management permit fee fund created in part 301.

(3) Fees collected by a local unit of government shall be credited to the treasury of the local unit of government to be used to defray the cost of administering uses under a zoning ordinance.

(4) In addition to fees provided for in this section, a soil conservation district may charge a separate fee to cover the actual expense of providing services under this part and for providing technical assistance

and advice to individuals who seek assistance in matters pertaining to compliance under this part.

(5) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may require the holder of a permit issued by a local unit of government or the department to file with the local unit of government or the department a bond executed by an approved surety in this state in an amount necessary to assure faithful conformance with the permit.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35310 Suspension or revocation of permit; restraining order, injunction, or other appropriate remedy; instituting action; cumulative rights; performance review; determination of noncompliance; response; implementation of model zoning plan; appeal; civil fine; order to pay cost of restabilization; violation as misdemeanor.

Sec. 35310. (1) If the department finds that a person is not in compliance with the model zoning plan if the department is implementing the plan, or if the department is involved in the modification or reversal of a decision regarding a special use project as provided in section 35322, the department may suspend or revoke the permit.

(2) At the request of the department or a person, the attorney general may institute an action for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of the model zoning plan if the department is implementing the provisions of the plan or if the department is involved in the modification or reversal of a decision regarding a special use project as provided in section 35322. At the request of a member of the governing body of a local unit of government or a person, the county prosecutor may institute an action for a restraining order or injunction or other proper remedy to prevent a violation of a zoning ordinance approved under this part. This shall be in addition to the rights provided in part 17, and as otherwise provided by law. An action under this subsection instituted by the attorney general

may be instituted in the circuit court for the county of Ingham or in the county in which the defendant is located, resides, or is doing business.

(3) The department shall periodically review the performance of all local units of government that have ordinances approved under this part. If the department determines that the local unit of government is not administering the ordinance in conformance with this part, the department shall notify the local unit of government in writing of its determination, including specific reasons why the local unit of government is not in compliance. The local unit of government has 30 days to respond to the department. If the department determines that the local unit of government has not made sufficient changes to its ordinance administration or otherwise explained its actions, the department may withdraw the approval of the local ordinance and implement the model zoning plan within that local unit of government. If a local unit disagrees with an action of the department to withdraw approval of the local ordinance, it may appeal that action pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, in the manner provided in that act for contested cases.

(4) In addition to any other relief provided by this section, the court may impose on a person who violates this part, or a permit, a civil fine of not more than $5,000.00 for each day of violation, or may order a violator to pay the full cost of restabilization of a critical dune area or other natural resource that is damaged or destroyed as a result of a violation, or both.

(5) A person who violates this part, or a person who violates a permit issued under this part, is guilty of a misdemeanor, punishable by a fine of not more than $5,000.00 per day for each day of violation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35311 Review of “atlas of critical dune areas”; appointment and duties of review team.

Sec. 35311. By May 23, 1995, the department shall appoint a team of qualified ecologists who may be employed by the department or may be persons with whom the department enters into contracts who shall review "the atlas of critical dune areas" dated February 1989. The review team shall evaluate the accuracy of the designations of critical dune areas within the atlas and shall recommend to the legislature any changes to the atlas or underlying criteria revisions to the atlas that would provide more precise protection to the targeted resource. In addition, the review team shall recommend whether the slope criteria in section 35330(1)(a) and (b) are appropriate and supported by the best available technical data and whether stairways and driveways in critical dune areas should be subject to the same criteria as other constructed uses.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35312 Zoning ordinance; formulation procedure; mandatory provisions; regulation of additional lands.
Sec. 35312. (1) After consulting with the local soil conservation district, a local unit of government that has 1 or more critical dune areas within its jurisdiction may formulate a zoning ordinance pursuant to the following:

(a) A county may zone as provided in the county rural zoning enabling act, Act No. 183 of the Public Acts of 1943, being sections 125.201 to 125.232 of the Michigan Compiled Laws.

(b) A city or village may zone as provided in Act No. 207 of the Public Acts of 1921, being sections 125.581 to 125.592 of the Michigan Compiled Laws.

(c) A township may zone as provided in the township rural zoning act, Act No. 184 of the Public Acts of 1943, being sections 125.271 to 125.301 of the Michigan Compiled Laws.

(2) A zoning ordinance shall consist of all of the provisions of the model zoning plan or comparable provisions that are at least as protective of critical dune areas as the model zoning plan.

(3) A local unit of government may regulate additional lands as critical dune areas under this part as considered appropriate by the planning commission if the lands are determined by the local unit of government to be essential to the hydrology, ecology, topography, or integrity of a critical dune area. A local unit of government shall provide within its zoning ordinance for the protection of lands that are within 250 feet of a critical dune area, if those lands are determined by the local unit of government to be essential to the hydrology, ecology, topography, or integrity of a critical dune area.

(4) If a local unit of government does not have an approved zoning ordinance, the department may regulate additional lands described in subsection (3). However, the lands added by the department shall not extend more than 250 feet from the landward boundary of a critical dune area, unless the governing body of the local unit of government authorizes such an extension.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35313 Zoning ordinance; requirements for applications for permits for use of critical dune area.
Sec. 35313. A zoning ordinance shall require that all applications for permits for the use of a critical dune area include in writing:

(a) That the county enforcing agency designated pursuant to part 91 finds that the project is in compliance with part 91 and any applicable soil erosion and sedimentation control ordinance that is in effect in the local unit of government.

(b) That a proposed sewage treatment or disposal system on the site has been approved by the county health department or the department.

(c) Assurances that the cutting and removing of trees and other vegetation will be performed according to the instructions or plans of the local soil conservation district. These instructions or plans may include all applicable silvicultural practices as described in the "voluntary forestry management guidelines for Michigan" prepared by the society of American foresters in 1987. The instructions or plans may include a program to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation than were removed by the proposed use.

(d) Except as otherwise provided in subdivision (e), a site plan that contains data required by the planning commission concerning the physical development of the site and extent of disruption of the site by the proposed development. The planning commission may consult with the soil conservation district in determining the required data.

(e) An environmental assessment that comports with section 35319 for a special use project. An environmental impact statement pursuant to section 35320 may be required if the additional information is considered necessary or helpful in reaching a decision on a permit application for a special use project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35314 Zoning ordinance; provisions; review of subdivision development.
Sec. 35314. (1) A zoning ordinance shall provide for all of the following:

(a) Lot size, width, density, and front and side setbacks.

(b) Storm water drainage that provides for disposal of drainage water without serious erosion.

(c) Methods for controlling erosion from wind and water.

(d) Restabilization.

(2) Each zoning ordinance shall provide that a use that proposes a subdivision development shall be reviewed by the local unit of government to assure compliance with all of the model zoning plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35315 Zoning ordinance; prohibited uses in critical dune area.
Sec. 35315. A zoning ordinance shall not permit either of the following uses in a critical dune area:

(a) The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.

(b) A use that does not comply with the minimum setback requirements required by rules that are promulgated under part 323.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35316 Zoning ordinances; additional prohibited uses in critical dune area; variance; structures; contour maps; guidelines; restoration.
Sec. 35316. (1) Unless a variance is granted pursuant to section 35317, a zoning ordinance shall not permit the following uses in a critical dune area:

(a) A structure and access to the structure on a slope within a critical dune area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with plans prepared for the site by a registered professional architect or a licensed professional engineer and the plans provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water. Prior to approval of

the plan, the planning commission shall consult with the local soil conservation district.

(b) A use on a slope within a critical dune area that has a slope steeper than a 1-foot vertical rise in a 3-foot horizontal plane.

(c) A use that is a structure that is not in compliance with subsection (2).

(d) A use involving a contour change that is likely to increase erosion, decrease stability, or is more extensive than required to implement a use for which a permit is requested.

(e) Silvicultural practices, as described in the "voluntary forest management guidelines for Michigan", prepared by the society of American foresters in 1987, that are likely to increase erosion, decrease stability, or are more extensive than required to implement a use for which a permit is requested.

(f) A use that involves a vegetation removal that is likely to increase erosion, decrease stability, or is more extensive than required to implement a use for which a permit is requested.

(g) A use that is not in the public interest. In determining whether a proposed use is in the public interest, the local unit of government shall consider both of the following:

(i) The availability of feasible and prudent alternative locations or methods, or both, to accomplish the benefits expected from the use. If a proposed use is 1 single family dwelling on a lot of record owned by the applicant, consideration of feasible and prudent alternative locations shall be limited to the lot of record on which the use is proposed. A lot of record shall not be created strictly for the purpose of avoiding consideration of alternative locations under this subparagraph.

(ii) The impact that is expected to occur to the critical dune area, and the extent to which the impact may be minimized.

(2) A use that is a structure shall be constructed behind the crest of the first landward ridge of a critical dune area that is not a foredune. However, if construction occurs within 100 feet measured landward from the crest of the first landward ridge that is not a foredune, the applicant shall demonstrate that the proposed use meets all of the following requirements:

(a) The use will not destabilize the critical dune area.

(b) Contour changes and vegetative removal are limited to that essential to siting the structure and access to the structure.

(c) Access to the structure is from the landward side of the dune.

(d) The dune is restabilized with indigenous vegetation.

(e) Construction techniques and methods are employed that mitigate the impact on the dune.

(f) The crest of the dune is not reduced in elevation.

(g) If the department is implementing the model zoning plan, the use meets all other applicable requirements of the zoning ordinance or the model zoning plan.

(3) If the local unit of government is not certain of the degree of slope on a property for which a use permit is sought, the local unit may require that the applicant supply contour maps of the site with 5-foot intervals at or near any proposed structure or roadway or consult with the local soil conservation district regarding the degree of slope.

(4) Within 60 days after the effective date of this section, the department shall develop guidelines to describe the method by which the department and local units of government measure slopes to implement the requirements of the zoning ordinance or the model zoning plan.

(5) If a person is ordered by the department, or by a local unit of government that is enforcing a zoning ordinance authorized under this part, to restore a critical dune area that has been degraded by that person, the department or local unit of government shall establish a procedure by which the restoration of the critical dune area is monitored to assure that the restoration is completed in a satisfactory manner.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996
Popular Name: Act 451
Popular Name: NREPA

324.35317 Variances; special exceptions; limitations; annual report; determination of unreasonable hardship; review and comment; notice of opposition; determination of practical difficulty.
Sec. 35317. (1) A local unit of government may issue variances under a zoning ordinance, or the department may issue special exceptions under the model zoning plan if a local unit of government does not have an approved zoning ordinance, if a practical difficulty will occur to the owner of the property if the variance or special exception is not granted. In determining whether a practical difficulty will occur if a variance or special exception is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. A variance or a special exception is also subject to the following limitations:

(a) A variance shall not be granted from a setback requirement provided for under the model zoning plan or an equivalent zoning ordinance enacted pursuant to this part unless the property for which the variance is requested is 1 of the following:

(i) A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of this part or a zoning ordinance.

(ii) A lot legally created after July 5, 1989 that later becomes nonconforming due to natural shoreline erosion.

(iii) Property on which the base of the first landward critical dune of at least 20 feet in height that is not a foredune is located at least 500 feet inland from the first foredune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the foredune crest or line of vegetation.

(b) A variance or special exception shall not be granted that authorizes construction of a dwelling or other permanent building on the first lakeward facing slope of a critical dune area or a foredune. However, a variance or special exception may be granted if the proposed construction is near the base of the lakeward facing slope of the critical dune on a slope of less than 1-foot vertical rise in an 8-foot horizontal plane on a nonconforming lot of record that is recorded prior to July 5, 1989 that has borders that lie entirely on the first lakeward facing slope of the critical dune area that is not a foredune.

(2) Each local unit of government that has issued a variance for a use other than a special use project during the previous 12 months shall file an annual report with the department indicating variances that have been granted by the local unit of government during that period.

(3) Upon receipt of an application for a special exception under the model zoning plan, the department shall forward a copy of the application and all supporting documentation to the local unit of government having jurisdiction over the proposed location. The local unit of government shall have 60 days to review the proposed special exception. The department shall not make a decision on a special exception under the model zoning plan until either the local unit of government has commented on the proposed special exception or has waived its opportunity to review the special exception. The local unit of government may waive its opportunity to consider the application at any time within 60 days after receipt of the application and supporting documentation by notifying the department in writing. If the local unit of government waives its opportunity to review the application, or fails to act as authorized in this section within 60 days, the local unit of government also waives its opportunity to oppose the decision by the department to issue a special exception. If the local unit of government

opposes the issuance of the special exception, the local unit of government shall notify the department, in writing, of its opposition within the 60-day notice period. If the local unit of government opposes the issuance of the special exception, the department shall not issue a special exception. The local unit of government may also consider whether a practical difficulty will occur to the owner of the property if the special exception is not granted by the department and may make a recommendation to the department within the 60-day notice period. The department shall base its determination of whether a practical difficulty exists on information provided by the local unit of government and other pertinent information.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996
Popular Name: Act 451
Popular Name: NREPA

324.35318 Request for revaluation to determine fair market value.
Sec. 35318. If a permit for a proposed use within a critical dune area is denied, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the restriction.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35319 Environmental assessment; contents.
Sec. 35319. The zoning ordinance shall provide that if an environmental assessment is required under section 35313(e), that assessment shall include the following information concerning the site of the proposed use:

(a) The name and address of the applicant.

(b) A description of the applicant's proprietary interest in the site.

(c) The name, address, and professional qualifications of the person preparing the environmental assessment and his or her opinion as to whether the proposed development of the site is consistent with protecting features of environmental sensitivity and archaeological or historical significance that may be located on the site.

(d) The description and purpose of the proposed use.

(e) The location of existing utilities and drainageways.

(f) The general location and approximate dimensions of proposed structures.

(g) Major proposed change of land forms such as new lakes, terracing, or excavating.

(h) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.

(i) Approximate location and type of proposed drainage, water, and sewage facilities.

(j) Legal description of property.

(k) A physical description of the site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.

(l) A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.

(m) An erosion review showing how erosion control will be achieved and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35320 Environmental impact statement; contents.
Sec. 35320. If an environmental impact statement is required under section 35313(e) prior to permitting a proposed use, a zoning ordinance may require that the statement include all of the following:

(a) The name and address of the applicant.

(b) A description of the applicant's proprietary interest in the site of the proposed use.

(c) The name, address, and professional qualifications of the proposed professional design team members, including the designation of the person responsible for the preparation of the environmental impact statement.

(d) The description and purpose of the proposed use.

(e) Six copies and 1 reproducible transparency of a schematic use plan of the proposed use showing the general location of the proposed use and major existing physical and natural features on the site, including, but not limited to, watercourses, rock outcropping, wetlands, and wooded areas.

(f) The location of the existing utilities and drainageways.

(g) The location and notation of public streets, parks, and railroad and utility rights-of-way within or adjacent to the proposed use.

(h) The general location and dimensions of proposed streets, driveways, sidewalks, pedestrian ways, trails, off-street parking, and loading areas.

(i) The general location and approximate dimensions of proposed structures.

(j) Major proposed change of land forms such as new lakes, terracing, or excavating.

(k) Approximate existing and proposed contours and drainage patterns, showing at least 5-foot contour intervals.

(l) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.

(m) Approximate location and type of proposed drainage, water and sewage treatment and disposal facilities.

(n) A legal description of the property.

(o) An aerial photo and contour map showing the development site in relation to the surrounding area.

(p) A description of the physical site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.

(q) A soil review giving a short descriptive summary of the soil types found on the site and whether the soil permits the use of septic tanks or requires central sewer. The review may be based on the “unified soil classification system” as adopted by the United States government corps of engineers and bureau of reclamation, dated January 1952, or the national cooperative soil survey classification system, and the standards for the development prospects that have been offered for each portion of the site.

(r) A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.

(s) A substrata review including a descriptive summary of the various geologic bedrock formations underlying the site, including the identification of known aquifers, the approximate depths of the aquifers,

and, if being tapped for use, the principal uses to be made of these waters, including irrigation, domestic water supply, and industrial usage.

(t) An erosion review showing how erosion control will be achieved and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.

(u) At a minimum, plans for compliance with all of the following standards shall be required for construction and postconstruction periods:

(i) Surface drainage designs and structures are erosion-proof through control of the direction, volume, and velocities of drainage patterns. These patterns shall promote natural vegetation growth that are included in the design so that drainage waters may be impeded in their flow and percolation encouraged.

(ii) The design shall include trash collection devices when handling street and parking drainage to contain solid waste and trash.

(iii) Watercourse designs, control volumes, and velocities of water to prevent bottom and bank erosion. In particular, changes of direction shall guard against undercutting of banks.

(iv) If vegetation has been removed or has not been able to occur on surface areas such as infill zones, it is the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, windbreaks, and other similar barriers.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35321 Review of site plan; duties of planning commission.
Sec. 35321. A zoning ordinance shall provide that, in reviewing a site plan required under section 35313(d), the planning commission shall do all of the following:

(a) Determine whether the requirements of the zoning ordinance have been met and whether the plan is consistent with existing laws.

(b) Determine whether the advice or assistance of the soil conservation district will be helpful in reviewing a site plan.

(c) Recommend alterations of a proposed development to minimize adverse effects anticipated if the development is approved and to assure compliance with all applicable state and local requirements.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35322 Special use project application, plan, and proposed decision; review; action.

Sec. 35322. Prior to issuing a permit allowing a special use project within a critical dune area, a local unit of government shall submit the special use project application and plan and the proposed decision of the local unit of government to the department. The department shall have 60 days to review the plan and may affirm, modify, or reverse the proposed decision of the local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35323 Destruction of structure or use; exemption.

Sec. 35323. A structure or use located in a critical dune area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, is exempt from the operation of this part or a zoning ordinance under this part for the purpose of rebuilding or replacing the structure or use, if the structure or use was lawful at the time it was constructed or commenced and the structure does not exceed in size or scope that which was destroyed and does not vary from its prior use.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35324 Management of federally owned and state owned land.
Sec. 35324. Federally owned land, to the extent allowable by law, and state owned land within critical dune areas shall be managed by the federal or state government, respectively, in a manner that is consistent with the model zoning plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35325 Purchase of lands or interests in lands; purpose.
Sec. 35325. The department or local units of government may purchase lands or interests in lands from a willing seller in critical dune areas for the purpose of maintaining or improving the critical dune areas and the environment of the critical dune areas in conformance with the zoning ordinance, or the model zoning plan if the local unit of government does not have an approved zoning ordinance. Interests that may be purchased may include easements designed to provide for the preservation of critical dune areas and to limit or eliminate development in critical dune areas.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35326 Appropriation; purpose; sufficiency.
Sec. 35326. (1) The legislature shall appropriate to the departments of agriculture, natural resources, and the attorney general sufficient funds to assure the full implementation and enforcement of this part.

(2) Appropriations to the department of agriculture shall be sufficient to assure adequate funding for the soil conservation districts to fulfill their responsibilities under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 355

BIOLOGICAL DIVERSITY CONSERVATION

324.35501 Definitions.
Sec. 35501. As used in this part:

(a) “Biological diversity” means the full range of variety and variability within and among living organisms and the natural associations in which they occur. Biological diversity includes ecosystem diversity, species diversity, and genetic diversity.

(b) “Committee” means the joint legislative working committee on biological diversity created pursuant to section 35504.

(c) “Conserve”, “conserving”, and “conservation” mean measures for maintaining natural biological diversity and measures for restoring natural biological diversity through management efforts, in order to protect, restore, and enhance as much of the variety of native species and communities as possible in quantities and distributions that provide for the continued existence and normal functioning of native species and communities, including the viability of populations throughout the natural geographic distributions of native species and communities.

(d) “Ecosystem” means an assemblage of species, together with the species' physical environment, considered as a unit.

(e) “Ecosystem diversity” means the distinctive assemblages of species and ecological processes that occur in different physical settings of the biosphere.

(f) “Genetic diversity” means the differences in genetic composition within and among populations of a given species.

(g) “Habitat” means the area or type of environment in which an organism or biological population normally lives or occurs.

(h) “Reporting department” means a state department or agency that is required by the committee under this part to file 1 or more reports.

(i) “Species diversity” means the richness and variety of native species.

(j) “State strategy” means the recommended state strategy prepared by the committee.

(k) “Sustained yield” means the achievement and maintenance in perpetuity of regular periodic output of the various renewable resources without impairment of the productivity of the land.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35502 Legislative findings.
Sec. 35502. The legislature finds that:

(a) The earth's biological diversity is an important natural resource. Decreasing biological diversity is a concern.

(b) Most losses of biological diversity are unintended consequences of human activity.

(c) Humans depend on biological resources, including plants, animals, and microorganisms, for food, medicine, shelter, and other important products.

(d) Biological diversity is valuable as a source of intellectual and scientific knowledge, recreation, and aesthetic pleasure.

(e) Conserving biological diversity has economic implications.

(f) Reduced biological diversity may have potentially serious consequences for human welfare as resources for research and agricultural, medicinal, and industrial development are diminished.

(g) Reduced biological diversity may also potentially impact ecosystems and critical ecosystem processes that moderate climate, govern nutrient cycles and soil conservation and production, control pests and diseases, and degrade wastes and pollutants.

(h) Reduced biological diversity may diminish the raw materials available for scientific and technical advancement, including the development of improved varieties of cultivated plants and domesticated animals.

(i) Maintaining biological diversity through habitat protection and management is often less costly and more effective than efforts to save species once they become endangered.

(j) Because biological resources will be most important for future needs, study by the legislature regarding maintaining the diversity of living organisms in their natural habitats and the costs and benefits of doing so is prudent.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35503 State goal.

Sec. 35503. (1) It is the goal of this state to encourage the lasting conservation of biological diversity.

(2) This part does not require a state department or agency to alter its regulatory functions.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35504 Joint legislative working committee on biological diversity; creation; appointment of members; establishment, organization, and membership of scientific advisory boards; consultation with other qualified individuals; function; reports; meetings; compliance with open meetings act; writings available to public; public hearings; dissolution.

Sec. 35504. (1) The joint legislative working committee on biological diversity is created in the legislature. The committee shall consist of 4 members of the senate appointed by the senate majority leader, 2 members of the house of representatives appointed by the republican leader of the house of representatives, and 2 members of the house of representatives appointed by the democratic leader of the house of representatives. Members of the committee shall be appointed by the senate majority leader and the republican and democratic leaders of the house of representatives within 30 days of March 23, 1994. At least 1 of the committee members appointed from the senate shall be a member of the minority party of the senate, and at least 1 of the committee members appointed from each house shall be a member of a standing committee that primarily addresses legislation pertaining to environmental protection and natural resources, or wildlife and fisheries management, and agriculture. The committee may establish and organize 1 or more scientific advisory boards to provide the committee with specific expertise as the committee considers necessary or helpful. If 1 or more scientific advisory boards are established, each board shall include individuals with expertise pertaining to the area of resource management at issue. The representatives shall include at least 1 individual employed by a state department or agency; 1 or more individuals employed by a university or college who work in applied research; and 1 or more individuals who work in basic research. The committee may consult with other individuals who are qualified representatives of industry and environmental groups. In fulfilling its duties under this part, the committee may consult with individuals and groups who are knowledgeable about, or interested in, biological diversity and conservation or are knowledgeable about scientific and technological issues related to biological diversity and its impact on human habitat.

(2) The function of the committee shall be to prepare a recommended state strategy for conservation of biological diversity and to report on the costs, benefits, and other implications of the strategy. Upon the request of the committee, state departments and state agencies shall submit reports containing the information required under section 35505 to the committee to enable the committee to prepare the state strategy and fulfill its functions under this part. The state strategy shall in part be based on information provided to the committee in these reports required under this section.

(3) The committee shall meet as soon as possible upon formation and then shall meet at least quarterly. The committee shall at its initial meeting develop a timeline establishing when specific reports are due from each of the reporting departments from which the committee requests reports. However, all reports required under section 35505(1) shall be submitted to the committee by a reporting department by December 30, 1994. The committee shall provide assistance to the reporting department as the committee considers necessary or helpful in developing the state strategy.

(4) The committee shall hold regularly scheduled meetings, and the business of the committee shall be conducted at public meetings held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(5) A writing prepared, owned, used, in the possession of, or retained by the committee shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(6) The committee shall hold public hearings to solicit input from individuals and entities regarding biological diversity.

(7) The committee shall be dissolved on December 30, 1995.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35505 Reports; contents; additional information.
Sec. 35505. (1) The committee may require clear and concise reports containing the information listed under subsection (2) and, if applicable, subsection (3) from state departments and state agencies, including, but not limited to, the following:

(a) Department of natural resources.

(b) State transportation department.

(c) Department of commerce.

(d) Department of agriculture.

(e) Department of public health.

(f) Department of military affairs.

(2) Each reporting department shall prepare for the committee a report that contains an overview of all of the following:

(a) A report pertaining to those activities of the reporting departments that alter biological diversity, noting which ecosystems and species are impacted and the existence of and effectiveness of mitigation measures.

(b) Any other information determined by the committee to be necessary or helpful in preparing the state strategy.

(c) The costs and benefits of preserving biological diversity and mitigation measures.

(3) In addition to the information required under subsection (2), the department of natural resources and the department of agriculture shall include in their report, to the extent practical, examples of techniques

that are used to improve the protection and maintenance of this state's biological diversity, and the long-term viability of ecosystems and ecosystem processes, including all of the following:

(a) Enhancement of scientific knowledge through improved and more complete biological surveys, and research designed to identify factors limiting population viability or persistence.

(b) Identification of habitats and species of special concern and methods to protect them.

(c) Improvement of management techniques based on scientific knowledge of the conservation of biological diversity.

(d) Effective restoration methods for ecosystems or species of concern.

(e) Broad-based education efforts regarding the importance of biological diversity and the need for conservation.

(f) Use of areas demonstrating management techniques that conserve or restore native biological diversity.

(g) Use of cooperative programs among government agencies, public and private ventures, and the public sector.

(h) Promotion of sustained yield of natural resources for human benefit.

(i) Any other technique to improve the protection and maintenance of this state's biological diversity, and the long-term viability of ecosystems and ecosystem processes whether or not the technique is in current use if supported by scientific knowledge.

(j) The costs and benefits associated with activities described in subdivisions (a) to (i).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.35506 Development of state strategy; factors; progress report to legislature; circulation of draft report; public hearing; report to legislature.

Sec. 35506. (1) Based on information received from the reporting departments and other sources identified in section 35504(1), the committee shall develop a state strategy that includes, but is not limited to, consideration of all of the following:

(a) Reduction of cumulative adverse impacts of all state departments and agencies on biological diversity.

(b) Responsibility of each reporting department to conserve biological diversity and determine the costs of such actions.

(c) Methods of cooperation among reporting departments, other states, and provinces concerning ecosystems management.

(d) Establishment of cooperative programs among governmental agencies, public and private ventures, universities and colleges, and the private sector.

(e) Identification of habitats and species of special concern and methods to protect them.

(f) Prevention of extinction of species.

(g) Provisions for the long-term viability of ecosystems and ecosystem processes.

(h) Development of areas demonstrating management techniques that conserve or restore native biological diversity.

(i) Development of broad-based educational efforts regarding the importance of biological diversity and the need for conservation.

(j) Development of criteria for evaluating the progress of this state in implementing the strategy.

(k) The effects on human beings or the environment, taking into account the economic, social, and environmental costs and benefits of the conservation of biological diversity.

(l) The effects of conserving biological diversity on agriculture and forestry.

(2) By December 30, 1994, the committee shall submit to the legislature a report detailing progress made toward development of the strategy.

(3) By June 30, 1995, the committee shall circulate a draft of the report described in subsection (4) and conduct a public hearing regarding the content of the draft report.

(4) By December 30, 1995, the committee shall approve and submit to the legislature a report containing all of the following:

(a) The recommended state strategy.

(b) Summaries of all written comments and reporting department reports received by the committee pertaining to the work of the committee.

(c) An evaluation of reports submitted by reporting departments.

(d) An evaluation of the cumulative impacts of the reporting departments on the biological diversity of this state.

(e) Recommendations pertaining to legislative options.

(f) Recommendations regarding whether the definitions in this part should be revised.

(g) Recommendations regarding whether there is a need to establish a biological diversity education center to set research priorities and provide leadership and coordination pertaining to fulfilling the policy of this state to maintain biological diversity.

(h) Recommendations concerning research priorities and personnel training to facilitate the implementation of the state strategy.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 361

FARMLAND AND OPEN SPACE PRESERVATION

324.36101 Definitions.
Sec. 36101. As used in this part:

(a) "Agricultural conservation easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

(b) "Agricultural use" means the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot.

(c) "Conservation district board" means that term as defined in section 9301.

(d) "Development" means an activity that materially alters or affects the existing conditions or use of any land.

(e) "Development rights" means an interest in land that includes the right to construct a building or structure, to improve land for development, to

divide a parcel for development, or to extract minerals incidental to a permitted use or as is set forth in an instrument recorded under this part.

(f) "Development rights agreement" means a restrictive covenant, evidenced by an instrument in which the owner and the state, for a term of years, agree to jointly hold the right to undertake development of the land, and that contains a covenant running with the land, for a term of years, not to undertake development, subject to permitted uses.

(g) "Development rights easement" means a grant, by an instrument, in which the owner relinquishes to the public in perpetuity or for a term of years the right to undertake development of the land, and that contains a covenant running with the land, not to undertake development, subject to permitted uses.

(h) "Farmland" means 1 or more of the following:

(i) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.

(ii) A farm of 5 acres or more in 1 ownership, but less than 40 acres, with 51% or more of the land area devoted to an agricultural use, that has produced a gross annual income from agriculture of $200.00 per year or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set aside program or a federal conservation reserve program is considered to have produced a gross annual income from agriculture of $200.00 per year or more per acre of cleared and tillable land.

(iii) A farm designated by the department of agriculture as a specialty farm in 1 ownership that has produced a gross annual income from an agricultural use of $2,000.00 or more. Specialty farms include, but are not limited to, greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.

(iv) Parcels of land in 1 ownership that are not contiguous but which constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland may be included in an application under this part.

(i) "Local governing body" means 1 of the following:

(i) With respect to farmland or open space land that is located in a city or village, the legislative body of the city or village.

(ii) With respect to farmland or open space land that is not located in a city or village but that is located in a township having a zoning ordinance in effect as provided by law, the township board of the township.

(iii) With respect to farmland or open space land that is not described in subparagraph (i) or (ii), the county board of commissioners.

(j) "Open space land" means 1 of the following:

(i) Lands defined as 1 or more of the following:

(A) Any undeveloped site included in a national registry of historic places or designated as a historic site pursuant to state or federal law.

(B) Riverfront ownership subject to designation under part 305, to the extent that full legal descriptions may be declared open space under the meaning of this part, if the undeveloped parcel or government lot parcel or portions of the undeveloped parcel or government lot parcel as assessed and owned is affected by that part and lies within 1/4 mile of the river.

(C) Undeveloped lands designated as environmental areas under part 323, including unregulated portions of those lands.

(ii) Any other area approved by the local governing body, the preservation of which area in its present condition would conserve natural or scenic resources, including the promotion of the conservation

of soils, wetlands, and beaches; the enhancement of recreation opportunities; the preservation of historic sites; and idle potential farmland of not less than 40 acres that is substantially undeveloped and because of its soil, terrain, and location is capable of being devoted to agricultural uses as identified by the department of agriculture.

(k) “Owner” means a person having a freehold estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor.

(l) “Permitted use” means any use expressly authorized within a development rights agreement, development rights easement, or agriculture conservation easement that is consistent with the farming operation or that does not alter the open space character of the land. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced by the farm operator for at least 3 of the immediately preceding 5 years. The state land use agency shall determine whether a use is a permitted use pursuant to section 36104a.

(m) “Person” includes an individual, corporation, limited liability company, business trust, estate, trust, partnership, or association, or 2 or more persons having a joint or common interest in land.

(n) “Planning commission” means a planning commission created by the local governing body under 1945 PA 282, MCL 125.101 to 125.107, 1959 PA 168, MCL 125.321 to 125.333, or 1931 PA 285, MCL 125.31 to 125.45, as applicable.

(o) “Prohibited use” means a use that is not consistent with an agricultural use for farmland subject to a development rights agreement or is not consistent with the open space character of the land for lands subject to a development rights easement.

(p) “Property taxes” means general ad valorem taxes levied after January 1, 1974, on lands and structures in this state, including collection fees, but not including special assessments, penalties, or interest.

(q) “Regional planning commission” means a regional planning commission created pursuant to 1945 PA 281, MCL 125.11 to 125.25.

(r) “Regional planning district” means the planning and development regions as established by executive directive 1968-1, as amended, whose organizational structure is approved by the regional council.

(s) “State income tax act” means the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and in effect during the particular year of the reference to the act.

(t) “State land use agency” means the department of agriculture.

(u) “Substantially undeveloped” means any parcel or area of land essentially unimproved except for a dwelling, building, structure, road, or other improvement that is incidental to agricultural and open space uses.

(v) “Unique or critical land area” means agricultural or open space lands identified by the land use agency as an area that should be preserved.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 233, Imd. Eff. June 5, 1996 ;-- Am. 2000, Act 262, Imd. Eff. June 29, 2000
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36102 Development rights agreement or easement; execution authorized; provisions.

Sec. 36102. (1) The state land use agency may execute a development rights agreement or easement on behalf of the state.

(2) The provisions of a development rights agreement or easement shall be consistent with the purposes of this part and shall not permit an action which will materially impair the character of the land involved.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36103 Development rights agreement or easement; effect of execution and acceptance; term; limitation; disposition; prior lien, lease, or interest not superseded; lien of state or local governing body; subordination.

Sec. 36103. (1) The execution and acceptance of a development rights agreement or easement by the state or local governing body and the owner dedicates to the public the development rights in the land for the term specified in the instrument. A development rights agreement or easement shall be for an initial term of not less than 10 years. A development rights agreement or easement entered into after June 5, 1996 shall not be for a term of more than 90 years.

(2) The state or local governing body shall not sell, transfer, convey, relinquish, vacate, or otherwise dispose of a development rights agreement or easement except with the agreement of the owner as provided in sections 36111, 36111a, 36112, and 36113.

(3) An agreement or easement does not supersede any prior lien, lease, or interest that is properly recorded with the county register of deeds.

(4) A lien created under this part in favor of the state or a local governing body is subordinate to a lien of a mortgage that is recorded in the office of the register of deeds before the recording of the lien of the state or local governing body.

(5) The state shall subordinate its interest in a recorded agreement under section 36104 or an easement under section 36105 or 36106 to a subsequently recorded mortgage lien, lease, or interest if both of the following conditions are met:

(a) The parcel meets the requirements set forth under section 36111(2)(a) for parcels containing existing structures.

(b) The landowner requesting the subordination is an individual essential to the operation of the farm as defined in section 36110(5).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 233, Imd. Eff. June 5, 1996 ;-- Am. 2003, Act 36, Imd. Eff. July 3, 2003
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36104 Application for farmland development rights agreement; form; contents; notice; review, comments, and recommendations; approval or rejection; appeal; preparation, contents, execution, and recordation of agreement; reapplication; tax exemption.
Sec. 36104. (1) An owner of land desiring a farmland development rights agreement may apply by filing an application with the local governing body having jurisdiction under this part. The owner shall apply on a form prescribed by the state land use agency. The application shall contain information reasonably necessary to properly classify the land as farmland. This information shall include a land survey or a legal description of the land and a map showing the significant natural features and all structures and physical improvements located on the land.

(2) Upon receipt of the application, the local governing body shall notify the county planning commission or the regional planning commission and the soil conservation district agency. If the county has jurisdiction, it shall also notify the township board of the township in which the land is situated. If the land is within 3 miles of the boundary of a city or within 1 mile of the boundary of a village, the county or township governing body having jurisdiction shall notify the governing body of the city or village.

(3) An agency or local governing body receiving notice has 30 days to review, comment, and make recommendations to the local governing body with which the application is filed. These reviewing agencies do not have an approval or rejection power over the application.

(4) After considering the comments and recommendations of the reviewing agencies and local governing bodies, the local governing body holding the application shall approve or reject the application within 45 days after the application is received, unless that period is extended by agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon, and consistent with, rules promulgated by the state land use agency under section 36116.

(5) If an application for a farmland development rights agreement is approved by the local governing body having jurisdiction, the local governing body shall forward a copy, along with the comments and recommendations of the reviewing bodies, to the state land use agency. The application shall contain a statement from the assessing officer where the property is located specifying the current fair market value of the land and structures in compliance with the agricultural section of the Michigan state tax commission assessor manual. If action is not taken by the local governing body within the time prescribed or agreed upon, the applicant may proceed as provided in subsection (6) as if the application was rejected.

(6) If the application for a farmland development rights agreement is rejected by the local governing body, the local governing body shall return the application to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection by submitting the application to the state land use agency.

(7) The state land use agency, within 60 days after a farmland development rights agreement application is received under subsection (5) or (6), shall approve or reject the application. A rejection of an application for a farmland development rights agreement that has been approved by a local governing body by the state land use agency shall be for nonconformance with section 36101(f) only. If the application is approved by the state land use agency, the state land use agency shall prepare a farmland development rights agreement that includes all of the following provisions:

(a) A structure shall not be built on the land except for use consistent with farm operations, which includes a residence for an individual essential to the operation of the farm under section 36111(2)(b), or lines for utility transmission or distribution purposes or with the approval of the local governing body and the state land use agency.

(b) Land improvements shall not be made except for use consistent with farm operations or with the approval of the local governing body and the state land use agency.

(c) Any interest in the land shall not be sold except a scenic, access, or utility easement that does not substantially hinder farm operations.

(d) Public access is not permitted on the land unless agreed to by the owner.

(e) Any other condition and restriction on the land as agreed to by the parties that is considered necessary to preserve the land or appropriate portions of it as farmland.

(8) A copy of the approved application and the farmland development rights agreement shall be forwarded to the applicant for execution. An application that is approved by the local governing body by November 1 shall take effect for the current tax year.

(9) If the owner executes the farmland development rights agreement, the owner shall return it to the state land use agency for execution on behalf of the state. The state land use agency shall record the executed development rights agreement with the register of deeds of the county in which the land is situated and shall notify the applicant, the local governing body and its assessing office, all reviewing agencies, and the department of treasury.

(10) If an application for a farmland development rights agreement is rejected by the state land use agency, the state land use agency shall notify the affected local governing body, all reviewing agencies concerned, and the applicant with a written statement containing the

reasons for rejection. An applicant receiving a rejection from the state land use agency may appeal the rejection pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(11) An applicant may reapply for a farmland development rights agreement following a 1-year waiting period.

(12) The value of the jointly owned development rights as expressed in a farmland development rights agreement is not exempt from ad valorem taxation and shall be assessed to the owner of the land as part of the value of that land.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 233, Imd. Eff. June 5, 1996
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36104a Permitted use; criteria.
Sec. 36104a. In determining whether a use is a permitted use, the state land use agency shall consider the following criteria:

(a) Whether the use adversely affects the productivity of farmland or adversely affects the character of open space land.

(b) Whether the use materially alters or negatively affects the existing conditions or use of the land.

(c) Whether the use substantially alters the agricultural use of farmland subject to a development rights agreement or substantially alters the natural character of open space land subject to an open space easement.

(d) Whether the use results in a material alteration of an existing structure to a nonagricultural use.

(e) Whether the use conforms with all applicable federal, state, and local laws and ordinances.

History: Add. 1996, Act 233, Imd. Eff. June 5, 1996
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36105 Land subject to MCL 324.36101(j)(i); application for open space development rights easement; approval or rejection; provisions; tax exemption.

Sec. 36105. (1) If an owner of open space land desires an open space development rights easement, and the land is subject to section 36101(j)(i), the procedures for filing an application provided by the state land use agency shall follow as provided in section 36104, except section 36104(7) and (12) do not apply to an open space development rights easement.

(2) The state land use agency, within 60 days after the open space development rights easement application is received, shall approve or reject the application. If the application is approved by the state land use agency, the state land use agency shall prepare an open space development rights easement that includes the following provisions:

(a) A structure shall not be built on the land without the approval of the state land use agency.

(b) Improvement to the land shall not be made without the approval of the state land use agency.

(c) An interest in the land shall not be sold, except for a scenic, access, or utility easement that does not substantially hinder the character of the open space land.

(d) Access to the open space land may be provided if access is agreed to by the owner and if access will not jeopardize the conditions of the land.

(e) Any other condition or restriction on the land as agreed to by the parties that is considered necessary to preserve the land or appropriate portions of it as open space land.

(3) Upon receipt of the application, the state land use agency shall notify the state tax commission. Upon notification, the state tax commission shall within 60 days make an on-site appraisal of the land in compliance with the Michigan state tax commission assessors manual. The application shall contain a statement specifying the current fair market value of the land and the current fair market value of the development rights. The state land use agency shall submit to the legislature each application for an open space development rights easement and an analysis of its cost to the state. The application shall be approved in both houses by a resolution concurred in by a majority of the members elected and serving in each house. The amount of the cost shall be returned to the local governing body if lost revenues are indicated. A copy of the approved application and the open space development rights easement shall be forwarded by the state land use agency to the applicant for execution and to the local assessing office where the land is situated.

(4) If an application for an open space development rights easement is rejected under subsection (2), the applicant may reapply for an open space development rights easement beginning 1 year after the rejection.

(5) The development rights held by the state as expressed in an open space development rights easement under this section are exempt from ad valorem taxation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 233, Imd. Eff. June 5, 1996 ;-- Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36106 Land subject to MCL 324.36101(j)(ii); application for open space development rights easement; form; contents; notice; review, comments, and recommendations; approval or rejection; preparation and contents of easement; appraisal; statement of fair market value; execution and recordation of easement; forwarding copies of easement; appeal; legislative approval; costs; reapplication; tax exemption.

Sec. 36106. (1) An owner of open space land desiring an open space development rights easement whose land is subject to section 36101(j)(ii) may apply by filing an application with the local governing body. The application shall be made on a form prescribed by the state land use agency. The application shall contain information reasonably necessary to properly identify the land as open space. This information shall include a land survey or a legal description of the land and a map showing the significant natural features and all structures and physical improvements located on the land.

(2) Upon receipt of an application, the local governing body shall notify the county planning commission, the regional planning commission, and the soil conservation district agency. If the local governing body is the county board of commissioners, the county board shall also notify the township board of the township in which the land is situated. If the land is within 3 miles of the boundary of a city or within 1 mile of the boundary of a village, the local governing body shall notify the governing body of the city or village.

(3) An entity receiving notice under subsection (2) has 30 days to review, comment, and make recommendations to the local governing body with which the application was filed.

(4) The local governing body shall approve or reject the application after considering the comments and recommendations of the reviewing entities and within 45 days after the application was received by the local governing body, unless that period is extended by agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon, and consistent with, rules promulgated by the state land use agency under section 36116. If the local governing body does not act within the time prescribed or agreed upon, the applicant may proceed as provided in subsection (9) as if the application was rejected.

(5) If the application is approved by the local governing body, the local governing body shall prepare the easement. If the application is approved by the state land use agency on appeal, the state land use agency shall

prepare the easement. An easement prepared under this section shall contain all of the following provisions:

(a) A structure shall not be built on the land without the approval of the local governing body.

(b) An improvement to the land shall not be made without the approval of the local governing body.

(c) An interest in the land shall not be sold, except for a scenic, access, or utility easement that does not substantially hinder the character of the open space land.

(d) Public access to the open space land may be provided if agreed upon by the owner and if access will not jeopardize the conditions of the land.

(e) Any other condition or restriction on the land as agreed to by both parties that is considered necessary to preserve the land or appropriate portions of it as open space land.

(6) Upon receipt of the application, the local governing body shall direct either the local assessing officer or an independent certified assessor to make an on-site appraisal of the land within 30 days in compliance with the Michigan state tax commission assessors manual. The approved application shall contain a statement specifying the current fair market value of the land and the current fair market value of the development rights, if any. A copy of the approved application and the development rights easement shall be forwarded to the applicant for his or her execution.

(7) If the owner of the land executes the approved easement, it shall be returned to the local governing body for its execution. The local governing body shall record the development rights easement with the register of deeds of the county. A copy of the approved easement shall be forwarded to the local assessing office and to the state land use agency for their information.

(8) The decision of the local governing body may be appealed to the state land use agency, pursuant to subsection (9).

(9) If an application for an open space development rights easement is rejected by the local governing body, the local governing body shall notify the applicant and all reviewing entities with a written statement of the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the state land use agency. The state land use agency shall have 60 days to approve or reject the application. The state land use agency shall submit to the legislature each approved application for an open space development rights easement and an analysis of its cost. The application shall be approved in both houses by a resolution concurred in by a majority of the members elected and serving in each house. The amount of the cost shall be returned to the local governing body where lost revenues are indicated. A copy of the approved application and an appropriate easement shall be forwarded by the state land use agency to the applicant for execution and to the local governing body where the land is situated.

(10) If an application for an open space development rights easement is rejected under subsection (4), the applicant may reapply for an open space development rights easement beginning 1 year after the final rejection.

(11) The development rights held by the local governing body as expressed in an open space development rights easement are exempt from ad valorem taxation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 233, Imd. Eff. June 5, 1996 ;-- Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36107 Notice of owners' intentions regarding extension or expiration of agreement or easement; notice of lien.
Sec. 36107. (1) All participants owning land contained under a development rights agreement or easement shall notify, on a form

provided by the state land use agency for informational purposes only, the state or the local governing body holding the development rights, 6 months before the natural termination date of the development rights agreement or easement, of the owners' intentions regarding whether the agreement or easement should be extended or allowed to expire.

(2) The state land use agency shall notify the landowner via first-class mail at least 7 years before the expiration of a development rights agreement or easement that a lien may be placed at the time of expiration on the enrolled land in accordance with section 36111(8) if the landowner does not extend the agreement or easement and shall indicate to the landowner the option of not claiming credits during all or a portion of the next 7 years.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 233, Imd. Eff. June 5, 1996
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36108 Special assessments.

Sec. 36108. (1) A city, village, township, county, or other governmental agency shall not impose special assessments for sanitary sewers, water, lights, or nonfarm drainage on land for which a development rights agreement or easement has been recorded, except for years before 1995 as to a dwelling or a nonfarm structure located on the land, unless the assessments were imposed before the recording of the development rights agreement or easement.

(2) Land covered by this exemption shall be denied use of an improvement created by the special assessment until it has paid that portion of the special assessment directly attributable to the actual use of the improvement created by the special assessment.

(3) Upon termination of a development rights agreement or easement that has been exempt from a special assessment under this section, a city, village, township, county, or other governmental agency may impose the previously exempted special assessment. However, the amount of that

special assessment shall not exceed the amount the special assessment would have been at the initial time of exemption, and shall not be subject to interest or penalty.

(4) If a dwelling or a nonfarm structure located on land covered by a development rights agreement or easement is required under the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws, to connect to an improvement created by a special assessment, the owner of that dwelling or nonfarm structure shall pay only that portion of the special assessment directly attributable to the actual use of the improvement created by the special assessment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 233, Imd. Eff. June 5, 1996
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36109 Credit against state income tax or state single business tax.

Sec. 36109. (1) An owner of farmland and related buildings subject to 1 or more development rights agreements under section 36104 or agricultural conservation easements or purchases of development rights under section 36111b or 36206 who is required or eligible to file a return as an individual or a claimant under the state income tax act may claim a credit against the state income tax liability for the amount by which the property taxes on the land and structures used in the farming operation, including the homestead, restricted by the development rights agreements, agricultural conservation easements, or purchases of development rights exceed 3.5% of the household income as defined in section 508 of the income tax act of 1967, 1967 PA 281, MCL 206.508, excluding a deduction if taken under section 613 of the internal revenue code of 1986, 26 USC 613. For the purposes of this section, all of the following apply:

(a) A partner in a partnership is considered an owner of farmland and related buildings owned by the partnership and covered by a

development rights agreement, agricultural conservation easement, or purchase of development rights. A partner is considered to pay a proportion of the property taxes on that property equal to the partner's share of ownership of capital or distributive share of ordinary income as reported by the partnership to the internal revenue service or, if the partnership is not required to report that information to the internal revenue service, as provided in the partnership agreement or, if there is no written partnership agreement, a statement signed by all the partners. A partner claiming a credit under this section based upon the partnership agreement or a statement shall file a copy of the agreement or statement with his or her income tax return. If the agreement or statement is not filed, the department of treasury shall deny the credit. All partners in a partnership claiming the credit allowed under this section shall compute the credit using the same basis for the apportionment of the property taxes.

(b) A shareholder of a corporation that has filed a proper election under subchapter S of chapter 1 of subtitle A of the internal revenue code of 1986, 26 USC 1361 to 1379, is considered an owner of farmland and related buildings covered by a development rights agreement that are owned by the corporation. A shareholder is considered to pay a proportion of the property taxes on that property equal to the shareholder's percentage of stock ownership for the tax year as reported by the corporation to the internal revenue service. Except as provided in subsection (8), this subdivision applies to tax years beginning after 1987.

(c) Except as otherwise provided in this subdivision, an individual in possession of property for life under a life estate with remainder to another person or holding property under a life lease is considered the owner of that property if it is farmland and related buildings covered by a development rights agreement. Beginning January 1, 1986, if an individual in possession of property for life under a life estate with remainder to another person or holding property under a life lease enters into a written agreement with the person holding the remainder interest in that land and the written agreement apportions the property taxes in the same manner as revenue and expenses, the life lease or life estate holder and the person holding the remainder interest may claim the credit

under this act as it is apportioned to them under the written agreement upon filing a copy of the written agreement with the return.

(d) If a trust holds farmland and related buildings covered by a development rights agreement and an individual is treated under subpart E of subchapter J of subchapter A of chapter 1 of the internal revenue code of 1986, 26 USC 671 to 679, as the owner of that portion of the trust that includes the farmland and related buildings, that individual is considered the owner of that property.

(e) An individual who is the sole beneficiary of a trust that is the result of the death of that individual's spouse is considered the owner of farmland and related buildings covered by a development rights agreement and held by the trust if the trust conforms to all of the following:

(i) One hundred percent of the trust income is distributed to the beneficiary in the tax year in which the trust receives the income.

(ii) The trust terms do not provide that any portion of the trust is to be paid, set aside, or otherwise used in a manner that would qualify for the deduction allowed by section 642(c) of the internal revenue code of 1986, 26 USC 642.

(f) A member in a limited liability company is considered an owner of farmland and related buildings covered by a development rights agreement that are owned by the limited liability company. A member is considered to pay a proportion of the property taxes on that property equal to the member's share of ownership or distributive share of ordinary income as reported by the limited liability company to the internal revenue service.

(2) An owner of farmland and related buildings subject to 1 or more development rights agreements under section 36104 or agricultural conservation easements or purchases of development rights under section 36111b or 36206 to whom subsection (1) does not apply may claim a credit under the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, for

the amount by which the property taxes on the land and structures used in farming operations restricted by the development rights agreements, agricultural conservation easements, or purchases of development rights exceed 3.5% of the adjusted business income of the owner as defined in section 36 of the former single business tax act, 1975 PA 228, or the business income tax base of the owner as defined in section 201 of the Michigan business tax act, 2007 PA 36, MCL 208.1201, plus compensation to shareholders not included in adjusted business income or the business income tax base, excluding any deductions if taken under section 613 of the internal revenue code of 1986, 26 USC 613. When calculating adjusted business income for tax years beginning before 1987, federal taxable income shall not be less than zero for the purposes of this subsection only. A participant is not eligible to claim a credit and refund against the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, unless the participant demonstrates that the participant's agricultural gross receipts of the farming operation exceed 5 times the property taxes on the land for each of 3 out of the 5 tax years immediately preceding the year in which the credit is claimed. This eligibility requirement does not apply to those participants who executed farmland development rights agreements under this part before January 1, 1978. A participant may compare, during the contract period, the average of the most recent 3 years of agricultural gross receipts to property taxes in the first year that the participant entered the program under the present contract in calculating the gross receipts qualification. Once an election is made by the participant to compute the benefit in this manner, all future calculations shall be made in the same manner.

(3) If the farmland and related buildings covered by a development rights agreement under section 36104 or an agricultural conservation easement or purchase of development rights under section 36111b or 36206 are owned by more than 1 owner, each owner is allowed to claim a credit under this section based upon that owner's share of the property tax payable on the farmland and related buildings. The department of treasury shall consider the property tax equally apportioned among the owners unless a written agreement signed by all the owners is filed with the return, which agreement apportions the property taxes in the same

manner as all other items of revenue and expense. If the property taxes are considered equally apportioned, a husband and wife shall be considered 1 owner, and a person with respect to whom a deduction under section 151 of the internal revenue code of 1986, 26 USC 151, is allowable to another owner of the property shall not be considered an owner.

(4) A beneficiary of an estate or trust to which subsection (1) does not apply is entitled to the same percentage of the credit provided in this section as that person's percentage of all other distributions by the estate or trust.

(5) If the allowable amount of the credit claimed exceeds the state income tax or the state business tax otherwise due for the tax year or if there is no state income tax or the state business tax due for the tax year, the amount of the claim not used as an offset against the state income tax or the state business tax, after examination and review, shall be approved for payment to the claimant pursuant to 1941 PA 122, MCL 205.1 to 205.31. The total credit allowable under this part and chapter 9 of the income tax act of 1967, 1967 PA 281, MCL 206.501 to 206.532, or the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, shall not exceed the total property tax due and payable by the claimant in that year. The amount the credit exceeds the property tax due and payable shall be deducted from the credit claimed under this part.

(6) For purposes of audit, review, determination, appeals, hearings, notices, assessments, and administration relating to the credit program provided by this section, the state income tax act, 1967 PA 281, MCL 206.1 to 206.36, the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, applies according to which tax the credit is claimed against. If an individual is allowed to claim a credit under subsection (1) based upon property owned or held by a partnership, S corporation, or trust, the department of treasury may require that the individual furnish to the department a copy of a tax return, or portion of a tax return, and

supporting schedules that the partnership, S corporation, or trust files under the internal revenue code.

(7) The department of treasury shall account separately for payments under this part and not combine them with other credit programs. A payment made to a claimant for a credit claimed under this part shall be issued by 1 or more warrants made out to the county treasurer in each county in which the claimant's property is located and the claimant, unless the claimant specifies on the return that a copy of the receipt showing payment of the property taxes that became a lien in the year for which the credit is claimed, or that became a lien in the year before the year for which the credit is claimed, is attached to the income tax or business tax return filed by the claimant. If the claimant specifies that a copy of the receipt is attached to the return, the payment shall be made directly to the claimant. A warrant made out to a claimant and a county treasurer shall be used first to pay delinquent property taxes, interest, penalties, and fees on property restricted by the development rights agreement. If the warrant exceeds the amount of delinquent taxes, interest, penalties, and fees, the county treasurer shall remit the excess to the claimant. If a claimant falsely specifies that the receipt showing payment of the property taxes is attached to the return and if the property taxes on the land subject to that development rights agreement were not paid before the return was filed, all future payments to that claimant of credits claimed under this act attributable to that development rights agreement may be made payable to the county treasurer of the county in which the property subject to the development rights agreement is located and to that claimant.

(8) For property taxes levied after 1987, a person that was an S corporation and had entered into a development rights agreement before January 1, 1989, and paid property taxes on that property, may claim the credit allowed by this section as an owner eligible under subsection (2). A subchapter S corporation claiming a credit as permitted by this subsection for taxes levied in 1988 through 1990 shall claim the credit by filing an amended return under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145. If a subchapter S corporation files an amended return as permitted by this subsection and if a shareholder of the

subchapter S corporation claimed a credit under subsection (1)(b) for the same property taxes, the shareholder shall file an amended return under the state income tax act. A subchapter S corporation is not entitled to a credit under this subsection until all of its shareholders file the amended returns required by this subsection. The department of treasury shall first apply a credit due to a subchapter S corporation under this subsection to repay credits claimed under this section by the subchapter S corporation's shareholders for property taxes levied in 1988 through 1990 and shall refund any remaining credit to the S corporation. Interest or penalty is not due or payable on an income tax liability resulting from an amended return required by this subsection. A subchapter S corporation electing to claim a credit as an owner eligible under subsection (2) shall not claim a credit under subsection (1) for property taxes levied after 1987.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 233, Imd. Eff. June 5, 1996 ;-- Am. 2000, Act 421, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002 ;-- Am. 2007, Act 174, Imd. Eff. Dec. 21, 2007
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36110 Sale of land; notice; death or disability of owner.
Sec. 36110. (1) Land subject to a development rights agreement or easement may be sold without penalty under sections 36111, 36112, and 36113, if the use of the land by the successor in title complies with the provisions contained in the development rights agreement or easement. The seller shall notify the governmental authority having jurisdiction over the development rights of the change in ownership.

(2) If the owner of land subject to a development rights agreement or easement dies or becomes totally and permanently disabled or when an individual essential to the operation of the farm dies or becomes totally and permanently disabled, the land may be relinquished from the program under this part and is subject to a lien pursuant to sections 36111(11), 36112(7), and 36113(7). A request for relinquishment under this section shall be made within 3 years from the date of death or disability. A request for relinquishment under this subsection shall be

made only by the owner in case of a disability or, in case of death, the person who becomes the owner through survivorship or inheritance.

(3) If an owner of land subject to a development rights agreement becomes totally and permanently disabled or dies, land containing structures that were present before the recording of the development rights agreement may be relinquished from the agreement, upon request of the disabled agreement holder or upon request of the person who becomes an owner through survivorship or inheritance, and upon approval of the local governing body and the state land use agency. Not more than 2 acres may be relinquished under this subsection unless additional land area is needed to encompass all of the buildings located on the parcel, in which case not more than 5 acres may be relinquished. If the parcel proposed to be relinquished is less in area than the minimum parcel size required by local zoning, the parcel may not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size. The portion of the farmland relinquished from the development rights agreement under this subsection is subject to a lien pursuant to section 36111(11).

(4) The land described in a development rights agreement may be divided into smaller parcels of land, each of which shall be covered by a separate development rights agreement and each of which shall be eligible for subsequent renewal. The separate development rights agreements shall contain the same terms and conditions as the original development rights agreement. The smaller parcels created by the division must meet the minimum requirements for being enrolled under this act or be 40 acres or more in size. Farmland may be divided once under this subsection without fee by the state land use agency. The state land use agency may charge a reasonable fee not greater than the state land use agency's actual cost of dividing the agreement for all subsequent divisions of that farmland. When a division of a development rights agreement is made under this subsection and is executed and recorded, the state land use agency shall notify the applicant, the local governing body and its assessing office, all reviewing agencies, and the department of treasury.

(5) As used in this section, "individual essential to the operation of the farm" means a co-owner, partner, shareholder, farm manager, or family member, who, to a material extent, cultivates, operates, or manages farmland under this act. An individual is considered involved to a material extent if that individual does 1 or more of the following:

(a) Has a financial interest equal to or greater than 1/2 the cost of producing the crops, livestock, or products and inspects and advises and consults with the owner on production activities.

(b) Works 1,040 hours or more annually in activities connected with production of the farming operation.

(6) The state land use agency may charge and collect a fee of $25.00 to process each change of ownership under subsection (1) or each division under subsection (4). The fee collected under this subsection shall be used by the state land use agency to administer this act.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 233, Imd. Eff. June 5, 1996
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36111 Expiration or relinquishment of development rights agreement.

Sec. 36111. (1) A development rights agreement expires at the expiration of the term of the agreement unless renewed with the consent of the owner of the land. If the owner of the land has complied with the requirements of this part regarding development rights agreements, the owner is entitled to automatic renewal of the farmland covered by the agreement upon written request of the owner. A development rights agreement may be renewed for a term of not less than 7 years. If a development rights agreement is renewed, the state land use agency shall send a copy of the renewal contract to the local governing body of the local unit of government in which the farmland is located.

(2) A development rights agreement or a portion of the farmland covered by a development rights agreement may be relinquished as provided in this section and section 36111a. Farmland may be relinquished by this state before a termination date contained in the instrument under either of the following circumstances:

(a) If approved by the local governing body and the state land use agency, land containing structures that were present before the recording of the development rights agreement may be relinquished from the agreement. Not more than 2 acres may be relinquished under this subdivision unless additional land area is needed to encompass all of the buildings located on the parcel, in which case not more than 5 acres may be relinquished. If the parcel proposed to be relinquished is less in area than the minimum parcel size required by local zoning, the parcel may not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size.

(b) If approved by the local governing body and the state land use agency, land may be relinquished from the agreement for the construction of a residence by an individual essential to the operation of the farm as defined in section 36110(5). Not more than 2 acres may be relinquished under this subdivision. If the parcel proposed to be relinquished is less in area than the minimum parcel size required by local zoning, the parcel may not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size.

(3) Until April 1, 1997, if an owner who entered into or renewed a development rights agreement before April 15, 1994 makes a request, in writing, to the state land use agency, to terminate that development rights agreement with respect to all or a portion of the farmland covered by the agreement, the state land use agency shall approve the request and relinquish that farmland from the development rights agreement. If farmland is relinquished under this subsection, the state land use agency shall notify the local governing body of the local unit of government in which the land is located of the relinquishment.

(4) If the request for relinquishment of the development rights agreement is approved, the state land use agency shall prepare an instrument, subject to subsections (5), (6), (7), and (8), and record it with the register of deeds of the county in which the land is situated.

(5) If a development rights agreement or a portion of a development rights agreement is to be relinquished pursuant to subsection (2) or section 36111a, the state land use agency shall record a lien against the property formerly subject to the development rights agreement for the total amount of the allocated tax credit of the last 7 years, including the year of termination, received by an owner for that property under the agreement under section 36109, attributable to the property formerly subject to the development rights agreement, plus interest at the rate of 6% per annum simple interest from the time the credit was received until the lien is placed on the property.

(6) If the property being relinquished from the development rights agreement is less than all of the property subject to that development rights agreement, the allocated tax credit for the development rights agreement shall be multiplied by the property's share of the taxable value of the agreement. As used in this subsection:

(a) “The allocated tax credit” means the amount obtained by multiplying the owner's total farmland preservation credit claimed in that year on all agreements by the quotient of the ad valorem property tax levied in that year on property subject to the development rights agreement that included the property being relinquished from the agreement divided by the total property taxes levied on property subject to any development rights agreement and used in determining the farmland preservation credit in that year.

(b) “The property's share of the taxable value of the agreement” means the quotient of the taxable value of the property being relinquished from the agreement divided by the total taxable value of property subject to the development rights agreement that included the property being relinquished from the agreement. For years before 1995, taxable value means assessed value.

(7) Thirty days before the recording of a lien under this section, the state land use agency shall notify the owner of the farmland subject to the development rights agreement of the amount of the lien, including interest, if any. If the lien amount is paid before 30 days after the owner is notified, the lien shall not be recorded. The lien may be paid and discharged at any time and is payable to the state by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former development rights agreement. The lien shall be discharged upon renewal or reentry in a development rights agreement, except that a subsequent lien shall not be less than the lien discharged.

(8) Upon the termination of all or a portion of the development rights agreement under subsection (3), the termination of a development rights agreement under subsection (13), or, subject to subsection (15), the termination of a development rights agreement under subsection (1), the state land use agency shall prepare and record a lien, if any, against the property formerly subject to the development rights agreement for the total amount of the allocated tax credit of the last 7 years, including the year of termination, received by the owner under section 36109, attributable to the property formerly subject to the development rights agreement. The lien shall be without interest or penalty and is payable subject to subsection (7).

(9) Upon termination of a development rights agreement, the state land use agency shall notify the department of treasury for their records.

(10) Until October 1, 2000, the proceeds from lien payments made under this part shall be used by the state land use agency to administer this part and, pursuant to section 36111b, to purchase development rights on farmland that does not necessitate direct purchase of the fee interest in the land. Beginning on October 1, 2000, the unappropriated proceeds from lien payments made under this part shall be forwarded to the state treasurer for deposit in the agricultural preservation fund created in section 36202. On October 1, 2000, all unexpended proceeds from lien payments made under this part that are held by the state shall be transferred to the agricultural preservation fund created in section 36202.

(11) Upon the relinquishment of all of the farmland under section 36110(2) or a portion of the farmland under section 36110(3), the state land use agency shall prepare and record a lien against the property formerly subject to a development rights agreement in an amount calculated as follows:

(a) Establishing a term of years by multiplying 7 by a fraction, the numerator of which is the number of years the farmland was under the development rights agreement, including any extensions, and the denominator of which is the number representing the term of years of that agreement, including any extensions.

(b) The lien amount equals the total amount of the allocated tax credit claimed attributable to that development rights agreement in the immediately preceding term of years as determined in subdivision (a).

(12) When a lien is paid under this section, the state land use agency shall prepare and record a discharge of lien with the register of deeds in the county in which the land is located. The discharge of lien shall specifically state that the lien has been paid in full, that the lien is discharged, that the development rights agreement and accompanying contract are terminated, and that the state has no further interest in the land under that agreement.

(13) An owner of farmland, upon written request to the state land use agency on or before April 1, 1997, may elect to have the remaining term of the development rights agreement reduced to 7 years if the farmland has been subject to that development rights agreement for 10 or more years. If the farmland has not been subject to a development rights agreement for 10 or more years, an owner of farmland may, upon written request to the state land use agency on or before April 1, 1997, elect to have the term of the development rights agreement reduced to 17 years from the initial year of enrollment.

(14) A farmland development rights agreement is automatically relinquished when the farmland becomes subject to an agricultural

conservation easement or purchase of development rights under section 36111b or 36206.

(15) If, upon expiration of the term of a farmland development rights agreement, the farmland becomes subject to an agricultural conservation easement or purchase of development rights under section 36111b or 36206 or if a farmland development rights agreement is automatically relinquished under subsection (14), the farmland is not subject to a lien under this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 173, Imd. Eff. Oct. 9, 1995 ;-- Am. 1996, Act 233, Imd. Eff. June 5, 1996 ;-- Am. 1996, Act 567, Imd. Eff. Jan. 16, 1997 ;-- Am. 2000, Act 262, Imd. Eff. June 29, 2000 ;-- Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36111a Relinquishment of development rights agreement; conditions; "economic viability" defined.
Sec. 36111a. (1) Upon request from a landowner and a local governing body, the state land use agency shall relinquish farmland from the development rights agreement if 1 or both of the following occur:

(a) The local governing body determines 1 or more of the following:

(i) That, because of the quality of the farmland, agricultural production cannot be made economically viable with generally accepted agricultural and management practices.

(ii) That surrounding conditions impose physical obstacles to the agricultural operation or prohibit essential agricultural practices.

(iii) That significant natural physical changes in the farmland have occurred that are generally irreversible and permanently limit the productivity of the farmland.

(iv) That a court order restricts the use of the farmland so that agricultural production cannot be made economically viable.

(b) The local governing body determines that the relinquishment is in the public interest and that the farmland to be relinquished meets 1 or more of the following conditions:

(i) The farmland is to be owned, operated, and maintained by a public body for a public use.

(ii) The farmland had been zoned for the immediately preceding 3 years for a commercial or industrial use.

(iii) The farmland is zoned for commercial or industrial use and the relinquishment of the farmland will be mitigated by 1 of the following means:

(A) For every 1 acre of farmland to be relinquished, an agricultural conservation easement will be acquired over 2 acres of farmland of comparable or better quality located within the same local unit of government where the farmland to be relinquished is located. The agricultural conservation easement shall be held by the local unit of government where the farmland to be relinquished is located or, if the local governing body declines to hold the agricultural conservation easement, by the state land use agency.

(B) If an agricultural conservation easement cannot be acquired as provided under sub-subparagraph (A), there will be deposited into the state agricultural preservation fund created in section 36202 an amount equal to twice the value of the development rights to the farmland being relinquished, as determined by a certified appraisal.

(iv) The farmland is to be owned, operated, and maintained by an organization exempt from taxation under section 501(c)(3) of the internal revenue code of 1986, 26 U.S.C. 501, and the relinquishment will be beneficial to the local community.

(2) In determining public interest under subsection (1)(b), the governing body shall consider all of the following:

(a) The long-term effect of the relinquishment upon the preservation and enhancement of agriculture in the surrounding area, including any nonfarm encroachment upon other agricultural operations in the surrounding area.

(b) Any other reasonable and prudent site alternatives to the farmland to be relinquished.

(c) Any infrastructure changes and costs to the local governmental unit that will result from the development of the farmland to be relinquished.

(3) If a landowner's relinquishment application under this section is denied by the local governing body, the landowner may appeal that denial to the state land use agency. In determining whether to grant the appeal and approve the relinquishment, the state land use agency shall follow the criteria established in subsection (1)(a) or follow the criteria in subsection (1)(b) and consider the factors described in subsection (2).

(4) The state land use agency shall review an application approved by the local governing body to verify that the criteria provided in subsection (1)(a) were met or the criteria in subsection (1)(b) were met and the factors in subsection (2) were considered. If the local governing body did not render a determination in accordance with this subsection, the state land use agency shall not relinquish the farmland from the development rights agreement.

(5) A local governing body may elect to waive its right to make a relinquishment determination under subsection (1)(a) or (b) by providing written notice of that election to the state land use agency. The written notice shall grant the state land use agency sole authority to grant or deny the application as provided in this section.

(6) A decision by the state land use agency to grant or deny an application for relinquishment under this section that adversely affects a

land owner or a local governing body is subject to a contested case hearing as provided under this act and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(7) As used in this section, “economic viability” means that the cash flow returning to the farming operation is positive. The local governing body or state land use agency shall evaluate an application for relinquishment, and determine the economic viability of the affected farming operation, by doing all of the following:

(a) Estimating crop, livestock, or product value of the farmland using locally accepted production methods and local United States department of agriculture yield capabilities for the specific soil types and average price for crop, livestock, or product over the past 5 years.

(b) Adding average yearly property tax credits afforded by the development rights agreement over the immediately preceding 5-year period.

(c) Subtracting estimated expenses directly attributed to the production of the crop, livestock, or product, including, but not limited to, seed, fertilizer, insecticide, building and machinery repair, drying, trucking, and property taxes.

(d) Subtracting the estimated cost of the operator's labor and management time at rates established by the United States department of agriculture for “all labor”, Great Lakes area, as published in the United States department of agriculture labor reports.

(e) Subtracting typical capital replacement cost per acre of nonland assets using a useful life depreciation rate for comparable farming operations.

History: Add. 1996, Act 233, Imd. Eff. June 5, 1996 ;-- Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36111b Development rights or acquisition of agricultural conservation easements; application; selection criteria and scoring system; notification; points; determination of development rights value; approval by director; installment purchase plan; provisions for protection of farmland; termination of easements; value development rights in event of condemnation.

Sec. 36111b. (1) An application submitted under section 36111(10) for purchase of development rights or acquisition of agricultural conservation easements shall be evaluated and ranked according to selection criteria and a scoring system approved by the commission of agriculture. In developing a point system for selecting the parcels for purchase of development rights or the acquisition of agricultural conservation easements, the department of agriculture shall seek the assistance of the department of natural resources, Michigan state university, the United States department of agriculture-natural resources conservation service, and other appropriate professional and industry organizations. The selection criteria shall give consideration to the quality and physical characteristics of the parcel as well as surrounding land uses and threat of development.

(2) The department of agriculture shall prepare a notification to those individuals whose farmland development rights agreements are expiring in the year of application or expiring 1 year after the year of application. The notice shall be completed not less than 90 days before an application deadline set by the department of agriculture and shall include written information and details regarding the program. Applications for the purchase of development rights or the acquisition of agricultural conservation easements shall be submitted to the department of agriculture by the owner of that land and must include written support by the local governing body.

(3) In developing a scoring system, points shall be given to farmland that meets 1 or more of the following criteria, with subdivision (a) given priority over subdivisions (b) to (e):

(a) Productive capacity of farmland suited for the production of feed, food, and fiber, including, but not limited to, prime or unique farmland

or farmland of local importance, as defined by the United States department of agriculture-natural resources conservation service.

(b) Lands that are enrolled under this act.

(c) Prime agricultural lands that are faced with development pressure that will permanently alter the ability for that land to be used for productive agricultural activity.

(d) Parcels that would complement and are part of a documented, long-range effort or plan for land preservation by the local governing body.

(e) Parcels with available matching funds from the local governing body, private organizations, or other sources.

(4) For purposes of subsections (7) and (8), the value of development rights in the purchase of development rights or the acquisition of agricultural conservation easements shall be determined by subtracting the current fair market value of the property without the development rights from the current fair market value of the property with all development rights.

(5) The director of the department of agriculture shall approve individual parcels for the purchase of development rights or the acquisition of agricultural conservation easements based upon the adopted selection criteria and scoring process. The commission of agriculture shall approve a method to establish the price to be paid for the purchase of development rights or the acquisition of agricultural conservation easements, such as via appraisal, bidding, or a formula-based process and shall establish the maximum price to be paid on a per purchase basis from the lien fund. The director of the department of agriculture, after negotiations with the landowner, shall approve the price to be paid for purchase of development rights or the acquisition of the agricultural conservation easements. Proper releases from mortgage holders and lienholders must be obtained and executed to ensure that all development rights are purchased free and clear of all encumbrances.

(6) The department may purchase the agricultural conservation easement through an installment purchase agreement under terms negotiated by the department.

(7) An agricultural conservation easement shall include appropriate provisions for the protection of the farmland and other unique and critical benefits. An agricultural conservation easement may be terminated if the land, as determined by the commission of agriculture, meets 1 or more of the criteria described in section 36111a(1)(a) to (d). An agricultural conservation easement or portion of an agricultural conservation easement shall not be terminated unless approved by the local governing body and the commission of natural resources and the commission of agriculture. If an agricultural conservation easement is terminated, the current fair market value of the development rights, at the time of termination, shall be paid to the state land use agency. Any payment received by the state land use agency under this part shall be used to acquire agricultural conservation easements on additional farmland under section 36111(10).

(8) Whenever a public entity, authority, or political subdivision exercises the power of eminent domain and condemns land enrolled under this act, the value of the land shall include the value of development rights covered by development rights agreements or agricultural conservation easements. If the development rights have been purchased or agricultural conservation easements have been acquired under section 36111(10), the value of the development rights at the time of condemnation shall be paid to the state land use agency and any payment received by the state land use agency shall be used to acquire agricultural conservation easements on additional land under section 36111(10).

History: Add. 1996, Act 233, Imd. Eff. June 5, 1996 ;-- Am. 2000, Act 262, Imd. Eff. June 29, 2000
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Popular Name: NREPA

324.36112 Relinquishment of open space development rights easement pursuant to MCL 324.36105.

Sec. 36112. (1) An open space development rights easement pursuant to section 36105 shall be relinquished by the state at the expiration of the term of the easement unless renewed with the consent of the owner of the land. If the owner of the land has complied with the requirements of this part regarding open space development rights easements, the owner is entitled to automatic renewal of the agreement upon written request of the landowner.

(2) An open space development rights easement may be relinquished by the state prior to a termination date contained in the instrument as follows:

(a) At any time the state determines that the development of the land is in the public interest and in agreement with the owner of the land.

(b) The owner of the land may submit an application to the local governing body where the original application for an open space development rights easement was submitted requesting that the development rights easement be relinquished. The application shall be made on a form prescribed by the state land use agency. The request for relinquishment shall be processed and shall be subject to the provisions as provided in sections 36104 and 36105 for review and approval.

(3) If the request for relinquishment of the development rights easement is approved, the state land use agency shall prepare an instrument providing for the relinquishment of the open space development rights easement, subject to subsections (4), (5), (6), and (7), and shall record it with the register of deeds of the county in which the land is situated.

(4) At the time a development rights easement is to be relinquished pursuant to subsection (2)(b), the state land use agency shall cause to be prepared and recorded a lien against the property formerly subject to the development rights easement for the total amount of the ad valorem taxes not paid on the development rights during the period it was held by the state, if any. The lien shall provide that interest at the rate of 6% per annum compounded shall be added to the ad valorem taxes not paid from the time the exemption was received until it is paid.

(5) The lien shall become payable to the state by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former open space development rights easement.

(6) Upon the termination of the open space development rights easement pursuant to subsection (2)(a), the development rights revert back to the owner without penalty or interest.

(7) Upon the natural termination of the open space development rights easement pursuant to subsection (1), the state land use agency shall cause to be prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the last 7 years ad valorem taxes not paid on the development rights during the period it was held by the state, if any. The lien shall be without penalty or interest and shall be payable subject to subsection (5).

(8) A copy of the renewal or relinquishment of an open space development rights easement shall be sent to the local governing body's assessing office.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36113 Relinquishment of open space development rights easement pursuant to MCL 324.36106.

Sec. 36113. (1) An open space development rights easement pursuant to section 36106 shall be relinquished by the local governing body at the expiration of the term of the easement unless renewed with the consent of the owner of the land if the owner of the land has complied with the requirements of this part regarding open space development rights easements, the owner shall be entitled to automatic renewal of the agreement upon written request of the landowner.

(2) An open space development rights easement may be relinquished by the local governing body prior to a termination date contained in the instrument as follows:

(a) At any time the local governing body determines that the development of the land is in the public interest and in agreement with the owner of the land.

(b) The owner of the land may submit an application to the local governing body having jurisdiction requesting that the development rights easement be relinquished. The application shall be made on a form prescribed by the state land use agency. The request for relinquishment shall be processed and shall be subject to the provisions as provided in section 36106 for review and approval.

(3) If the request for relinquishment of the open space development rights easement is approved, the local governing body shall prepare an instrument providing for the relinquishment of the open space development rights easement, subject to subsections (4), (5), (6), and (7), and shall record it with the register of deeds of the county in which the land is situated.

(4) At the time an open space development rights easement is to be relinquished pursuant to subsection (2)(b), the local governing body shall cause to have prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the ad valorem taxes not paid on the development rights during the period it was held by the local governing body, if any. The lien shall provide that interest at the rate of 6% per annum compounded shall be added to the ad valorem taxes exemption from the time granted until the lien is paid.

(5) The lien shall become payable to the local governing body by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former open space development rights easement.

(6) Upon the termination of the open space development rights easement pursuant to subsection (2)(a), the development rights revert back to the owner without penalty or interest and the development rights easement upon the land expire.

(7) Upon the natural termination of the open space development rights easement pursuant to subsection (1), the local governing body shall cause to be prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the last 7 years ad valorem taxes not paid on the development rights during the period it was held by the local governing body, if any. The lien shall be without penalty or interest and will be payable subject to subsection (5).

(8) A copy of the renewal or relinquishment of an open space development rights easement shall be sent to the local assessing office.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36114 Injunction; penalty.

Sec. 36114. If the owner or a successor in title of the land upon which a development rights agreement or easement has been recorded pursuant to this part changes the use of the land to a prohibited use or knowingly sells the land for a use other than those permitted in the development rights agreement or easement without first pursuing the provisions in sections 36110(2), 36111, 36112, and 36113, or receiving permission of the state land use agency, he or she may be enjoined by the state acting through the attorney general, or by the local governing body acting through its attorney, and is subject to a civil penalty for actual damages, which in no case shall exceed double the value of the land as established at the time the application for the development rights agreement or easement was approved.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451

Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36115 Exchange of information.

Sec. 36115. All departments and agencies of state government shall cooperate with the state land use agency in the exchange of information concerning projects and activities that might jeopardize the preservation of land contemplated by this part. The state land use agency shall periodically advise the departments and agencies of state government of the location and description of land upon which there exists development rights agreements or easements and the departments and agencies shall harmonize their planning and projects consistent with the purposes of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36116 Rules.

Sec. 36116. The state land use agency may promulgate rules for the administration of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

324.36117 Report; recommendations to legislature.

Sec. 36117. The state land use agency shall prepare a report and make recommendations to the legislature not later than January 30, 1976, for a state plan for preserving open space lands, agricultural and horticultural lands, unique or critical land areas, recreational lands, and historic lands.
History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Farmland and Open Space
Popular Name: NREPA

Part 362

AGRICULTURAL PRESERVATION FUND

324.36201 Definitions.
Sec. 36201. As used in this part:

(a) "Agricultural conservation easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

(b) "Agricultural use" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program, a federal conservation reserve program, or a wetland reserve program. Agricultural use does not include the management and harvesting of a woodlot.

(c) "Board" means the agricultural preservation fund board created in section 36204.

(d) "Commission" means the commission of agriculture.

(e) "Department" means the department of agriculture.

(f) "Development" means an activity that materially alters or affects the existing conditions or use of any land in a manner that is inconsistent with an agricultural use.

(g) “Development rights” means an interest in land that includes the right to construct a building or structure, to improve land for development, or to divide a parcel for development purposes.

(h) “Farmland” means 1 or more of the following:

(i) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.

(ii) A farm of 5 acres or more in 1 ownership, but less than 40 acres, with 51% or more of the land area devoted to an agricultural use, that has produced a gross annual income from agriculture of $200.00 per year or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set-aside program or a federal conservation reserve program is considered to have produced a gross annual income from agriculture of $200.00 per year or more per acre of cleared and tillable land.

(iii) A farm designated by the department of agriculture as a specialty farm in 1 ownership that has produced a gross annual income of $2,000.00 or more from an agricultural use. Specialty farms include, but are not limited to, greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.

(iv) Parcels of land in 1 ownership that are not contiguous but which constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland may be included in an application under this part.

(i) “Fund” means the agricultural preservation fund created in section 36202.

(j) “Grant” means a grant for the purchase of an agriculture conservation easement under this part.

(k) “Owner” means a person having a freehold estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor.

(l) “Permitted use” means any use expressly authorized within an agriculture conservation easement consistent with the farming operation or that does not adversely affect the productivity of the farmland. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced by the farm operator for at least 3 of the immediately preceding 5 years. Permitted use includes oil and gas exploration and extraction, but does not include other mineral development that is inconsistent with an agricultural use.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000
Popular Name: Act 451
Popular Name: NREPA

324.36202 Agricultural preservation fund; creation; disposition; money remaining in fund; expenditures.
Sec. 36202. (1) The agricultural preservation fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund, including federal funds, other state revenues, gifts, bequests, and other donations. The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) Money in the fund may be expended, upon appropriation, following approval of the board and the commission, as follows:

(a) Not more than $900,000.00 annually for the administrative costs of the department and the board in implementing this part and part 361.

However, if deposits into the fund during any given fiscal year exceed $11,250,000.00, up to 8% of the deposits may be expended for administrative costs pursuant to this subdivision.

(b) After expenditures for the administrative costs under subdivision (a), money in the fund may be used to provide grants to local units of government pursuant to section 36203.

(c) After expenditures under subdivisions (a) and (b) have been made, if the amount of money remaining in the fund exceeds $5,000,000.00, money in the fund may be used pursuant to part 361 for the purchase of development rights to farmland or the acquisition of agricultural conservation easements.

(5) Expenditures of money in the fund as provided in this part are consistent with the state's interest in preserving farmland and are declared to be for an important public purpose.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000 ;-- Am. 2004, Act 75, Imd. Eff. Apr. 21, 2004
Popular Name: Act 451
Popular Name: NREPA

324.36203 Purchase of agricultural conservation easements; establishment of grant program; application; eligibility; form; contents; forwarding to board.
Sec. 36203. (1) The department shall establish a grant program to provide grants to eligible local units of government for the purchase of agricultural conservation easements.

(2) A grant application shall be submitted by the local unit of government applying for the grant. A local unit of government is eligible to submit a grant application under this section if both of the following requirements have been met:

(a) The local unit of government has adopted a development rights ordinance providing for a purchase of development rights program pursuant to the county zoning act, 1943 PA 183, MCL 125.201 to

125.240, the township zoning act, 1943 PA 184, MCL 125.271 to 125.310, or the city and village zoning act, 1921 PA 207, MCL 125.581 to 125.600, that contains all of the following:

(i) An application procedure.

(ii) The criteria for a scoring system for parcel selections within the local unit of government.

(iii) A method to establish the price to be paid for development rights, which may include an appraisal, bidding, or formula-based process.

(b) The local unit of government has adopted, within the last 10 years, a comprehensive land use plan that includes a plan for agricultural preservation or the local unit of government is included within a regional plan that was prepared within the last 10 years that includes a plan for agricultural preservation.

(3) An application for a grant shall be submitted on a form prescribed by the department. The grant application shall include at a minimum a list of the parcels proposed for acquisition of agricultural conservation easements, the size and location of each parcel, the amount of local matching funds, and the estimated acquisition value of the agricultural conservation easements.

(4) Upon receipt of grant applications pursuant to subsection (3), the department shall forward those grant applications to the board for consideration under section 36205.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000
Popular Name: Act 451
Popular Name: NREPA

324.36204 Agricultural preservation fund board; creation; membership; appointment; terms; quorum; compensation; expenses; election of chairperson and vice-chairperson; removal of member; vacancy.

Sec. 36204. (1) The agricultural preservation fund board is created within the department.

(2) The board shall consist of the following members:

(a) The director of the department or his or her designee.

(b) The director of the department of natural resources or his or her designee.

(c) Five individuals appointed by the governor as follows:

(i) Two individuals representing agricultural interests.

(ii) One individual representing conservation interests.

(iii) One individual representing development interests.

(iv) One individual representing the general public.

(d) In addition to the members described in subdivisions (a) to (c), the director of the department may appoint 2 individuals with knowledge and expertise in agriculture or land use, or local government, as nonvoting members.

(3) The members first appointed to the board shall be appointed within 60 days after the effective date of this section.

(4) Members of the board appointed under subsection (2)(c) and (d) shall serve for terms of 4 years or until a successor is appointed, whichever is later. However, of the members first appointed under subsection (2)(c), 1 shall be appointed for a term of 2 years, 2 shall be appointed for terms of 3 years, and 2 shall be appointed for terms of 4 years.

(5) A majority of the members of the board constitute a quorum for the transaction of business at a meeting of the board. A majority of the members present and serving are required for official action of the board.

(6) Members of the board shall serve without compensation. However, members of the board may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the board.

(7) The board shall annually elect a chairperson and a vice-chairperson from among its members.

(8) The board may remove a member of the board for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(9) A vacancy on the board shall be filled for the unexpired term in the same manner as the original appointment.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000
Popular Name: Act 451
Popular Name: NREPA

324.36205 Application; evaluation criteria; priority; determination of grant awards; amount; notification; report to commission; maximum expenditure; portion of acquisition cost to be provided by applicant or another person.
Sec. 36205. (1) An application submitted to the board under section 36203 shall be evaluated according to selection criteria established by the board. The criteria shall place a priority on the acquisition of agricultural conservation easements on farmland that meets 1 or more of the following:

(a) Farmland that has a productive capacity suited for the production of feed, food, and fiber.

(b) Farmland that would complement and is part of a documented, long-range effort or plan for land preservation by the local unit of government in which the farmland is located.

(c) Farmland that is located within an area that complements other land protection efforts by creating a block of farmland that is subject to an

agricultural conservation easement under this part or part 361, or a development rights agreement under part 361, or in which development rights have been acquired under part 361.

(d) Farmland in which a greater portion of matching funds or a larger percentage of the agricultural conservation easement value is provided by a local unit of government or sources other than the fund.

(e) Other factors considered important by the board.

(2) After reviewing grant applications for the acquisition of agricultural conservation easements and evaluating them according to the criteria established in subsection (1), the board shall determine which grants should be awarded and the amount of the grants. Upon making its determination, the board shall notify the department and shall submit a report containing this information to the commission.

(3) The board may establish a maximum amount per acre that may be expended with money from the fund for the purchase of agricultural conservation easements.

(4) A grant shall require that a portion of the cost of acquiring an agricultural conservation easement shall be provided by the applicant or another person.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000
Popular Name: Act 451
Popular Name: NREPA

324.36206 Distribution of grants to local units of government; condition; reviewing permitted uses; contribution of development rights; purchase by local unit of government through installment purchase agreement; joint holding by state and local unit of government; delegation of enforcement authority; transfer to property owner; tax credits under MCL 324.36109.
Sec. 36206. (1) After the board determines which grants should be awarded, and the amount of the grants, the department shall distribute the grants to the local units of government awarded the grants. The

department shall condition the receipt of a grant upon the department's approval of the agricultural conservation easements being acquired.

(2) In reviewing permitted uses contained within an agricultural conservation easement under subsection (1), the department shall consider all of the following:

(a) Whether the permitted uses adversely affect the productivity of farmland.

(b) Whether the permitted uses materially alter or negatively affect the existing conditions or use of the land.

(c) Whether the permitted uses result in a material alteration of an existing structure to a nonagricultural use.

(d) Whether the permitted uses conform with all applicable federal, state, and local laws and ordinances.

(3) The department may accept contributions of all or a portion of the development rights to 1 or more parcels of land, including a conservation easement or a historic preservation easement as defined in section 2140, as part of a transaction for the purchase of an agricultural conservation easement.

(4) A local unit of government that purchases an agricultural conservation easement with money from a grant may purchase the agricultural conservation easement through an installment purchase agreement under terms negotiated by the local unit of government.

(5) An agricultural conservation easement acquired under this part shall be held jointly by the state and the local unit of government in which the land subject to the agricultural conservation easement is located. However, the state may delegate enforcement authority of 1 or more agricultural conservation easements to the local units of government in which the agricultural conservation easements are located.

(6) An agricultural conservation easement acquired under this part may be transferred to the owner of the property subject to the agricultural conservation easement if the state and the local unit of government holding the agricultural conservation easement agree to the transfer and the terms of the transfer.

(7) Section 36109 provides for tax credits for an owner of farmland subject to an agricultural conservation easement under this section.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000 ;-- Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002
Popular Name: Act 451
Popular Name: NREPA

324.36207 Rules. Sec. 36207. The department may promulgate rules to implement this part.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000
Popular Name: Act 451
Popular Name: NREPA

FOREST RESTORATION PILOT PROJECT

324.50106 Purpose.
Sec. 50106. (1) The purpose of this part is to stimulate improved management and utilization of forest land and forest resources within this state as recommended by Jaakko Poyry and company, Helsinki, Finland, in Michigan's timber resource development project. Economic and community development opportunities based on the forest resource will be enhanced by ensuring adequate future high-quality timber supplies, increased employment opportunities, a diversified economy, and other economic benefits and the protection, maintenance, and enhancement of a productive and stable forest resource system for the public benefit of present and future generations.
(2) The primary purpose of this part is to demonstrate and improve the timber productivity of forest land within this state. Consistent with this purpose, the objective is to effect a utilization of waste material and determine the commercial feasibility of that waste material, as well as to improve all forest resources, such as fish and wildlife habitat and soil

resources, so that the overall effect is to improve the total forest resource system.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Subpart 2

FOREST RESTORATION PILOT PROJECT

324.50108 Forest restoration pilot project; purpose; sources of funding; allocation of funds.
Sec. 50108. (1) The department may fund a forest restoration pilot project or any other district created under this part to implement this part. The forest restoration pilot project may consist of the establishment and funding of the forest improvement district formed under this part.

(2) The department may fund the pilot project or any other district created pursuant to this part from funds appropriated annually by the legislature and from the following sources:

(a) General fund of the state.

(b) Grants from the federal government.

(c) Grants or gifts from private persons.

(d) Any other permissible source.

(3) When allocating available funds among proposed pilot projects, the department shall consider those projects that in its judgment will produce the greatest public benefit, giving consideration to all of the following factors:

(a) The need to demonstrate the potential commercial benefits of forest practices that can be recognized by the establishment of a forest improvement district.

(b) The need to demonstrate the potential benefits to long-term production, maintenance, and enhancement of the total forest resource system.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50144 Conversion of forest land to other use; procedures and criteria.

Sec. 50144. This subpart does not prevent forest land from being converted to any other use. A board shall establish the procedures and criteria for excluding land being converted or to be converted from the requirements of this subpart. The procedures and criteria shall conform with zoning ordinances and land use plans of any other political subdivision within which forest land of a district is located.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 505

MICHIGAN FOREST FINANCE AUTHORITY

324.50501 Purpose of part.

Sec. 50501. The purpose of this part and of the authority created by this part is to preserve existing jobs, create new jobs, and alleviate and prevent unemployment through the retention, promotion, and development of forestry and forest industries and to protect the health and vigor of forest resources by doing all of the following:

(a) Funding practices prescribed and approved by the department that intensify management of certain highly productive portions of this state's forest system.

(b) Implementing a system of forest management that is investment-oriented, economically efficient, and environmentally sound.

(c) Implementing a system of forest management that is consistent with principles of sustainable forestry and with part 525.

(d) Promoting a stable and continuing supply of timber for future economic expansion.

(e) Providing dependable funding of scheduled forest management operations.

(f) Promoting effective investment of revenues from timber sales for high future returns.

(g) Facilitating timely performance of forest management operations.

(h) Earning additional revenues for forest management from timber sales.

(i) Improving existing timber stands and establishing new stands of trees.

(j) Providing for reforestation, forest protection, and timber stand improvement.

(k) Providing an additional funding source for the purposes described in this section from indebtedness secured with revenues generated from future sale of timber harvested from state tax reverted lands, from lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and from other lands as provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 124, Imd. Eff. May 28, 2004
Popular Name: Act 451
Popular Name: NREPA

324.50502 Definitions.

Sec. 50502. As used in this part:

(a) “Authority” means the Michigan forest finance authority created in section 50503.

(b) “Board” means the board of directors of the Michigan forest finance authority, except where the context clearly requires a different definition.

(c) “Bonds” means bonds of the authority issued as provided in this part.

(d) “Notes” means notes of the authority issued as provided in this part, including commercial paper.

(e) “State forester” means an employee of the department who has a 4-year degree in forest management from an accredited college or university and experience in forest management and who is designated as the state forester by the director.

(f) “Sustainable forestry” means that term as it is defined in section 52501.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 124, Imd. Eff. May 28, 2004
Popular Name: Act 451
Popular Name: NREPA

324.50503 Michigan forest finance authority; creation; exercise of powers, duties, and functions; handling of funds.
Sec. 50503. The Michigan forest finance authority is created as a body corporate within the department of natural resources and shall be administered under the supervision of the department but shall exercise its prescribed statutory power, duties, and functions independently of the department. The budgeting, procurement, and related functions of the authority shall be performed under the direction and supervision of the department. Funds of the authority shall be handled in the same manner and subject to the same provisions of law applicable to state funds or in a manner specified in a resolution of the authority authorizing the issuance of bonds and notes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50504 Board of directors; appointment; terms; oath; vacancy; persons subject to MCL 15.321 to 15.330; discharge of duties; policies and procedures; conducting business at public meetings; notice; quorum; actions of board; representative as voting member; chairperson.

Sec. 50504. (1) The authority shall be governed by a board of directors consisting of the director, the state treasurer, the director of the department of labor and economic growth, and 6 residents of the state, appointed by the governor with the advice and consent of the senate as follows:

(a) One individual shall represent the forest products industry within the state.

(b) One individual shall be a commercial logging contractor.

(c) One individual shall be an owner of nonindustrial, private forestland.

(d) One individual shall be from the wood products manufacturing industry.

(e) One individual shall represent hunters, anglers, and other outdoor recreation interests.

(f) One individual from a college or university in the state with knowledge and expertise in forest management.

(2) The 6 resident directors appointed under subsection (1)(a) to (f) shall serve terms of 3 years. In appointing the initial 6 resident members of the board, the governor shall designate 2 to serve for 3 years, 2 to serve for 2 years, and 2 to serve for 1 year.

(3) Upon appointment to the board under subsection (1), and upon the taking and filing of the constitutional oath of office, a member of the board shall enter the office and exercise the duties of the office.

(4) Regardless of the cause of a vacancy on the board, the governor shall fill a vacancy in the office of a member of the board by appointment with the advice and consent of the senate. A vacancy shall be filled for the balance of the unexpired term of the office. A member of the board shall hold office until a successor has been appointed and has qualified.

(5) Members of the board and officers and employees of the authority are subject to 1968 PA 317, MCL 15.321 to 15.330. A member of the board or an officer, employee, or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the board or an officer, employee, or agent of the authority, when acting in good faith, may rely upon the opinion of counsel for the authority, upon the report of an independent appraiser selected with reasonable care by the board, or upon financial statements of the authority represented to the member of the board, officer, employee, or agent to be correct by the officer of the authority having charge of its books or account, or stated in a written report by the auditor general or a certified public accountant or the firm of the accountants fairly to reflect the financial condition of the authority.

(6) The board shall organize and make its own policies and procedures. The board shall conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of each meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Five members of the board constitute a quorum for the transaction of business. An action of the board requires a concurring vote by 5 members of the board. A state officer who is a member of the board may designate a representative from his or her department to serve instead of that state officer as a voting member of

the board for 1 or more meetings. The state treasurer shall serve as chairperson of the board.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 124, Imd. Eff. May 28, 2004
Popular Name: Act 451
Popular Name: NREPA

324.50505 Election of chairperson and vice-chairperson; state forester as executive director; qualifications, duties, and compensation of employees; delegation of powers or duties; rights and interests of authority; annual report; audits; records.
Sec. 50505. (1) The authority shall elect a chairperson and a vice-chairperson from among its members. The state forester shall serve as the executive director of the authority. The authority may employ legal and technical experts and other officers, agents, or employees, permanent or temporary, paid from the funds of the authority. The authority shall determine the qualifications, duties, and compensation of those it employs, but an employee shall not be paid a higher salary than the director. The authority may delegate to 1 or more members, officers, agents, or employees any powers or duties it considers proper.

(2) The authority shall contract with the department for the purpose of maintaining and improving the rights and interests of the authority.

(3) The authority shall annually file a written report on its activities of the last year with the legislature. This report shall be submitted not later than 270 days following the end of the fiscal year. This report shall specify the amount and source of revenues received, the status of investments made, and a description of the forest management practices undertaken by the department with proceeds of bonds sold under this part.

(4) The accounts of the authority shall be subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general. Records shall be maintained according to generally accepted auditing principles.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50506 Powers of board.

Sec. 50506. Except as otherwise provided in this part, the board may do all things necessary or convenient to implement the purposes, objectives, and provisions of this part, and the purposes, objectives, and powers delegated to the board by other laws or executive orders, including, but not limited to, all of the following:

(a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws at its pleasure.

(b) Sue and be sued in its own name and plead and be impleaded.

(c) Borrow money and issue negotiable revenue bonds and notes pursuant to this part.

(d) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers.

(e) With the prior consent of the department, solicit and accept gifts, grants, loans, and other aid from any person, or the federal, state, or local government or any agency of the federal, state, or local government, or participate in any other way in a federal, state, or local government program.

(f) Acquire standing timber, timber cutting rights, and the state's interest in contracts granting cutting rights, on state tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law, to be used for any of the purposes provided in this part subject to the restrictions of section 50509. However, the state shall not convey to the authority fee title to any state forest lands.

(g) Procure insurance against loss in connection with the property, assets, or activities of the authority.

(h) Invest money of the authority, at the board's discretion, in instruments, obligations, securities, or property determined proper by the board, and name and use depositories for its money.

(i) Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, and auditors for rendering professional financial assistance and advice payable out of any money of the authority, subject to the restrictions of section 50507.

(j) Indemnify and procure insurance indemnifying members of the board from personal loss or accountability from liability asserted by a person on bonds or notes of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the authority.

(k) Do all other things necessary or convenient to achieve the objectives and purposes of the authority, this part, rules promulgated under this part, or other laws that relate to the purposes and responsibilities of the authority.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 124, Imd. Eff. May 28, 2004
Popular Name: Act 451
Popular Name: NREPA

324.50507 Financing forest management operations and practices; guidelines, rules, and objectives; application of funds; interim procedure; annual list of activities and practices; projection of probable default; contracts for cutting and sale of timber; forest development fund; audit.

Sec. 50507. (1) The authority shall finance only forest management operations and practices consistent with part 525 that follow the guidelines, rules, and objectives prescribed and approved by the

department as these guidelines, rules, and objectives are amended by the department.

(2) Funds managed by the authority shall be applied in a manner consistent with part 525 and the land management planning policies of the department on lands that have been identified for forest management practices. In the absence of an approved state forest management plan covering a candidate area, an interim procedure, as adopted by the department, shall be used to assure that all forest values have been considered in selecting sites for investment with funds of the authority. The department shall annually submit a list of activities and practices allocated from the funds generated under this part for the board's review and determination of consistency with the purposes of this part.

(3) The executive director of the authority shall notify the department if the authority projects a probable default on any bonds or notes issued by the authority, and within 1 year of receipt of the notification, or within less than 1 year, if the notification indicates a shorter time period is necessary to avoid a default, the department shall identify and convey to the authority sufficient timber on tax reverted lands to enable the authority to avoid the projected default and to provide for timely payment of principal of and interest on the authority's bonds or notes. The authority may only issue contracts for the cutting and sale of timber that has been conveyed to the authority under this section to avoid a default on any bonds or notes issued by the authority. The determination of the board as to the need to cut and sell timber is conclusive. Contracts for the cutting and sale of timber shall be consistent with part 525 and with the guidelines, rules, and objectives prescribed by the department.

(4) The authority shall establish a fund designated as the “forest development fund”. Any money on hand or received in the future from bond proceeds and from contracts for the cutting and sale of timber on tax reverted lands shall be deposited in the forest development fund. In addition, this fund may receive revenues from any other source. The authority shall use money in the forest development fund for 1 or more of the following:

(a) To provide for the payment of principal of and interest on any bonds or notes issued by the authority.

(b) For reforestation, forest protection, and timber stand improvement.

(c) To obtain and maintain certification of sustainable forestry standards in the state forest under section 52505.

(d) For any other purposes authorized by this part.

(5) The auditor general shall audit the expenditures of the forest development fund at least once every 3 years.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 124, Imd. Eff. May 28, 2004
Popular Name: Act 451
Popular Name: NREPA

324.50508 Department as agent for authority; conveyance of state's interest in contracts granting timber cutting rights; deposit of money received; conveyance of title to timber.
Sec. 50508. (1) Except as provided in section 50507(3), the department shall act as the agent for the authority in contracting for the cutting and sale of timber or other forest management operations and practices undertaken by the authority.

(2) The state's interest in all existing and future contracts granting timber cutting rights on state tax reverted lands are conveyed to the authority to be used for any of the purposes of this part subject to the restrictions of this part. The money received by the state from existing or future contracts for the cutting and sale of timber on state tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law shall be deposited in the forest development fund and utilized as provided in section 50507(4).

(3) In order to provide for additional security for indebtedness of the authority, the department may convey to the authority title to timber on all or any portion of tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law. The form of conveyance shall be approved by the attorney general and by resolution of the state administrative board. If the authority receives title to any timber, it may release and reconvey timber on state tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law if requested by the department, and the reconveyance from the authority to the department will not cause the authority to default on any obligation or covenant contained in any resolution of the authority authorizing issuance of bonds or notes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 124, Imd. Eff. May 28, 2004
Popular Name: Act 451
Popular Name: NREPA

324.50509 Bonds and notes generally; expenses; expenditures.
Sec. 50509. (1) The authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the authority. Bonds and notes of the authority are not a debt or liability of the state and do not create or constitute any indebtedness, liability, or obligations of the state or constitute a pledge of the faith and credit of the state. All authority bonds and notes shall be payable solely from revenues or funds pledged or available for their payment as authorized in this part. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal of and the interest on the bond or note only from revenues or funds of the authority pledged for the payment of principal and interest and that the state is not obligated to pay that principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond or note.

(2) All expenses incurred in carrying out this part shall be payable solely from revenues or funds provided or to be provided under this part. This part does not authorize the authority to incur any indebtedness or liability on behalf of or payable by the state.

(3) Any revenues or funds available to the authority that are not necessary to pay principal of or interest on any outstanding bonds or notes of the authority or which are not required to be deposited in a fund created to secure the bonds or notes of the authority or required to provide for the funding of any other matters required by a resolution authorizing the issuance of bonds or notes of the authority shall be expended to fund forest management programs in a manner prescribed by the department. Any money derived from the proceeds of bonds or notes shall be expended by the authority in the manner prescribed in the part and the resolution authorizing such indebtedness.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50510 Bonds and notes; purposes; payment; requirements; signature of board member or office of authority; sale of bonds or notes; applicability of other laws; interest rate agreement.
Sec. 50510. (1) The authority may issue from time to time bonds or notes in principal amounts the authority considers necessary to provide funds for any purpose, including, but not limited to, all of the following:

(a) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the authority whether the bonds or notes or interest to be funded or refunded have or have not become due.

(b) The establishment or increase of reserves to secure or to pay authority bonds or notes or interest on those bonds or notes.

(c) The payment of interest on the bonds or notes for a period as the authority determines.

(d) The payment of all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The bonds or notes of the authority shall not be a general obligation of the authority but shall be payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the resolution authorizing the bond or note.

(3) The bonds or notes of the authority:

(a) Shall be authorized by resolution of the authority.

(b) Shall bear the date or dates of issuance.

(c) May be issued as either tax-exempt bonds or notes or taxable bonds or notes for federal income tax purposes.

(d) Shall be serial bonds, term bonds, or term and serial bonds.

(e) Shall mature at such time or times not exceeding 30 years from the date of issuance.

(f) May provide for sinking fund payments.

(g) May provide for redemption at the option of the authority for any reason or reasons.

(h) May provide for redemption at the option of the bondholder for any reason or reasons.

(i) Shall bear interest at a fixed or variable rate or rates of interest per annum or at no interest.

(j) Shall be registered bonds, coupon bonds, or both.

(k) May contain a conversion feature.

(l) May be transferable.

(m) Shall be in the form, denomination or denominations, and with the other provisions and terms as is determined necessary or beneficial by the authority.

(4) If a member of the board or any officer of the authority whose signature or facsimile of his or her signature appears on the note, bond, or coupon ceases to be a member or officer before the delivery of that note or bond, the signature shall continue to be valid and sufficient for all purposes, as if the member or officer had remained in office until the delivery.

(5) Bonds or notes of the authority may be sold at a public or private sale at the time or times, at the price or prices, and at a discount as the authority determines. Bonds and notes of the authority are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The bond or note of the authority is not required to be filed under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818.

(6) The issuance of bonds and notes under this section is subject to the agency financing reporting act.

(7) For the purpose of more effectively managing its debt service, the authority may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the authority.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2002, Act 387, Imd. Eff. May 30, 2002
Popular Name: Act 451
Popular Name: NREPA

324.50511 Refunding bonds or notes.

Sec. 50511. (1) The authority may provide for the issuance of bonds or notes in the amounts the authority considers necessary for the purpose of refunding bonds or notes of the authority then outstanding, including the

payment of any redemption premium and interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of these bonds or notes. The proceeds of bonds or notes issued for the purpose of refunding outstanding bonds or notes may be applied by the authority to the purchase or retirement at maturity or redemption of outstanding bonds or notes either on the earliest or subsequent redemption date, and pending such applications, may be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date or dates determined by the authority. Pending such application and subject to agreements with noteholders or bondholders, the escrowed proceeds may be invested and reinvested in the manner the authority determines, maturing at the date or times as appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, on the outstanding bonds or notes to be refunded. After the terms of the escrow have been fully satisfied and carried out, the balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment of the proceeds shall be returned to the authority for use by the authority in any lawful manner.

(2) In the resolution authorizing bonds or notes to refund bonds or notes, the authority may provide that the bonds or notes to be refunded shall be considered paid when there has been deposited in escrow, money or investment obligations that would provide payments of principal and interest adequate to pay the principal and interest on the bonds to be refunded, as that principal and interest becomes due whether by maturity or prior redemption and that, upon the deposit of the money or investment obligations, the obligations of the authority to the holders of the bonds or notes to be refunded shall be terminated except as to the rights to the money or investment obligations deposited in trust.

(3) The authority shall not have outstanding at any time bonds or notes in an aggregate principal amount exceeding $20,000,000.00 excluding bonds or notes issued to refund outstanding bonds or notes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50512 Security to assure timely payment of bond or note.
Sec. 50512. (1) The authority may authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, and any other transaction to provide security to assure timely payment of a bond or note.

(2) The authority may authorize payment from the proceeds of the notes or bonds, or other funds available, of the cost of issuance including, but not limited to, fees for placement, charges for insurance, letters of credit, lines of credit, remarketing agreements, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of notes or bonds.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50513 Bonds or notes; authority of board member, executive director, or other officer of authority.
Sec. 50513. Within limitations that shall be contained in the issuance or authorization resolution of the authority, the authority may authorize a member of the board, the executive director, or other officer of the authority to do 1 or more of the following:

(a) Sell and deliver, and receive payment for notes or bonds.

(b) Refund notes or bonds by the delivery of new notes or bonds whether or not the notes or bonds to be refunded have matured or are subject to redemption.

(c) Deliver notes or bonds, partly to refund notes or bonds and partly for any other authorized purpose.

(d) Buy notes or bonds so issued and resell those notes or bonds.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of

issuance, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(f) Direct the investment of any and all funds of the authority.

(g) Approve the terms of a contract, including, but not limited to, a contract for the sale or cutting of timber, and execute and deliver the contract subject to the restrictions of this part.

(h) Approve terms of any insurance contract, agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, an agreement to manage payment, revenue, or interest rate exposure, or any other transaction to provide security to assure timely payment of a bond or note.

(i) Perform any power, duty, function, or responsibility of the authority.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50514 Resolution authorizing bonds or notes; provisions.
Sec. 50514. A resolution authorizing bonds or notes may provide for all of the following that shall be part of the contract with the holders of the bonds or notes:

(a) A pledge to any payment or purpose all or any part of authority revenues or assets to which its right then exists or may later come to exist, and of money derived from the revenues or assets, and of the proceeds of bonds or notes or of an issue of bonds or notes, subject to any existing agreements with bondholders or noteholders. The authority shall not mortgage or grant a security interest in or otherwise pledge its ownership rights in standing timber. This subdivision does not prohibit the authority from pledging any revenues derived from the sale of timber or any contracts for the cutting of timber.

(b) A pledge of a loan, grant, or contribution from the federal or state government.

(c) The establishment and setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds subject to this part.

(d) Authority for and limitations on the issuance of additional bonds or notes for the purposes provided for in the resolution and the terms upon which additional notes or bonds may be issued and secured.

(e) The procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent to the amendment or abrogation, and the manner in which the consent may be given.

(f) A contract with the bondholders as to the custody, collection, securing, investment, and payment of any money of the authority. Money of the authority and deposits of money may be secured in the manner determined by the authority. Banks and trust companies may give security for such deposits.

(g) Vest in a trustee, or a secured party, such property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise as the authority determines necessary or appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the right of the holders of bonds or notes of the authority to appoint a trustee under this part or to limit the rights, powers, and duties of the trustee.

(h) Provide to a trustee or the noteholders or bondholders remedies that may be exercised if the authority fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of bonds or notes, which may include any of the following:

(i) By mandamus or other suit, action, or proceeding at law or in equity, to enforce the rights of the bondholders or noteholders, and require the

authority to carry out any other agreements with the holders of those notes or bonds and to perform the authority's duties under this part.

(ii) Bring suit upon the notes or bonds.

(iii) By action or suit, require the authority to account as if it were the trustee of an express trust for the holders of the notes or bonds.

(iv) By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the notes or bonds.

(v) Declare the notes or bonds due and payable and, if all defaults shall be made good, then, as permitted by such resolution, annul that declaration and its consequences.

(i) Any other matters of like or different character that in any way affect the security of protection of the bonds or notes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50515 Pledge.

Sec. 50515. A pledge made by the authority shall be valid and binding from the time the pledge is made. The money or property pledged and then received by the authority immediately is subject to the lien of the pledge without a physical delivery or further act. The lien of a pledge is valid and binding as against parties having claims of any kind in tort, contract, or otherwise against the authority, and is valid and binding as against the transfers of the money or property pledged, irrespective of whether parties have notice. Neither the resolution, the trust agreement, nor any other instrument by which a pledge is created need be recorded in order to establish and perfect a lien or security interest in the property so pledged.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50516 Personal liability on bonds or notes.
Sec. 50516. Neither the members of the authority nor any person executing bonds or notes issued under this part or any person executing any agreement on behalf of the authority is liable personally on the bonds or notes by reason of their issuance.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50517 Purchasing, holding, canceling, or reselling bonds or notes.
Sec. 50517. The authority may purchase bonds or notes of the authority out of funds or money of the authority available for that purpose. The authority may hold, cancel, or resell authority bonds or notes subject to or in accordance with an agreement with holders of authority bonds or notes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50518 Rights and remedies.
Sec. 50518. The state pledges to and agrees with the holders of bonds or notes issued under this part that the state shall not limit or restrict the rights vested in the authority by this part to fulfill the terms of an agreement made with the holders of authority bonds or notes, or in any way impair the rights or remedies of the holders of the bonds or notes of the authority until the bonds and notes, together with interest on the bonds or notes and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged.
History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50519 Bonds or notes as legal investments; security.
Sec. 50519. Notwithstanding any restriction contained in any other law, the state and a public officer, local unit of government, or agency of the

state or a local unit of government; a bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, guardian, trustee, or other fiduciary may legally invest funds belonging to them or within their control in bonds or notes issued under this part, and authority bonds or notes shall be authorized security for public deposits.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50520 Property and income of authority; exemption from taxes and special assessments; bonds or notes exempt from taxation.
Sec. 50520. Property of the authority is public property devoted to an essential public and governmental function and purpose. Income of the authority is considered to be for a public purpose. The property of the authority and its income and operation are exempt from all taxes and special assessments of the state or a political subdivision of the state. Bonds or notes issued by the authority, and the interest on and income from those bonds and notes, are exempt from all taxation of the state or a political subdivision of the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50521 Liberal construction; broad interpretation.
Sec. 50521. This part shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this part, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.50522 Rules.
Sec. 50522. The authority may promulgate rules as necessary to implement this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 511

COMMERCIAL FORESTS (Reserves)

324.51101 Definitions.
Sec. 51101. As used in this part:

(a) "Ad valorem general property tax" means taxes levied under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(b) "Commercial forest" or "commercial forestland" means forestland that is determined to be a commercial forest under section 51103.

(c) "Declassify" or "declassification" means the removal of the commercial forest designation pursuant to section 51116.

(d) "Forestland" means a tract of land that may include nonproductive land that is intermixed with productive land that is an integral part of a managed forest and that meets all the following:

(i) Does not have material natural resources other than those resources suitable for forest growth or the potential for forest growth.

(ii) Is not used for agricultural, mineral extraction except as provided in section 51113, grazing, industrial, developed recreational, residential, resort, commercial, or developmental purposes.

(iii) The owner agrees to develop, maintain, and actively manage the land as a commercial forest through planting, natural reproduction, or other silvicultural practices.

(e) "Forest management plan" means a written plan prepared and signed by a registered forester or a natural resources professional that prescribes measures to optimize production, utilization, and regeneration of forest resources. The forest management plan shall include schedules and timetables for the various silvicultural practices used on commercial forestlands, including, but not limited to, timber harvesting and regeneration.

(f) "Fund" means the commercial forest fund created under section 51112.

(g) "Natural resources professional" means a person who is acknowledged by the department as having the education, knowledge, experience, and skills to identify, schedule, and implement appropriate forest management practices needed to achieve the purposes of this part on land subject to or to be subject to this part.

(h) "Owner" means a person who holds title to the surface estate of forestland subject to this part. However, if land is purchased on a land contract, the owner includes the person who holds the land contract vendee's interest and does not include the person who holds the land contract vendor's interest.

(i) "Personal use" means use for any noncommercial purpose.

(j) "Registered forester" means a person registered under article 21 of the occupational code, 1980 PA 299, MCL 339.2101 to 339.2108.

(k) "Silvicultural practices" means the management and manipulation of forest vegetation for the protection, growth, and enhancement of forest products.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 383, Imd. Eff. Sept. 27, 2006
Popular Name: Act 451
Popular Name: NREPA

324.51102 Commercial forest; scope and authority of department; rules; expenses; staff.

Sec. 51102. The department shall establish and maintain commercial forests and may promulgate and enforce rules as necessary to accomplish the intent and purpose of this part. All expenses incurred and staff employed to implement this part shall be with the approval of the state administrative board.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.51103 Commercial forest; application for determination; "contiguous" defined; requirements for eligibility; application form; postmark or delivery date; contents; brochure; notification; preparation of forest management plan.

Sec. 51103. (1) The owner of at least 40 contiguous acres or a survey unit consisting of 1/4 of 1/4 of a section of forestland located within this state may apply to the department to have that forestland determined to be a commercial forest under this part. For purposes of this subsection, "contiguous" means land that touches at any point. Even if portions of commercial forestland are contiguous only at a point, the privilege of hunting and fishing shall not be denied for any portion of the land as provided in section 51113. The existence of a public or private road, a railroad, or a utility right-of-way that separates any part of the land does not make the land noncontiguous.

(2) To be eligible for determination as a commercial forest, forestland shall be capable of all of the following:

(a) Producing not less than 20 cubic feet per acre per year of forest growth upon maturity.

(b) Producing tree species that have economic or commercial value.

(c) Producing a commercial stand of timber within a reasonable period of time.

(3) An application for classification as commercial forest shall be submitted on a form prescribed by the department. The application shall be postmarked or delivered not later than April 1 to be eligible for approval as commercial forest for the following tax year. In addition to any information that the department may reasonably require by rule, the applicant shall provide all of the following to the department:

(a) A nonrefundable application fee in the amount of $1.00 per acre or fraction of an acre, but not less than $200.00 and not more than $1,000.00. The department shall remit the application fee to the state treasurer for deposit into the fund.

(b) A legal description and the amount of acreage considered for determination as a commercial forest.

(c) A statement certifying that a forest management plan covering the forestland has been prepared and is in effect.

(d) A statement certifying that the owner of the forestland owns the timber rights to the timber standing on the forestland.

(4) The department shall prepare and distribute to any person desiring to apply for classification of forestland as commercial forest under this part a brochure that lists and explains, in simple, nontechnical terms, all of the following:

(a) The application, hearing, determination, declassification, and prosecution process.

(b) The requirements of the forest management plan.

(5) Not later than 3 months after the effective date of the 2006 amendatory act that amended this section, the department shall notify each county and township and all owners of forestland that is classified as commercial forest under this part of the amendments to this part that were enacted in 2006.

(6) If an applicant is unable to secure the services of a registered forester or a natural resources professional to prepare a forest management plan, the department upon request shall prepare the forest management plan on behalf of the owner of the forestland and charge the owner a forest management plan fee not to exceed the actual cost of preparing the forest management plan.

(7) After an owner certifies to the department that a forest management plan has been prepared and is in effect, a violation of that forest management plan is a violation of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 383, Imd. Eff. Sept. 27, 2006
Popular Name: Act 451
Popular Name: NREPA

324.51104 Forestland; evaluation; hearing; notice; conduct; approval; record.

Sec. 51104. (1) Upon receipt of the application, the forest management plan certification, the timber rights certification, and the application fee described in section 51103, the department shall evaluate the forestland offered and fix a date for a public hearing upon the eligibility of the forestland for determination as a commercial forest. The hearing shall be held in the county where the land is located not later than November 1 following receipt of the application. Applications offering lands in the same county may be heard on the same day and at the same place. The department shall publish a notice of hearing and a list of the legal descriptions of lands being considered for determination as commercial forests in a newspaper of general circulation in the county in which the land is located. The notice of hearing shall be published at least 20 days before the date of the hearing. At the time of publication, the department shall provide a copy of the notice of hearing and a list of descriptions of land in each township to be considered for determination as a commercial forest to each township supervisor in whose township the lands are located. Any person who wishes may testify as to eligibility for determination as a commercial forest of any of the described lands. The hearing shall be conducted by the department.

(2) After the hearing, if the department determines that the applicant and forestland meet the requirements of this part and determines that all valid taxes assessed against that forestland have been paid, the department shall approve the application. Upon approval of the application, the department shall immediately record a listing certificate in the register of deeds office in the county in which the land is located with the department approval endorsed on the listing certificate and forward a copy of the listing certificate to the applicant and to the township supervisor of the township in which the land is located.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.51105 Commercial forests not subject to ad valorem general property tax; specific tax; removal from land descriptions list; separate roll; collection; return and sale for nonpayment of taxes; valuation prohibited; lands not considered in connection with equalization distribution of sums collected; distribution; commercial forestland located in renaissance zone.

Sec. 51105. (1) Commercial forests are not subject to the ad valorem general property tax after the date the township supervisor is notified by the department that the land is a commercial forest, except taxes as previously levied. Except as otherwise provided in part 512 and as provided in subsection (5), commercial forests are subject to an annual specific tax as follows:

(a) Until December 31, 2006, $1.10 per acre.

(b) Beginning January 1, 2007 through December 31, 2011, $1.20 per acre.

(c) Beginning January 1, 2012 and every 5 years after that date, the amount of the annual specific tax under this section shall be increased by 5 cents per acre.

(2) The supervisor of the township shall remove from the list of land descriptions assessed and taxed under the ad valorem general property

tax the land descriptions certified to him or her by the department as being commercial forests and shall enter those land descriptions on a roll separate from lands assessed and taxed by the ad valorem general property tax and shall spread against these commercial forests the specific tax provided by this section.

(3) The township treasurer shall collect the specific tax at the same time and in the same manner as ad valorem general property taxes are collected and this tax is subject to the same collection charges levied for the collection of ad valorem property taxes. Commercial forests are subject to return and sale for nonpayment of taxes in the same manner, at the same time, and under the same penalties as lands returned and sold for nonpayment of taxes levied under the ad valorem general property tax laws. A valuation shall not be determined for descriptions listed as commercial forests and these lands shall not be considered by the county board of commissioners or by the state board of equalization in connection with county or state equalization for ad valorem property taxation purposes.

(4) Except as provided in section 51109(2), all sums collected pursuant to this section shall be distributed by the township treasurer in the same proportions to the various funds as the ad valorem general property tax is allocated in the township.

(5) Commercial forestland located in a renaissance zone under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, is exempt from the annual specific tax levied under this section to the extent and for the duration provided pursuant to that act.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 451, Imd. Eff. Dec. 19, 1996 ;-- Am. 2006, Act 382, Imd. Eff. Sept. 27, 2006
Popular Name: Act 451
Popular Name: NREPA

324.51106 Acreage as commercial forest; certifying to state treasurer; payment to county treasurer; distribution of remaining funds.

Sec. 51106. (1) On December 1 of each year, the department shall certify to the state treasurer the number of acres that are commercial forestlands in each county and the state treasurer shall transmit to the treasurer of each county in which these commercial forests are located a warrant on the state treasurer for an amount equal to the following for commercial forest in the county:

(a) Until December 31, 2011, $1.20 per acre.

(b) Beginning January 1, 2012 and every 5 years after that date, the amount of the annual payment under this section shall be increased by 5 cents per acre.

(2) From the payments received under subsection (1), the county treasurer of each county shall distribute an amount equal to 25 cents per acre for each acre of commercial forest in the county in the same proportions between the various funds as the ad valorem general property tax is distributed by the township treasurers in each township. Except as provided by section 51109(2), the county treasurer of each county shall distribute the remainder of the funds received under this section in the same manner and in the same proportion as ad valorem taxes collected under the ad valorem general property tax.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 382, Imd. Eff. Sept. 27, 2006
Popular Name: Act 451
Popular Name: NREPA

324.51107 Repealed. 2006, Act 383, Imd. Eff. Sept. 27, 2006

Compiler's Notes: The repealed section pertained to adjustment of annual specific tax and state payment computed by using state equalized value per acre of timber cutover lands.
Popular Name: Act 451
Popular Name: NREPA

324.51108 Withdrawal of land as commercial forest; application; fee; penalty; publication on website; disposition; distribution; notice

to applicant, township supervisor, and register of deeds; filing list of withdrawn lands; definitions.

Sec. 51108. (1) An owner of a commercial forest may withdraw his or her land, in whole or in part, from the operation of this part upon application to the department and payment of the withdrawal application fee and penalty, as provided in this section.

(2) Except as otherwise provided by this section, upon application to the department to withdraw commercial forestland from the operation of this part, the applicant shall forward to the department a withdrawal application fee in the amount of $1.00 per acre with a minimum withdrawal application fee of $200.00 per application and a maximum withdrawal application fee of $1,000.00 per application.

(3) Except as otherwise provided in this section, an application to withdraw commercial forestland from the operation of this part shall be granted upon the payment to the township treasurer in which the commercial forestland is located of a penalty. For applications to withdraw commercial forestland filed on or after September 27, 2007 in which the withdrawal penalty has not been paid before the effective date of the amendatory act that added subdivision (d), the withdrawal penalty shall be calculated in the following manner:

(a) Multiply the number of acres of commercial forestland withdrawn from the operation of this part by 1 of the following:

(i) For 2007, 1/2 of the valuation per acre for the county in which the forestland is located.

(ii) Beginning in 2008, and for each subsequent year, the number described in subparagraph (i) adjusted annually by the inflation rate for each year after 2007.

(b) Multiply the product of the calculation in subdivision (a) by the average millage rate levied by all townships, excluding villages, in the county in which the property is located.

(c) Multiply the product of the calculation in subdivision (b) by the number of years, to a maximum of 7 years, in which the property withdrawn from the operation of this part has been designated as commercial forestland under this part.

(d) Multiply the product of the calculation in subdivision (c) by the following:

(i) 0.2, if the commercial forestland is located in Luce county.

(ii) 0.3, if the commercial forestland is located in Grand Traverse, Manistee, Ottawa, or Wexford county.

(iii) 0.4, if the commercial forestland is located in Charlevoix, Chippewa, Emmet, Gladwin, Leelanau, Midland, Oscoda, or Tuscola county.

(iv) 0.5, if the commercial forestland is located in Cheboygan, Delta, Mackinac, Oceana, Otsego, or Schoolcraft county.

(v) 0.6, if the commercial forestland is located in Alcona, Alger, Allegan, Alpena, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Clare, Clinton, Crawford, Dickinson, Eaton, Genesee, Gogebic, Gratiot, Hillsdale, Houghton, Huron, Ingham, Ionia, Iosco, Iron, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lapeer, Lenawee, Livingston, Macomb, Marquette, Mecosta, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Ogemaw, Osceola, Presque Isle, Roscommon, Saginaw, St. Clair, St. Joseph, Sanilac, Shiawassee, Van Buren, Washtenaw, or Wayne county.

(vi) 0.7, if the commercial forestland is located in Antrim, Baraga, Mason, or Menominee county.

(vii) 0.8, if the commercial forestland is located in Keweenaw, Lake, Missaukee, or Ontonagon county.

(4) The department shall publish all of the following on its website:

(a) The calculation described in subsection (3)(a)(i) for each county.

(b) The adjusted value and the inflation rate described in subsection (3)(a)(ii) for each county.

(c) The average millage rate described in subsection (3)(b) for each county.

(5) An application to withdraw commercial forestland from the operation of this part that meets 1 or more of the following requirements shall be granted without payment of the withdrawal application fee or penalty under this section:

(a) Commercial forestland that has been donated to a public body for public use prior to withdrawal.

(b) Commercial forestland that has been exchanged for property belonging to a public body if the property received is designated as a commercial forest as determined by the department.

(c) Commercial forestland that has been condemned for public use.

(6) The department shall remit the withdrawal application fee paid pursuant to subsection (2) to the state treasurer for deposit into the fund. The penalty received by the township treasurer under subsection (3) shall be distributed by the township treasurer in the same proportions to the various funds as the ad valorem general property tax is allocated in the township, except as provided by section 51109(2).

(7) If an application to withdraw commercial forestland is granted, the department shall immediately notify the applicant, the supervisor of the township, and the register of deeds of the county in which the lands are located of the action and shall file with those officials a list of the lands withdrawn.

(8) As used in this section:

(a) "Inflation rate" means the lesser of 1.05 or the inflation rate as defined in section 34d of the general property tax act, 1893 PA 206, MCL 211.34d.

(b) "Valuation" means the market value as determined by the state tax commission.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 382, Imd. Eff. Sept. 27, 2006 ;-- Am. 2008, Act 299, Imd. Eff. Oct. 8, 2008
Popular Name: Act 451
Popular Name: NREPA

324.51109 Determining proportion for disbursement of revenues and attribution of revenues; number of mills levied for local school operating purposes; distribution of revenues; "revenues" defined.
Sec. 51109. (1) For revenues disbursed after June 30, 1994, to determine the proportion for the disbursement of revenues under this part and for attribution of revenues under subsection (2)(b) for revenues collected under this part, the number of mills levied for local school district operating purposes to be used in the calculation shall equal the number of mills for local school district operating purposes levied in 1993 minus the number of mills levied under the state education tax act, Act No. 331 of the Public Acts of 1993, being sections 211.901 to 211.906 of the Michigan Compiled Laws, for the year for which the disbursement is calculated.

(2) Except as provided in subdivision (b), for revenues disbursed after June 30, 1994, the revenues collected under this part shall be distributed as follows:

(a) In the case of intermediate school districts receiving state aid under sections 56, 62, and 81 of the state school aid act of 1979, Act No. 94 of the Public Acts of 1979, being sections 388.1656 , 388.1662, and 388.1681 of the Michigan Compiled Laws, all or a portion of the amount that would otherwise be disbursed to these intermediate school districts from the following revenue sources, as determined under a formula prescribed by the department of management and budget on the basis of the tax rate utilized to compute the amount of state aid for the

intermediate school district, shall be paid instead to the state treasury to the credit of the state school aid fund established by section 11 of article IX of the state constitution of 1963:

(i) Revenues from that portion of the levy of a specific tax over 15 cents per acre pursuant to section 51105.

(ii) Revenues from that portion of state payments in excess of 25 cents per acre which are made pursuant to section 51106.

(iii) Revenues from remitted withdrawal penalties and fees imposed pursuant to section 51108.

(iv) Revenues from declassification penalties and fees pursuant to section 51116 .

(v) Revenues from remitted stumpage or yield tax collections made under former Act No. 94 of the Public Acts of 1925.

(b) For revenues disbursed after June 30, 1994, the amount that would otherwise be disbursed to a local school district for school operating purposes shall be paid instead to the state treasury and credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(3) Except as provided in subsection (2)(a), as used in this section "revenues" means all of the following:

(a) The specific tax levied pursuant to section 51105.

(b) State payments made pursuant to section 51106.

(c) Withdrawal penalties and fees imposed pursuant to section 51108.

(d) Declassification penalties and fees pursuant to section 51116.

(e) Revenue from remitted stumpage or yield tax collections made under former Act No. 94 of the Public Acts of 1925.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 585, Eff. Mar. 1, 1997
Popular Name: Act 451
Popular Name: NREPA

324.51110 Cutting, harvesting, or removing forest products prohibited; exceptions.

Sec. 51110. (1) Except as provided in subsection (2), a person shall not cut, harvest, or remove forest products from a commercial forest.

(2) The owner of a commercial forest is entitled to cut or remove merchantable forest products on his or her commercial forest without withdrawing it or affecting its status as a commercial forest and without payment of a fee or penalty if the owner complies with all of the following:

(a) After an owner certifies to the department that a forest management plan has been prepared and is in effect under section 51103 and cuts, harvests, or removes forest products in compliance with his or her forest management plan.

(b) All other requirements of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.51111 Report to department.

Sec. 51111. The owner shall report to the department prior to the cutting, harvesting, or removal of forest products from the commercial forest.
History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.51112 Commercial forest fund.
Sec. 51112. (1) The commercial forest fund is created within the state treasury.

(2) The state treasurer shall deposit the money collected from the following sources into the fund:

(a) The application fee and forest management plan fee pursuant to section 51103.

(b) The withdrawal application fee pursuant to section 51108.

(c) The fee described in section 51116(1)(a).

(d) An amount equal to 10 cents for each acre of land enrolled under this part as certified by the department, to be appropriated each fiscal year from the general fund.

(e) Any restitution ordered by a court payable to this state for a violation of this part.

(3) In addition to the revenues described in subsection (2), the state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(4) Money in the fund appropriated from the general fund shall remain in the fund at the close of the fiscal year and shall not lapse to the general fund.

(5) The department shall expend the money from the fund, upon appropriation, for enforcement, administration, and monitoring of compliance with part 512 and this part and rules promulgated under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 383, Imd. Eff. Sept. 27, 2006
Popular Name: Act 451
Popular Name: NREPA

324.51113 Prohibited use of land by owner; exception; exploration for minerals; removal of commercial mineral deposits, sand and gravel, and oil and gas.

Sec. 51113. (1) Except as provided in this section, the owner of a commercial forest shall not use that land in a manner that is prejudicial to its development as a commercial forest, use the land for agricultural, mineral extraction except as provided in this section, grazing, industrial, developed recreational, residential, resort, commercial, or developmental purposes, or deny the general public the privilege of hunting and fishing on commercial forestland unless the land is closed to hunting or fishing, or both, by order of the department or by an act of the legislature.

(2) Exploration for minerals shall be permitted on land listed under this part. Except as provided in subsections (3) and (4), before the removal of any commercial mineral deposits, the owner shall withdraw the portion of the commercial forestland directly affected by the removal pursuant to section 51108. The withdrawal of commercial forestland due to mineral removal as provided in this section and section 51108 shall not cause the remaining portion of the commercial forestland to be withdrawn due to insufficient acreage of the remaining commercial forestland.

(3) Upon application to and approval by the department, sand and gravel may be removed from the commercial forest without affecting the land's status as a commercial forest. The department shall approve an application to remove sand and gravel deposits only if the removal site is not greater than 5 acres, excluding access to the removal site, and the sand and gravel are to be utilized by 1 or more of the following:

(a) The owner of a commercial forest for personal use if the owner of the commercial forest is also the owner of the sand and gravel deposits.

(b) The owner of the sand and gravel deposits for his or her personal use or for sale to the owner of the commercial forest for personal use, if the

owner of the commercial forest is not also the owner of the sand and gravel deposits.

(c) This state, a local unit of government, or a county road commission, for governmental use.

(4) Upon application to and approval by the department, deposits of oil and gas may be removed from the commercial forest without affecting the land's status as a commercial forest.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 383, Imd. Eff. Sept. 27, 2006
Popular Name: Act 451
Popular Name: NREPA

324.51114 Applications, statements, and reports under oath; forms.
Sec. 51114. All applications, statements, reports, and information required by the department in the administration of this part shall be on forms prescribed by the department and shall be under oath.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.51115 Transfer of title; effect; withdrawal; document; notification.
Sec. 51115. (1) The transfer of title of forestland subject to this part shall not affect that forestland's status as a commercial forest if the forestland continues to meet all of the eligibility requirements under this part. If the purchaser desires to withdraw his or her forestland from this part, the purchaser shall withdraw that forestland pursuant to section 51108. If the forestland's eligibility to be a commercial forest is affected by the transfer of title, the department shall determine which forestlands may remain under this part and which forestlands must be withdrawn or declassified.

(2) A document that transfers any interest in commercial forestlands shall state on the face of the document that “this property is subject to

part 511, the commercial forest part of the natural resources and environmental protection act". Failure to comply with this subsection does not affect the status of the land as commercial forestland.

(3) Not later than 30 days after the transfer of title or the transfer of any interest in land contract concerning the commercial forestland, the owner shall notify the department in writing of the transfer or ownership change.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.51116 Removal of designation; declassification; notice; recording; fee.

Sec. 51116. If, after providing notice and an opportunity for a hearing, the department determines that a commercial forest was used in violation of this part, that the owner failed to pay the specific tax pursuant to section 51105, that the owner failed to report to the department pursuant to section 51111, that minerals were removed in violation of section 51113, or, after an owner certifies to the department that a forest management plan has been prepared and is in effect, that the owner failed to plant, harvest, or remove forest products in compliance with the owner's forest management plan, then the department shall remove the commercial forest designation for the commercial forest, serve a notice of declassification of the lands upon the owner, and record a copy of the declassification in the office of the register of deeds of the county in which the lands are located. Upon declassification, the land is subject to the ad valorem general property tax. Within 30 days after the service of the declassification notice on the owner, the owner shall pay both of the following:

(a) A fee equal to the withdrawal application fee described in section 51108 to the department for deposit into the fund.

(b) An amount equal to the penalty described in section 51108 to the township treasurer of the township in which the land is located to be distributed, except as provided in section 51109(2), in the same

proportions to the various funds as the ad valorem general property tax is allocated in the township.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 382, Imd. Eff. Sept. 27, 2006
Popular Name: Act 451
Popular Name: NREPA

324.51118 Applicability of changes in part; withdrawal; fees.
Sec. 51118. (1) Except as provided in this section, changes in the terms, fees, taxes, or other provisions of this part apply to all forestlands that are commercial forests when the changes take effect.

(2) An owner, without penalty or payment of the withdrawal application fee pursuant to section 51108, may withdraw commercial forestland from the operation of this part if any change in the terms, fees, taxes, or other provisions of this part materially increases the burden on the owner. However, if an owner elects to withdraw his or her commercial forestlands under this subsection, the owner shall pay a fee for each acre withdrawn equal to the product of the current average ad valorem property tax per acre on timber cutover real property within the township in which the commercial forestland is located, as determined by the township assessor, multiplied by 5. If the township in which the commercial forestland is located does not contain any real property classified as timber cutover real property under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws, then 1 of the following applies:

(a) If there is timber cutover real property located within the county in which the commercial forestland is located, the per acre average of the ad valorem property tax for all timber cutover real property located in the county in which the commercial forestland is located shall be used in calculating the penalty under this subsection.

(b) If there is no timber cutover real property located within the county in which the commercial forestland is located, the per acre average of the ad valorem property tax for all timber cutover real property in townships

contiguous to the county in which the commercial forestland is located shall be used in calculating the penalty under this subsection.

(3) The fee described in subsection (2) shall not exceed $100,000.00. The owner shall pay the fee described in subsection (2) before withdrawal.

(4) The owner may not withdraw commercial forestland under this section unless he or she makes application to do so within 1 year after the changes take effect. If an owner elects to withdraw commercial forestlands under this section, he or she shall withdraw all the commercial forestlands owned by him or her at the time of withdrawal.

(5) If an application to withdraw commercial forestlands under subsection (2) is initiated by an owner or by the department before changes in terms, fees, taxes, or other provisions of this part or former Act No. 94 of the Public Acts of 1925 become effective, the owner shall pay the stumpage fees, other fees, taxes, and penalties, if any, in the same manner and at the same rates as were in effect when the application was filed.

(6) The department shall remit the fees paid pursuant to this section to the township treasurer. Except as provided in section 51109(2), all fees remitted to the township treasurer under this section shall be distributed by the township treasurer in the same proportions to the various funds as the ad valorem general property tax is allocated in the township.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.51119 Representatives of department; right of entry on commercial forestlands; access to books and papers.
Sec. 51119. A duly authorized representative of the department may at any time go upon commercial forestlands to ascertain the validity of any report made pursuant to this part or otherwise determine compliance with this part. The duly authorized representative of the department may examine or cause to be examined any books, papers, records, or

memorandum bearing upon the amounts of timber products cut from the commercial forestland or the owner's forest management plan.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.51120 Violation of part; penalty.
Sec. 51120. (1) Except as provided in subsection (2), a person who violates this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(2) A person who harvests, cuts, or removes forest products having a value of more than $2,500.00 in violation of this part is guilty of a felony punishable by imprisonment for not more than 3 years or a fine of not more than $10,000.00, or both.

(3) Upon conviction for a violation of this part, the court may declassify all or a portion of the commercial forest pursuant to section 51116.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

PART 512

SUSTAINABLE FOREST CONSERVATION EASEMENT TAX INCENTIVES

324.51201 Owner of commercial forestland subject to sustainable forest conservation easement; specific tax; application for sustainable forest conservation easement tax incentives; form; information; cutting or removing forest products; violation; penalty; definitions.
Sec. 51201. (1) Notwithstanding section 51105, an owner of commercial forestland that is subject to a sustainable forest conservation easement is subject to an annual specific tax equal to the annual specific tax levied under section 51105 less 15 cents per acre. The specific tax described in

this section shall be administered, collected, and distributed in the same manner as the specific tax levied in section 51105.

(2) An application for sustainable forest conservation easement tax incentives described in this part shall be submitted on a form prescribed by the department. The application shall be postmarked or delivered to the department not later than April 1 to be eligible for approval for the following tax year. In addition to any information that the department may reasonably require by rule, the applicant shall provide all of the following to the department:

(a) A nonrefundable application fee in the amount of $2.00 per acre or fraction of an acre, but not less than $200.00 and not more than $1,000.00. The department shall remit the application fee to the state treasurer for deposit into the commercial forest fund under section 51112.

(b) A copy of the conservation easement covering the forestland.

(3) The owner of commercial forestlands subject to a sustainable forest conservation easement is entitled to cut or remove forest products on his or her commercial forestlands if the owner complies with part 511 and the requirements of the sustainable forest conservation easement.

(4) If commercial forestland subject to a sustainable forest conservation easement is used in violation of this part or the sustainable forest conservation easement, the owner in addition to any other penalties provided by law shall pay a penalty, per acre, for each year in which the violation occurs equal to the difference between the specific tax paid under this part and the specific tax that would otherwise be paid under part 511. The specific tax collected under this part shall be paid to the township treasurer in which the commercial forestland is located. The penalty shall be distributed by the township treasurer in the same manner as the specific tax is distributed.

(5) As used in this part:

(a) "Commercial forestland" means commercial forestland that is enrolled under part 511.

(b) "Department" means the department of natural resources.

(c) "Forestland" means that term as defined in part 511.

(d) "Sustainable forest conservation easement" means a conservation easement described in section 2140 on commercial forestland that is approved by the department and meets all of the following:

(i) Is an easement granted in perpetuity to this state, a political subdivision of this state, or a charitable organization described in section 501(c)(3) of the internal revenue code, 26 USC 501, that also meets the requirements of section 170(h)(3) of the internal revenue code, 26 USC 170.

(ii) Covers commercial forestland of 40 or more acres in size.

(iii) Provides that the forestland subject to the conservation easement or the manager of the forestland subject to the conservation easement is and continues to be certified under a sustainable forestry certification program that uses independent third party auditors and that is recognized by the department.

(iv) Provides that the forestland subject to the conservation easement provides for the nonmotorized recreational use of the forestland by members of the public.

History: Add. 2006, Act 381, Imd. Eff. Sept. 27, 2006
Popular Name: Act 451
Popular Name: NREPA

MUNICIPAL HISTORICAL COMMISSIONS
Act 213 of 1957

AN ACT to authorize cities, villages, townships, and counties to create historical commissions and prescribe their functions; to issue revenue

bonds for commission purposes; and to appropriate money for historical activities and projects.

History: 1957, Act 213, Eff. Sept. 27, 1957 ;-- Am. 1968, Act 33, Imd. Eff. May 21, 1968 ;-- Am. 1974, Act 355, Imd. Eff. Dec. 21, 1974 ;-- Am. 1976, Act 88, Imd. Eff. Apr. 17, 1976

The People of the State of Michigan enact:

399.171 Appropriation; purpose.
Sec. 1. The governing body of a city, village, township, or county in this state may raise and appropriate money for the purpose of fostering any activity or project which the governing body of the village, city, township, or county determines will advance the historical interests of the village, city, township, or county.

History: 1957, Act 213, Eff. Sept. 27, 1957 ;-- Am. 1974, Act 209, Imd. Eff. July 11, 1974 ;-- Am. 1976, Act 88, Imd. Eff. Apr. 17, 1976

399.172 Historical commission; creation; appointments; functions; revenue bonds.
Sec. 2. The governing body of a city, village, township, or county, or any combination thereof acting jointly, may create by ordinance a historical commission, provide for its appointment, and prescribe its functions. A city, village, township, or county creating a historical commission may issue revenue bonds pursuant to Act No. 94 of the Public Acts of 1933, as amended, being sections 141.101 to 141.139 of the Michigan Compiled Laws, for carrying out the functions of the commission.

History: Add. 1968, Act 33, Imd. Eff. May 21, 1968 ;-- Am. 1974, Act 209, Imd. Eff. July 11, 1974 ;-- Am. 1974, Act 355, Imd. Eff. Dec. 21, 1974 ;-- Am. 1976, Act 88, Imd. Eff. Apr. 17, 1976

LOCAL HISTORIC DISTRICTS ACT
Act 169 of 1970

AN ACT to provide for the establishment of historic districts; to provide for the acquisition of certain resources for historic preservation purposes;

to provide for preservation of historic and nonhistoric resources within historic districts; to provide for the establishment of historic district commissions; to provide for the maintenance of publicly owned resources by local units; to provide for certain assessments under certain circumstances; to provide for procedures; and to provide for remedies and penalties.

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970 ;-- Am. 1986, Act 230, Imd. Eff. Oct. 1, 1986 ;-- Am. 1992, Act 96, Imd. Eff. June 18, 1992

The People of the State of Michigan enact:

399.201 Short title.
Sec. 1. This act shall be known and may be cited as the "local historic districts act".

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970 ;-- Am. 1992, Act 96, Imd. Eff. June 18, 1992

399.201a Definitions.
Sec. 1a. As used in this act:

(a) "Alteration" means work that changes the detail of a resource but does not change its basic size or shape.

(b) "Certificate of appropriateness" means the written approval of a permit application for work that is appropriate and that does not adversely affect a resource.

(c) "Commission" means a historic district commission created by the legislative body of a local unit under section 4.

(d) "Committee" means a historic district study committee appointed by the legislative body of a local unit under section 3 or 14.

(e) "Demolition" means the razing or destruction, whether entirely or in part, of a resource and includes, but is not limited to, demolition by neglect.

(f) “Demolition by neglect” means neglect in maintaining, repairing, or securing a resource that results in deterioration of an exterior feature of the resource or the loss of structural integrity of the resource.

(g) “Denial” means the written rejection of a permit application for work that is inappropriate and that adversely affects a resource.

(h) “Department” means the department of history, arts, and libraries.

(i) “Fire alarm system” means a system designed to detect and annunciate the presence of fire or by-products of fire. Fire alarm system includes smoke alarms.

(j) “Historic district” means an area, or group of areas not necessarily having contiguous boundaries, that contains 1 resource or a group of resources that are related by history, architecture, archaeology, engineering, or culture.

(k) “Historic preservation” means the identification, evaluation, establishment, and protection of resources significant in history, architecture, archaeology, engineering, or culture.

(l) “Historic resource” means a publicly or privately owned building, structure, site, object, feature, or open space that is significant in the history, architecture, archaeology, engineering, or culture of this state or a community within this state, or of the United States.

(m) “Local unit” means a county, city, village, or township.

(n) “Notice to proceed” means the written permission to issue a permit for work that is inappropriate and that adversely affects a resource, pursuant to a finding under section 5(6).

(o) “Open space” means undeveloped land, a naturally landscaped area, or a formal or man-made landscaped area that provides a connective link or a buffer between other resources.

(p) “Ordinary maintenance” means keeping a resource unimpaired and in good condition through ongoing minor intervention, undertaken from time to time, in its exterior condition. Ordinary maintenance does not change the external appearance of the resource except through the elimination of the usual and expected effects of weathering. Ordinary maintenance does not constitute work for purposes of this act.

(q) “Proposed historic district” means an area, or group of areas not necessarily having contiguous boundaries, that has delineated boundaries and that is under review by a committee or a standing committee for the purpose of making a recommendation as to whether it should be established as a historic district or added to an established historic district.

(r) “Repair” means to restore a decayed or damaged resource to a good or sound condition by any process. A repair that changes the external appearance of a resource constitutes work for purposes of this act.

(s) “Resource” means 1 or more publicly or privately owned historic or nonhistoric buildings, structures, sites, objects, features, or open spaces located within a historic district.

(t) “Smoke alarm” means a single-station or multiple-station alarm responsive to smoke and not connected to a system. As used in this subdivision, “single-station alarm” means an assembly incorporating a detector, the control equipment, and the alarm sounding device into a single unit, operated from a power supply either in the unit or obtained at the point of installation. “Multiple-station alarm” means 2 or more single-station alarms that are capable of interconnection such that actuation of 1 alarm causes all integrated separate audible alarms to operate.

(u) “Standing committee” means a permanent body established by the legislative body of a local unit under section 14 to conduct the activities of a historic district study committee on a continuing basis.

(v) “Work” means construction, addition, alteration, repair, moving, excavation, or demolition.

History: Add. 1992, Act 96, Imd. Eff. June 18, 1992 ;-- Am. 2001, Act 67, Imd. Eff. July 24, 2001 ;-- Am. 2004, Act 67, Imd. Eff. Apr. 20, 2004

399.202 Historic preservation as public purpose; purpose of ordinance.

Sec. 2. Historic preservation is declared to be a public purpose and the legislative body of a local unit may by ordinance regulate the construction, addition, alteration, repair, moving, excavation, and demolition of resources in historic districts within the limits of the local unit. The purpose of the ordinance shall be to do 1 or more of the following:

(a) Safeguard the heritage of the local unit by preserving 1 or more historic districts in the local unit that reflect elements of the unit's history, architecture, archaeology, engineering, or culture.

(b) Stabilize and improve property values in each district and the surrounding areas.

(c) Foster civic beauty.

(d) Strengthen the local economy.

(e) Promote the use of historic districts for the education, pleasure, and welfare of the citizens of the local unit and of the state.

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970 ;-- Am. 1986, Act 230, Imd. Eff. Oct. 1, 1986 ;-- Am. 1992, Act 96, Imd. Eff. June 18, 1992

399.203 Historic districts; establishment; study committee; duties; public hearing; notice; actions; availability of writings to public.

Sec. 3. (1) A local unit may, by ordinance, establish 1 or more historic districts. The historic districts shall be administered by a commission established pursuant to section 4. Before establishing a historic district, the legislative body of the local unit shall appoint a historic district study

committee. The committee shall contain a majority of persons who have a clearly demonstrated interest in or knowledge of historic preservation, and shall contain representation from 1 or more duly organized local historic preservation organizations. The committee shall do all of the following:

(a) Conduct a photographic inventory of resources within each proposed historic district following procedures established or approved by the department.

(b) Conduct basic research of each proposed historic district and the historic resources located within that district.

(c) Determine the total number of historic and nonhistoric resources within a proposed historic district and the percentage of historic resources of that total. In evaluating the significance of historic resources, the committee shall be guided by the selection criteria for evaluation issued by the United States secretary of the interior for inclusion of resources in the national register of historic places, as set forth in 36 C.F.R. part 60, and criteria established or approved by the department, if any.

(d) Prepare a preliminary historic district study committee report that addresses at a minimum all of the following:

(i) The charge of the committee.

(ii) The composition of the committee membership.

(iii) The historic district or districts studied.

(iv) The boundaries for each proposed historic district in writing and on maps.

(v) The history of each proposed historic district.

(vi) The significance of each district as a whole, as well as a sufficient number of its individual resources to fully represent the variety of resources found within the district, relative to the evaluation criteria.

(e) Transmit copies of the preliminary report for review and recommendations to the local planning body, to the department, to the Michigan historical commission, and to the state historic preservation review board.

(f) Make copies of the preliminary report available to the public pursuant to subsection (4).

(2) Not less than 60 calendar days after the transmittal of the preliminary report, the committee shall hold a public hearing in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the hearing shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Written notice shall be mailed by first-class mail not less than 14 calendar days before the hearing to the owners of properties within the proposed historic district, as listed on the tax rolls of the local unit.

(3) After the date of the public hearing, the committee and the legislative body of the local unit shall have not more than 1 year, unless otherwise authorized by the legislative body of the local unit, to take the following actions:

(a) The committee shall prepare and submit a final report with its recommendations and the recommendations, if any, of the local planning body to the legislative body of the local unit. If the recommendation is to establish a historic district or districts, the final report shall include a draft of a proposed ordinance or ordinances.

(b) After receiving a final report that recommends the establishment of a historic district or districts, the legislative body of the local unit, at its discretion, may introduce and pass or reject an ordinance or ordinances. If the local unit passes an ordinance or ordinances establishing 1 or more historic districts, the local unit shall file a copy of that ordinance or those

ordinances, including a legal description of the property or properties located within the historic district or districts, with the register of deeds. A local unit shall not pass an ordinance establishing a contiguous historic district less than 60 days after a majority of the property owners within the proposed historic district, as listed on the tax rolls of the local unit, have approved the establishment of the historic district pursuant to a written petition.

(4) A writing prepared, owned, used, in the possession of, or retained by a committee in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970 ;-- Am. 1980, Act 125, Imd. Eff. May 21, 1980 ;-- Am. 1992, Act 96, Imd. Eff. June 18, 1992 ;-- Am. 2001, Act 67, Imd. Eff. July 24, 2001

399.204 Historic district commission; establishment; appointment, qualifications, and terms of members; vacancy; commissions previously established by charter or ordinance.

Sec. 4. The legislative body of a local unit may establish by ordinance a commission to be called the historic district commission. The commission may be established at any time, but not later than the time the first historic district is established by the legislative body of the local unit. Each member of the commission shall reside within the local unit. The membership of the historic district commission in a local unit having a population of 5,000 or more individuals shall consist of not less than 7 or more than 9 members. The membership of the historic district commission in a local unit having a population of less than 5,000 individuals shall consist of not less than 5 or more than 7 members. A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation. The members shall be appointed by the township supervisor, village president, mayor, or chairperson of the board of commissioners, unless another method of appointment is provided in the ordinance creating the commission. Initial members shall be appointed within 6 months after the ordinance establishing the commission is enacted. Members shall be appointed for 3-year terms except the initial appointments of some of the members shall be for less

than 3 years so that the initial appointments are staggered and that subsequent appointments do not recur at the same time. Members shall be eligible for reappointment. A vacancy on the commission shall be filled within 60 calendar days by an appointment made by the appointing authority. The ordinance creating the commission may provide procedures for terminating an appointment due to the acts or omissions of the member. The appointing authority of a local unit having a population of 25,000 or more individuals shall appoint at least 2 members from a list of citizens submitted by 1 or more duly organized local historic preservation organizations. A local unit having a population of more than 5,000 individuals but less than 25,000 individuals shall appoint at least 1 member from a list of citizens submitted by 1 or more duly organized local historic preservation organizations. The commission of all local units shall include as a member, if available, a graduate of an accredited school of architecture who has 2 years of architectural experience or who is an architect registered in this state. This section does not apply to historic district commissions established by charter or to historic district commissions established by ordinance before August 3, 1970.

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970 ;-- Am. 1971, Act 30, Imd. Eff. May 25, 1971 ;-- Am. 1992, Act 96, Imd. Eff. June 18, 1992

399.205 Permit required; completed application; certificate of appropriateness or notice to proceed; issuance; permit fee; appeal to review board and circuit court; plan review standards, guidelines, and considerations; scope of review; preservation plan; approval; conditions; public meeting; availability of writings to public; rules of procedure; approval of minor work; finding of demolition by neglect; restoration or modification of work done without permit.
Sec. 5. (1) A permit shall be obtained before any work affecting the exterior appearance of a resource is performed within a historic district or, if required under subsection (4), work affecting the interior arrangements of a resource is performed within a historic district. The person, individual, partnership, firm, corporation, organization, institution, or agency of government proposing to do that work shall file an application for a permit with the inspector of buildings, the commission, or other duly delegated authority. If the inspector of

buildings or other authority receives the application, the application shall be immediately referred together with all required supporting materials that make the application complete to the commission. A permit shall not be issued and proposed work shall not proceed until the commission has acted on the application by issuing a certificate of appropriateness or a notice to proceed as prescribed in this act. A commission shall not issue a certificate of appropriateness unless the applicant certifies in the application that the property where work will be undertaken has, or will have before the proposed project completion date, a fire alarm system or a smoke alarm complying with the requirements of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531. A local unit may charge a reasonable fee to process a permit application.

(2) An applicant aggrieved by a decision of a commission concerning a permit application may file an appeal with the state historic preservation review board within the department. The appeal shall be filed within 60 days after the decision is furnished to the applicant. The appellant may submit all or part of the appellant's evidence and arguments in written form. The review board shall consider an appeal at its first regularly scheduled meeting after receiving the appeal, but may not charge a fee for considering an appeal. The review board may affirm, modify, or set aside a commission's decision and may order a commission to issue a certificate of appropriateness or a notice to proceed. A permit applicant aggrieved by the decision of the state historic preservation review board may appeal the decision to the circuit court having jurisdiction over the historic district commission whose decision was appealed to the state historic preservation review board.

(3) In reviewing plans, the commission shall follow the United States secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 C.F.R. part 67. Design review standards and guidelines that address special design characteristics of historic districts administered by the commission may be followed if they are equivalent in guidance to the secretary of interior's standards and guidelines and are established or approved by the department. The commission shall also consider all of the following:

(a) The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area.

(b) The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.

(c) The general compatibility of the design, arrangement, texture, and materials proposed to be used.

(d) Other factors, such as aesthetic value, that the commission finds relevant.

(e) Whether the applicant has certified in the application that the property where work will be undertaken has, or will have before the proposed project completion date, a fire alarm system or a smoke alarm complying with the requirements of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(4) The commission shall review and act upon only exterior features of a resource and, except for noting compliance with the requirement to install a fire alarm system or a smoke alarm, shall not review and act upon interior arrangements unless specifically authorized to do so by the local legislative body or unless interior work will cause visible change to the exterior of the resource. The commission shall not disapprove an application due to considerations not prescribed in subsection (3).

(5) If an application is for work that will adversely affect the exterior of a resource the commission considers valuable to the local unit, state, or nation, and the commission determines that the alteration or loss of that resource will adversely affect the public purpose of the local unit, state, or nation, the commission shall attempt to establish with the owner of the resource an economically feasible plan for preservation of the resource.

(6) Work within a historic district shall be permitted through the issuance of a notice to proceed by the commission if any of the following conditions prevail and if the proposed work can be demonstrated by a

finding of the commission to be necessary to substantially improve or correct any of the following conditions:

(a) The resource constitutes a hazard to the safety of the public or to the structure's occupants.

(b) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.

(c) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.

(d) Retaining the resource is not in the interest of the majority of the community.

(7) The business that the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A meeting agenda shall be part of the notice and shall include a listing of each permit application to be reviewed or considered by the commission.

(8) The commission shall keep a record of its resolutions, proceedings, and actions. A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) The commission shall adopt its own rules of procedure and shall adopt design review standards and guidelines for resource treatment to carry out its duties under this act.

(10) The commission may delegate the issuance of certificates of appropriateness for specified minor classes of work to its staff, to the inspector of buildings, or to another delegated authority. The commission shall provide to the delegated authority specific written standards for issuing certificates of appropriateness under this subsection. On at least a quarterly basis, the commission shall review the certificates of appropriateness, if any, issued for work by its staff, the inspector, or another authority to determine whether or not the delegated responsibilities should be continued.

(11) Upon a finding by a commission that a historic resource within a historic district or a proposed historic district subject to its review and approval is threatened with demolition by neglect, the commission may do either of the following:

(a) Require the owner of the resource to repair all conditions contributing to demolition by neglect.

(b) If the owner does not make repairs within a reasonable time, the commission or its agents may enter the property and make such repairs as are necessary to prevent demolition by neglect. The costs of the work shall be charged to the owner, and may be levied by the local unit as a special assessment against the property. The commission or its agents may enter the property for purposes of this section upon obtaining an order from the circuit court.

(12) When work has been done upon a resource without a permit, and the commission finds that the work does not qualify for a certificate of appropriateness, the commission may require an owner to restore the resource to the condition the resource was in before the inappropriate work or to modify the work so that it qualifies for a certificate of appropriateness. If the owner does not comply with the restoration or modification requirement within a reasonable time, the commission may

seek an order from the circuit court to require the owner to restore the resource to its former condition or to modify the work so that it qualifies for a certificate of appropriateness. If the owner does not comply or cannot comply with the order of the court, the commission or its agents may enter the property and conduct work necessary to restore the resource to its former condition or modify the work so that it qualifies for a certificate of appropriateness in accordance with the court's order. The costs of the work shall be charged to the owner, and may be levied by the local unit as a special assessment against the property. When acting pursuant to an order of the circuit court, a commission or its agents may enter a property for purposes of this section.

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970 ;-- Am. 1980, Act 125, Imd. Eff. May 21, 1980 ;-- Am. 1986, Act 230, Imd. Eff. Oct. 1, 1986 ;-- Am. 1992, Act 96, Imd. Eff. June 18, 1992 ;-- Am. 2001, Act 67, Imd. Eff. July 24, 2001 ;-- Am. 2004, Act 67, Imd. Eff. Apr. 20, 2004

399.206 Grants, gifts, and programs.

Sec. 6. The legislative body of a local unit may accept state or federal grants for historic preservation purposes, may participate in state and federal programs that benefit historic preservation, and may accept public or private gifts for historic preservation purposes. The legislative body may make the historic district commission, a standing committee, or other agency its duly appointed agent to accept and administer grants, gifts, and program responsibilities.

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970 ;-- Am. 1992, Act 96, Imd. Eff. June 18, 1992

399.207 Historic resource; acquisition by local legislative body.

Sec. 7. If all efforts by the historic district commission to preserve a resource fail, or if it is determined by the local legislative body that public ownership is most suitable, the local legislative body, if considered to be in the public interest, may acquire the resource using public funds, public or private gifts, grants, or proceeds from the issuance of revenue bonds. The acquisition shall be based upon the recommendation of the commission or standing committee. The commission or standing committee is responsible for maintaining

publicly owned resources using its own funds, if not specifically designated for other purposes, or public funds committed for that use by the local legislative body. Upon recommendation of the commission or standing committee, the local unit may sell resources acquired under this section with protective easements included in the property transfer documents, if appropriate.

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970 ;-- Am. 1992, Act 96, Imd. Eff. June 18, 1992

399.208 County historic district commission; coordination with township and municipality.

Sec. 8. The jurisdiction of a county shall be the same as that provided in Act No. 183 of the Public Acts of 1943, as amended, being sections 125.201 to 125.232 of the Michigan Compiled Laws, or as otherwise provided by contract entered into between the county and a city, village or township. If a county historic district commission is in existence, coordination between the county historic district commission and township and municipality historic district commissions shall be maintained. The overall historic preservation plans of cities, villages and townships shall be submitted to the county historic district commission for review, and county plans submitted to cities, villages, and townships having historic district commissions. Day-to-day activities of a commission shall not be reviewed unless the activities affect resources of importance to another commission.

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970 ;-- Am. 1992, Act 96, Imd. Eff. June 18, 1992

399.209 Historic district commission; filings with delegated authority; duties of local public officials, employees, and department.

Sec. 9. (1) The commission shall file certificates of appropriateness, notices to proceed, and denials of applications for permits with the inspector of buildings or other delegated authority. A permit shall not be issued until the commission has acted as prescribed by this act. If a permit application is denied, the decision shall be binding on the inspector or other authority. A denial shall be accompanied with a

written explanation by the commission of the reasons for denial and, if appropriate, a notice that an application may be resubmitted for commission review when suggested changes have been made. The denial shall also include notification of the applicant's rights of appeal to the state historic preservation review board and to the circuit court. The failure of the commission to act within 60 calendar days after the date a complete application is filed with the commission, unless an extension is agreed upon in writing by the applicant and the commission, shall be considered to constitute approval.

(2) Local public officials and employees shall provide information and records to committees, commissions, and standing committees, and shall meet with those bodies upon request to assist with their activities.

(3) The department shall cooperate with and assist local units, committees, commissions, and standing committees in carrying out the purposes of this act and may establish or approve standards, guidelines, and procedures that encourage uniform administration of this act in this state but that are not legally binding on any individual or other legal entity.

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970 ;-- Am. 1992, Act 96, Imd. Eff. June 18, 1992 ;-- Am. 2001, Act 67, Imd. Eff. July 24, 2001

399.210 Construction of act.

Sec. 10. Nothing in this act shall be construed to prevent ordinary maintenance or repair of a resource within a historic district, or to prevent work on any resource under a permit issued by the inspector of buildings or other duly delegated authority before the ordinance was enacted.

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970 ;-- Am. 1992, Act 96, Imd. Eff. June 18, 1992

399.211 Appeal of decisions.

Sec. 11. Any citizen or duly organized historic preservation organization in the local unit, as well as resource property owners, jointly or severally aggrieved by a decision of the historic district commission may appeal the decision to the circuit court, except that a permit applicant aggrieved

by a decision rendered under section 5(1) may not appeal to the court without first exhausting the right to appeal to the state historic preservation review board under section 5(2).

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970 ;-- Am. 1992, Act 96, Imd. Eff. June 18, 1992

399.212 Effect of act as to existing legislation and historical commissions.

Sec. 12. This act does not affect any previously enacted legislation pertaining to historical preservation and does not affect historical commissions appointed by local governing bodies to foster historic preservation. An existing local historical commission organized under Act No. 213 of the Public Acts of 1957, as amended, being sections 399.171 and 399.172 of the Compiled Laws of 1948, may be designated as a historic district commission, if its membership and structure conform, or are revised to conform, to the provisions of section 4.

History: 1970, Act 169, Imd. Eff. Aug. 3, 1970

399.213 Powers and duties of historic district commission.

Sec. 13. The local legislative body may prescribe powers and duties of the historic district commission, in addition to those prescribed in this act, that foster historic preservation activities, projects, and programs in the local unit.

History: Add. 1986, Act 230, Imd. Eff. Oct. 1, 1986

399.214 Local units; establishing, modifying, or eliminating historic districts; study committee; considerations; review of applications within proposed historic district; emergency moratorium.

Sec. 14. (1) A local unit may at any time establish by ordinance additional historic districts, including proposed districts previously considered and rejected, may modify boundaries of an existing historic district, or may eliminate an existing historic district. Before establishing, modifying, or eliminating a historic district, a historic district study committee appointed by the legislative body of the local unit shall, except as provided in subsection (2), comply with the

procedures set forth in section 3 and shall consider any previously written committee reports pertinent to the proposed action. To conduct these activities, local units may retain the initial committee, establish a standing committee, or establish a committee to consider only specific proposed districts and then be dissolved.

(2) If considering elimination of a historic district, a committee shall follow the procedures set forth in section 3 for issuing a preliminary report, holding a public hearing, and issuing a final report but with the intent of showing 1 or more of the following:

(i) The historic district has lost those physical characteristics that enabled establishment of the district.

(ii) The historic district was not significant in the way previously defined.

(iii) The historic district was established pursuant to defective procedures.

(3) Upon receipt of substantial evidence showing the presence of historic, architectural, archaeological, engineering, or cultural significance of a proposed historic district, the legislative body of a local unit may, at its discretion, adopt a resolution requiring that all applications for permits within the proposed historic district be referred to the commission as prescribed in sections 5 and 9. The commission shall review permit applications with the same powers that would apply if the proposed historic district was an established historic district. The review may continue in the proposed historic district for not more than 1 year, or until such time as the local unit approves or rejects the establishment of the historic district by ordinance, whichever occurs first.

(4) If the legislative body of a local unit determines that pending work will cause irreparable harm to resources located within an established historic district or a proposed historic district, the legislative body may by resolution declare an emergency moratorium of all such work for a

period not to exceed 6 months. The legislative body may extend the emergency moratorium for an additional period not to exceed 6 months upon finding that the threat of irreparable harm to resources is still present. Any pending permit application concerning a resource subject to an emergency moratorium may be summarily denied.

History: Add. 1992, Act 96, Imd. Eff. June 18, 1992

399.215 Violation; fine; payment of costs.
Sec. 15. (1) A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this act is responsible for a civil violation and may be fined not more than $5,000.00.

(2) A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this act may be ordered by the court to pay the costs to restore or replicate a resource unlawfully constructed, added to, altered, repaired, moved, excavated, or demolished.

History: Add. 1992, Act 96, Imd. Eff. June 18, 1992

E. PUBLIC HEALTH

PRIVATELY OWNED CERVIDAE PRODUCERS MARKETING ACT (EXCERPT)
Act 190 of 2000

287.956 Application; fee; standards; business plan; forwarding copies of application; notice to local governmental units; issuance; renewal; determination of completed application; denial; review; "completed application" defined.
Sec. 6. (1) The initial application to construct a cervidae livestock facility shall be accompanied by the application fee described in section 8. The department shall approve, deny, or propose a modification to the completed application within 60 days. The department shall utilize the standards contained in "Operational Standards for Registered Privately Owned Cervidae Facilities", published by the Michigan department of

natural resources, (revised December 2005), adopted by the Michigan commission of agriculture on January 9, 2006, and adopted by the natural resources commission on January 12, 2006, and incorporated by reference, to evaluate the issuance, construction, maintenance, administration, and renewal of a registration issued under this act. The department after consultation with the department of agriculture and with concurrence of the commissions of natural resources and agriculture may, by amendment of this act, amend or update the standards adopted in this subsection. Before issuing any registration under this act, the director shall verify, through written confirmation, both of the following:

(a) The department has approved the method used to flush any free-ranging cervidae species from the facility, if applicable, and all free-ranging cervidae species have actually been flushed.

(b) The department has determined that the size and location of the facility will not place unreasonable stress on wildlife habitat or migration corridors.

(2) As part of the initial application or the application to modify a cervidae livestock facility, the applicant for registration shall submit a business plan complying with the standards established under this section that includes all of the following:

(a) The complete address of the proposed cervidae livestock facility and the size of, the location of, and a legal description of the lands on which the cervidae livestock operation will be conducted.

(b) The number of each cervidae species included in the proposed facility.

(c) Biosecurity measures to be utilized, including, but not limited to, methods of fencing and appropriate animal identification.

(d) The proposed method of flushing wild cervidae species from the enclosure, if applicable.

(e) A record-keeping system in compliance with this act and the operational standards incorporated by reference in subsection (1).

(f) The method of verification that all free-ranging cervidae species have been removed.

(g) The current zoning of the property proposed as a cervidae livestock facility and whether the local unit or units of government within which the cervidae livestock facility will be located has an ordinance regarding fences.

(h) A disease herd plan in compliance with the operational standards incorporated by reference in subsection (1) to be approved by the state veterinarian under the animal industry act, 1988 PA 466, MCL 287.701 to 287.745.

(i) Any other information considered necessary by the department.

(3) Upon receipt of an application, the director shall forward 1 copy each to the departments of agriculture and environmental quality. Upon receipt of an application, the department shall send a written notice to the local unit or units of government within which the proposed cervidae livestock facility will be located unless the department determines, from information provided in the application, that the local unit of government has a zoning ordinance under which the land is zoned agricultural. The local unit or units of government may respond, within 30 days of receipt of the written notice, indicating whether the applicant's cervidae livestock facility would be in violation of any ordinance.

(4) The department shall not issue an initial cervidae livestock facility registration or modification unless the application demonstrates all of the following:

(a) The cervidae livestock facility has been inspected by the director and he or she has determined that the cervidae livestock facility meets the standards and requirements prescribed by and adopted under this act, complies with the business plan submitted to the department, and

determines that there are barriers in place to prevent the escape of cervidae species and prevent the entry of wild cervidae species. A renewal or initial applicant must provide a perimeter fence in compliance with the operational standards incorporated by reference under subsection (1).

(b) The method for individual animal identification complies with the standards incorporated by reference under this section.

(c) The applicant has all necessary permits that are required under part 31 regarding water resources protection, part 301 regarding inland lakes and streams, and part 303 regarding wetland protection of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3101 to 324.3133, 324.30101 to 324.30113, and 324.30301 to 324.30323, and any other permits or authorizations that may be required by law.

(5) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial registration or modification registration allowing an expansion of an existing facility not later than 120 days after the applicant files a completed application. Renewal applications shall be issued not later than 60 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by the department. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The determination of the completeness of an application does not operate as an approval of the application for the registration and does not confer eligibility upon an applicant determined otherwise ineligible for issuance of a registration. The 120-day period is tolled under any of the following circumstances:

(a) Notice sent by the department of a deficiency in the application until the date all of the requested information is received by the department.

(b) The time period during which required actions are completed that include, but are not limited to, completion of construction or renovation of the facility; mandated reinspections if by the department; other inspections if required by any state, local, or federal agency; approval by the legislative body of a local unit of government; or other actions mandated by this act or as otherwise mandated by law or local ordinance.

(6) If the department fails to issue or deny a registration within the time required by this subsection, the department shall return the registration fee and shall reduce the registration fee for the applicant's next renewal application, if any, by 15%. The failure to issue a registration within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the registration fee was refunded or discounted under this subsection.

(7) Upon receipt of a denial under this section and without filing a second application, the applicant may request in writing and, if requested, the department shall provide an informal review of the application. The review shall include the applicant, the department, and the departments of agriculture and environmental quality, if applicable. After the informal review, if the director determines that the proposed cervidae livestock facility or cervidae livestock operation complies with the requirements of this act, the director shall issue a registration within 30 days after the applicant notifies the department of completion of the facility. After the informal review, if the director determines that the proposed cervidae livestock facility or cervidae livestock operation does not comply with the requirements of this act, the director shall affirm the denial of the application in writing and specify the deficiencies needed to be addressed or corrected in order for a registration to be issued. The applicant may waive the informal review of the application.

(8) As used in this subsection, "completed application" means an application complete on its face and submitted with any applicable

registration fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

History: 2000, Act 190, Eff. June 1, 2001 ;-- Am. 2006, Act 561, Imd. Eff. Dec. 29, 2006
Compiler's Notes: For transfer of certain powers and duties under the cervidae act from the department of agriculture, or its director, to the department of natural resources by type II transfer, see E.R.O. No. 2004-2, compiled at MCL 287.981.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPTS)
Act 451 of 1994

AN ACT to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996 ;-- Am. 2005, Act 116, Imd. Eff. Sept. 22, 2005
Compiler's Notes: Act 160 of 2004, which was approved by the governor and filed with the secretary of state on June 18, 2004, provided for the amendment of Act 451 of 1994 by amending Sec. 40103 and adding Sec. 40110a. The amended and added sections were effective June 18, 2004. On March 28, 2005, a petition seeking a referendum on Act 160 of 2004 was filed with the Secretary of State. Const 1963, art 2, sec 9, provides that no law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election. A referendum on Act 160 of 2004 was presented to the electors at the November 2006 general election as Proposal 06-3, which read as follows:"PROPOSAL 06-3"A REFERENDUM ON PUBLIC ACT 160 OF 2004 — AN ACT TO ALLOW THE ESTABLISHMENT OF A HUNTING SEASON FOR MOURNING DOVES"Public Act 160 of 2004 would:"Authorize the Natural Resources Commission to establish a hunting season for mourning doves."Require a mourning dove hunter to have a small game license and a $2.00

mourning dove stamp."Stipulate that revenue from the stamp must be split evenly between the Game and Fish Protection Fund and the Fish and Wildlife Trust Fund."Require the Department of Natural Resources to address responsible mourning dove hunting; management practices for the propagation of mourning doves; and participation in mourning dove hunting by youth, the elderly and the disabled in the Department's annual hunting guide."Should this law be approved?"Yes [ ]"No [ ]"Act 160 of 2004 was rejected by a majority of the electors voting thereon at the November 2006 general election.
Popular Name: Act 451
Popular Name: NREPA

Part 117

SEPTAGE WASTE SERVICERS

324.11701 Definitions.
Sec. 11701. As used in this part:

(a) "Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown, including land used or suitable for use as a range or pasture; a sod farm; or a Christmas tree farm.

(b) "Certified health department" means a city, county, or district department of health certified under section 11716.

(c) "Cesspool" means a cavity in the ground that receives waste to be partially absorbed directly or indirectly by the surrounding soil.

(d) "Department" means the department of environmental quality or its authorized agent.

(e) "Director" means the director of the department of environmental quality or his or her designee.

(f) "Domestic septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, type III marine sanitation device, or similar storage or treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar facility that receives either commercial

wastewater or industrial wastewater and does not include grease removed from a grease interceptor, grease trap, or other appurtenance used to retain grease or other fatty substances contained in restaurant waste.

(g) "Domestic sewage" means waste and wastewater from humans or household operations.

(h) "Domestic treatment plant septage" means biosolids generated during the treatment of domestic sewage in a treatment works and transported to a receiving facility or managed in accordance with a residuals management program approved by the department.

(i) "Food establishment septage" means material pumped from a grease interceptor, grease trap, or other appurtenance used to retain grease or other fatty substances contained in restaurant wastes and which is blended into a uniform mixture, consisting of not more than 1 part of that restaurant-derived material per 3 parts of domestic septage, prior to land application or disposed of at a receiving facility.

(j) "Fund" means the septage waste program fund created in section 11717.

(k) "Governmental unit" means a county, township, municipality, or regional authority.

(l) "Incorporation" means the mechanical mixing of surface-applied septage waste with the soil.

(m) "Injection" means the pressurized placement of septage waste below the surface of soil.

(n) "Operating plan" means a plan developed by a receiving facility for receiving septage waste that specifies at least all of the following:

(i) Categories of septage waste that the receiving facility will receive.

(ii) The receiving facility's service area.

(iii) The hours of operation for receiving septage waste.

(iv) Any other conditions for receiving septage waste established by the receiving facility.

(o) "Pathogen" means a disease-causing agent. Pathogen includes, but is not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

(p) "Peace officer" means a sheriff or sheriff's deputy, a village or township marshal, an officer of the police department of any city, village, or township, any officer of the Michigan state police, any peace officer who is trained and certified pursuant to the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, or any conservation officer appointed by the department or the department of natural resources pursuant to section 1606.

(q) "Portable toilet" means a receptacle for human waste temporarily in a location for human use.

(r) "Receiving facility" means a structure that is designed to receive septage waste for treatment at a wastewater treatment plant or at a research, development, and demonstration project authorized under section 11511b to which the structure is directly connected, and that is available for that purpose as provided for in an ordinance of the local unit of government where the structure is located or in an operating plan. Receiving facility does not include either of the following:

(i) A septic tank.

(ii) A structure or a wastewater treatment plant at which the disposal of septage waste is prohibited by order of the department under section 11708 or 11715b.

(s) "Receiving facility service area" or "service area" means the territory for which a receiving facility has the capacity and is available to receive and treat septage waste, subject to the following:

(i) Beginning October 12, 2005 and before the 2011 state fiscal year, the geographic service area of a receiving facility shall not extend more than 15 radial miles from the receiving facility.

(ii) After the 2010 state fiscal year, the geographic service area of a receiving facility shall not extend more than 25 radial miles from the receiving facility.

(t) "Sanitary sewer cleanout septage" means sanitary sewage or cleanout residue removed from a separate sanitary sewer collection system that is not land applied and that is transported by a vehicle licensed under this part elsewhere within the same system or to a receiving facility that is approved by the department.

(u) "Septage waste" means the fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin that is removed from a wastewater system. Septage waste consists only of food establishment septage, domestic septage, domestic treatment plant septage, or sanitary sewer cleanout septage, or any combination of these.

(v) "Septage waste servicing license" means a septage waste servicing license as provided for under sections 11703 and 11706.

(w) "Septage waste vehicle" means a vehicle that is self-propelled or towed and that includes a tank used to transport septage waste. Septage waste vehicle does not include an implement of husbandry as defined in section 21 of the Michigan vehicle code, 1949 PA 300, MCL 257.21.

(x) "Septage waste vehicle license" means a septage waste vehicle license as provided for under sections 11704 and 11706.

(y) "Septic tank" means a septic toilet, chemical closet, or other enclosure used for the decomposition of domestic sewage.

(z) "Service" or "servicing" means cleaning, removing, transporting, or disposing, by application to land or otherwise, of septage waste.

(aa) "Site" means a location or locations on a parcel or tract, as those terms are defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, proposed or used for the disposal of septage waste on land.

(bb) "Site permit" means a permit issued under section 11709 authorizing the application of septage waste to a site.

(cc) "Storage facility" means a structure that receives septage waste for storage but not for treatment.

(dd) "Tank" means an enclosed container placed on a septage waste vehicle to carry or transport septage waste.

(ee) "Type I public water supply", "type IIa public water supply", "type IIb public water supply", and "type III public water supply" mean those terms, respectively, as described in R 325.10502 of the Michigan administrative code.

(ff) "Type III marine sanitation device" means that term as defined in 33 CFR 159.3.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004 ;-- Am. 2005, Act 199, Eff. Nov. 22, 2005
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.11702 Septage waste licensing; requirement.
Sec. 11702. (1) A person shall not engage in servicing or contract to engage in servicing except as authorized by a septage waste servicing license and a septage waste vehicle license issued by the department pursuant to part 13. A person shall not contract for another person to engage in servicing unless the person who is to perform the servicing has a septage waste servicing license and a septage waste vehicle license.

(2) The septage waste servicing license and septage waste vehicle license requirements provided in this part are not applicable to a publicly owned receiving facility subject to a permit issued under part 31 or section 11511b.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004 ;-- Am. 2005, Act 199, Eff. Nov. 22, 2005
Popular Name: Act 451
Popular Name: NREPA

324.11703 Septage waste servicing license; application; eligibility; records.
Sec. 11703. (1) An application for a septage waste servicing license shall include all of the following:

(a) The applicant's name and mailing address.

(b) The location or locations where the business is operated, if the applicant is engaged in the business of servicing.

(c) Written approval from all receiving facilities where the applicant plans to dispose of septage waste.

(d) The locations of the sites where the applicant plans to apply septage waste to land and, for each proposed site, either proof that the applicant owns the proposed site or written approval from the site owner.

(e) A written plan for disposal of septage waste obtained in the winter, if the disposal will be by a method other than delivery to a receiving facility or, subject to section 11711, application to land.

(f) Written proof of satisfaction of the continuing education requirements of subsection (2), if applicable.

(g) Any additional information pertinent to this part required by the department.

(h) Payment of the septage waste servicing license fee as provided in section 11717b.

(2) Beginning January 1, 2007, a person is not eligible for an initial servicing license unless the person has successfully completed not less than 10 hours of continuing education during the 2-year period before applying for the license. Beginning January 1, 2007 and until December 31, 2009, a person is not eligible to renew a servicing license unless the person has successfully completed not less than 10 hours of continuing education during the 2-year period preceding the issuance of the license. Beginning January 1, 2010, a person is not eligible to renew a servicing license unless the person has successfully completed not less than 30 hours of continuing education during the 5-year period preceding the issuance of the license.

(3) Before offering or conducting a course of study represented to meet the educational requirements of subsection (2), a person shall obtain approval from the department. The department may suspend or revoke the approval of a person to offer or conduct a course of study to meet the requirements of subsection (2) for a violation of this part or of the rules promulgated under this part.

(4) If an applicant or licensee is a corporation, partnership, or other legal entity, the applicant or licensee shall designate a responsible agent to fulfill the requirements of subsections (2) and (3). The responsible agent's name shall appear on any license or permit required under this part.

(5) A person engaged in servicing shall maintain at all times at his or her place of business a complete record of the amount of septage waste that the person has transported or disposed of, the location at which septage

waste was disposed of, and any complaints received concerning disposal of the septage waste. The person shall also report this information to the department on an annual basis in a manner required by the department.

(6) A person engaged in servicing shall maintain records required under subsection (5) or 40 CFR part 503 for at least 5 years. A person engaged in servicing or an individual who actually applies septage waste to land, as applicable, shall display these records upon the request of the director, a peace officer, or an official of a certified health department.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11704 Septage waste vehicle license; application; display; transportation of hazardous waste.
Sec. 11704. (1) An application for a septage waste vehicle license shall include all of the following:

(a) The model and year of the septage waste vehicle.

(b) The capacity of any tank used to remove or transport septage waste.

(c) The name of the insurance carrier for the septage waste vehicle.

(d) Whether the septage waste vehicle or any other vehicle owned by the person applying for the septage waste vehicle license will be used at any time during the license period for land application of septage waste.

(e) Any additional information pertinent to this part required by the department.

(f) A septage waste vehicle license fee as provided by section 11717b for each septage waste vehicle.

(2) A person who is issued a septage waste vehicle license shall carry a copy of that license at all times in each vehicle that is described in the

license and display the license upon the request of the department, a peace officer, or an official of a certified health department.

(3) A septage waste vehicle shall not be used to transport hazardous waste regulated under part 111 or liquid industrial waste regulated under part 121, without the express written permission of the department.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11705 Septage waste vehicle, tank, and accessory equipment; requirements.

Sec. 11705. A tank upon a septage waste vehicle shall be closed in transit to prevent the release of septage waste and odor. The septage waste vehicle and accessory equipment shall be kept clean and maintained in a manner that prevents environmental damage or harm to the public health.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11706 Review of applications; providing health department with copies of application materials; investigations; issuance of license; license nontransferable; duration of license.

Sec. 11706. (1) Upon receipt of an application for a septage waste servicing license or a septage waste vehicle license, the department shall review the application to ensure that it is complete. If the department determines that the application is incomplete, the department shall promptly notify the applicant of the deficiencies. If the department determines that the application is complete, the department shall promptly provide the appropriate certified health department with a copy of all application materials. Upon receipt of the application materials, a certified health department shall conduct investigations necessary to verify that the sites, the servicing methods, and the septage waste vehicles are in compliance with this part. If so, the department shall

approve the application and issue the license applied for in that application. If a certified health department does not exist, the department may perform the functions of a certified health department as necessary.

(2) A septage waste servicing license is not transferable and is valid, unless suspended or revoked, for 5 years. A septage waste vehicle license is not transferable and is valid, unless suspended or revoked, for the same 5-year period as the licensee's septage waste servicing license.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11707 Display on both sides of septage waste vehicle.

Sec. 11707. Each septage waste vehicle for which a septage waste vehicle license has been issued shall display on both sides of the septage waste vehicle in letters not less than 2 inches high the words "licensed septage hauler", the vehicle license number issued by the department, and a seal furnished by the department that designates the year the septage waste vehicle license was issued.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11708 Deposit of septage waste in public septage waste treatment facility; disposal fee; prohibiting operation of wastewater treatment plant.

Sec. 11708. (1) Before 1 year after the effective date of the 2004 amendatory act that added this subsection, if a person is engaged in servicing in a receiving facility service area not more than 15 road miles from that receiving facility, that person shall dispose of the septage waste at that receiving facility or another receiving facility in whose service area the person is engaged in servicing.

(2) Subsection (1) does not apply to a person engaged in servicing who owns a storage facility with a capacity of 50,000 gallons or more.

(3) Beginning 1 year after the effective date of the 2004 amendatory act that added this subsection, if a person is engaged in servicing in a receiving facility service area, that person shall dispose of the septage waste at that receiving facility or any other receiving facility within whose service area the person is engaged in servicing.

(4) If a person engaged in servicing owns a storage facility with a capacity of 50,000 gallons or more and the storage facility was constructed, or authorized by the department to be constructed, before the location where the person is engaged in servicing was included in a receiving facility service area under an operating plan approved under section 11715b, subsection (3) does not apply to that person before the 2025 state fiscal year.

(5) A receiving facility may charge a fee for receiving septage waste. Before 1 year after the effective date of the 2004 amendatory act that added this subsection, the fee shall not exceed the actual costs related to the treatment and storage of the waste. Beginning 1 year after the effective date of the 2004 amendatory act that added this subsection, the fee shall not exceed the actual costs of operating the receiving facility including the reasonable cost of doing business as defined by common accounting practices.

(6) The department may issue an order prohibiting the operation of a wastewater treatment plant or structure as a receiving facility due to excessive hydraulic or organic loading, odor problems, or other environmental or public health concerns.

(7) A person shall not dispose of septage waste at a wastewater treatment plant or structure if the operation of that wastewater treatment plant or structure as a receiving facility is prohibited by an order issued under subsection (6) or section 11715b.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11709 Disposal of septage waste on land; permit required; additional information; notice; renewal; revocation of permit.
Sec. 11709. (1) A person shall not dispose of septage waste on land except as authorized by a site permit for that site issued by the department pursuant to part 13. A person shall apply for a site permit using an application form provided by the department. The application shall include all of the following for each site:

(a) A map identifying the site from a county land atlas and plat book.

(b) The site location by latitude and longitude.

(c) The name and address of the land owner.

(d) The name and address of the manager of the land, if different than the owner.

(e) Results of a soil fertility test performed within 1 year before the date of the application for a site permit including analysis of a representative soil sample of each location constituting the site as determined by the bray P1 (bray and kurtz P1), or Mehlich 3 test, for which procedures are described in the publication entitled "Recommended chemical soil test procedures for the north central region". The department shall provide a copy of this publication to any person upon request at no cost. The applicant shall also provide test results from any additional test procedures that were performed on the soil.

(f) Other site specific information necessary to determine whether the septage waste disposal will comply with state and federal law.

(g) Payment of the site permit fee as provided under section 11717b.

(2) Upon receipt of an application under subsection (1), the department shall review the application to ensure that it is complete. If the department determines that the application is incomplete, it shall promptly notify the applicant of the deficiencies.

(3) An applicant for a site permit shall simultaneously send a notice of the application, including all the information required by subsection (1)(a) to (d), to all of the following:

(a) The certified health department having jurisdiction.

(b) The clerk of the city, village, or township where the site is located.

(c) Each person who owns a lot or parcel that is contiguous to the lot, parcel, or tract on which the proposed site is located or that would be contiguous except for the presence of a highway, road, or street.

(d) Each person who owns a lot or parcel that is within 150 feet of a location where septage waste is to be disposed of by injection or 800 feet of a location where septage waste is to be disposed of by surface application.

(4) If the department finds that the applicant is unable to provide notice as required in subsection (3), the department may waive the notice requirement or allow the applicant to use a substitute means of providing notice.

(5) The department shall issue a site permit if all the requirements of this part and federal law are met. Otherwise, the department shall deny the site permit.

(6) A site permit is not transferable and is valid, unless suspended or revoked, until the expiration of the permittee's septage waste servicing license. A site permit may be revoked by the department if the septage waste land application or site management is in violation of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11710 Requirements to which permit subject.
Sec. 11710. A site permit is subject to all of the following requirements:

(a) The septage waste disposed of shall be applied uniformly at agronomic rates.

(b) Not more than 1 person licensed under this part may use a site for the disposal of septage waste during any year.

(c) Septage waste may be disposed of by land application only if the horizontal distance from the applied septage waste and the features listed in subparagraphs (i) to (ix) equals or exceeds the following isolation distances:

	TYPE OF APPLICATION	
	Surface	Injection
(i)	Type I public water supply wells	2,000 feet 2,000 feet
(ii)	Type IIa public water supply wells	2,000 feet 2,000 feet
(iii)	Type IIb public water supply wells	800 feet 800 feet
(iv)	Type III public water supply wells	800 feet 150 feet
(v)	Private drinking water wells	800 feet 150 feet
(vi)	Other water wells	800 feet 150 feet
(vii)	Homes or commercial buildings	800 feet 150 feet
(viii)	Surface water	500 feet 150 feet
(ix)	Roads or property lines	200 feet 150 feet

(d) Septage waste disposed of by land application shall be disposed of either by surface application, subject to subdivision (g), or injection.

(e) If septage waste is applied to the surface of land, the slope of that land shall not exceed 6%. If septage waste is injected into land, the slope of that land shall not exceed 12%.

(f) Septage waste shall not be applied to land unless the water table is at least 30 inches below any applied septage waste.

(g) If septage waste is applied to the surface of the land, 1 of the following requirements is met:

(i) The septage waste shall be mechanically incorporated within 6 hours after application.

(ii) The septage waste shall have been treated to reduce pathogens prior to land disposal by aerobic or anaerobic digestion, lime stabilization, composting, air drying, or other process or method approved by the department and, if applied to fallow land, is mechanically incorporated within 48 hours after application, unless public access to the site is restricted for 12 months and no animals whose products are consumed by humans are allowed to graze on the site for at least 1 month following disposal.

(h) Septage waste shall be treated to reduce pathogens by composting, heat drying or treatment, thermophilic aerobic digestion, or other process or method approved by the department prior to disposal on lands where crops for direct human consumption are grown, if contact between the septage waste and the edible portion of the crop is possible.

(i) Vegetation shall be grown on a septage waste disposal site within 1 year after septage waste is disposed of on that site.

(j) Food establishment septage shall not be applied to land unless it has been combined with other septage waste in no greater than a 1 to 3 ratio and blended into a uniform mixture.

(k) The permittee shall not apply septage waste to a location on the site unless the permittee has conducted a soil fertility test of that location as described in section 11709 within 1 year before the date of the land application. The permittee shall not apply food establishment septage to a location on the site unless the permittee has conducted testing of soil in that location within 1 year before the date of application in accordance with requirements in 40 CFR 257.3 to 257.5 or a single test of mixed septage waste contained in a storage facility.

(l) Beginning 2 years after the effective date of the 2004 amendatory act that amended this section, before land application, domestic septage shall be screened through a screen of not greater than 1/2-inch mesh or through slats separated by a gap of not greater than 3/8 inch. Screenings shall be handled as solid waste under part 115. Instead of screening, the domestic septage may be processed through a sewage grinder designed to not pass solids larger than 1/2 inch in diameter.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11711 Surface application of septage waste to frozen ground; requirements.
Sec. 11711. Beginning 2 years after the effective date of the 2004 amendatory act that amended this section, a person shall not surface apply septage waste to frozen ground. Before that time, a person shall not surface apply septage waste to frozen ground unless all of the following requirements are met:

(a) Melting snow or precipitation does not result in the runoff of septage waste from the site.

(b) The slope of the land is less than 2%.

(c) The pH of septage waste is raised to 12.0 (at 25 degrees Celsius) or higher by alkali addition and, without the addition of more alkali,

remains at 12.0 or higher for 30 minutes. Other combinations of pH and temperature may be approved by the department.

(d) The septage waste is mechanically incorporated within 20 days following the end of the frozen ground conditions.

(e) The department approves the surface application and subsequent mechanical incorporation.

(f) Less than 10,000 gallons per acre are applied to the surface during the period that the septage waste cannot be mechanically incorporated due to frozen ground.

(g) The septage waste is applied in a manner that prevents the accumulation and ponding of the septage waste.

(h) Any other applicable requirement under this part or federal law is met.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11712 Applicability of federal regulations.

Sec. 11712. Persons subject to this part shall comply with applicable provisions of subparts A, B, and D of part 503 of title 40 of the code of federal regulations.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11713 Inspection of disposal site.

Sec. 11713. (1) At any reasonable time, a representative of the department may enter in or upon any private or public property for the purpose of inspecting and investigating conditions relating to compliance

with this part. However, an investigation or inspection under this subsection shall comply with the United States constitution, the state constitution of 1963, and this section.

(2) The department shall inspect septage waste vehicles at least annually.

(3) The department shall inspect a site at least annually.

(4) The department shall inspect a receiving facility within 1 year after that receiving facility begins operation and at least annually thereafter.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11714 Prohibited disposition of septage waste into certain bodies of water.

Sec. 11714. A person shall not dispose of septage waste directly or indirectly in a lake, pond, stream, river, or other body of water.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11715 Preemption; duty of governmental unit to make available public septage waste treatment facility; posting of surety not required.

Sec. 11715. (1) This part does not preempt an ordinance of a governmental unit that prohibits the application of septage waste to land within that governmental unit or otherwise imposes stricter requirements than this part.

(2) If a governmental unit requires that all septage waste collected in that governmental unit be disposed of in a receiving facility or prohibits, or effectively prohibits, the application of septage waste to land within that governmental unit, the governmental unit shall make available a

receiving facility that can lawfully accept all septage waste generated within that governmental unit that is not lawfully applied to land.

(3) The owner or operator of a receiving facility may require the posting of a surety, including cash in an escrow account or a performance bond, not exceeding $25,000.00 to dispose of septage waste in the receiving facility.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11715b Rules; requirements for receiving facilities and control of nuisance conditions; notice of operation; penalties for noncompliance.
Sec. 11715b. (1) The department shall promulgate rules establishing design and operating requirements for receiving facilities and the control of nuisance conditions.

(2) A person shall not commence construction of a receiving facility on or after the date on which rules are promulgated under subsection (1) unless the owner has a permit from the department authorizing the construction of the receiving facility. The application for a permit shall include a basis of design for the receiving facility, engineering plans for the receiving facility sealed by an engineer licensed to practice in Michigan, and any other information required by the department. If the proposed receiving facility will be part of a sewerage system whose construction is required to be permitted under part 41 or a research, development, and demonstration project whose construction and operation is required to be permitted under section 11511b, the permit issued under part 41 or part 115, respectively, satisfies the permitting requirement of this subsection.

(3) Subject to subsection (4), a person shall not operate a receiving facility contrary to an operating plan approved by the department.

(4) If the operation of a receiving facility commenced before October 12, 2004, subsection (3) applies to that receiving facility beginning October 12, 2005.

(5) Before submitting a proposed operating plan to the department for approval, a person shall do all of the following:

(a) Publish notice of the proposed operating plan in a newspaper of general circulation in the area where the receiving facility is located.

(b) If the person maintains a website, post notice of the proposed operating plan on its website.

(c) Submit notice of the proposed operating plan by first-class mail to the county health department and the legislative body of each city, village, and township located in whole or in part within the service area of the receiving facility.

(6) Notice of a proposed operating plan under subsection (5) shall contain all of the following:

(a) A statement that the receiving facility proposes to receive or, in the case of a receiving facility described in subsection (4), to continue to receive septage waste for treatment.

(b) A copy of the proposed operating plan or a statement where the operating plan is available for review during normal business hours.

(c) A request for written comments on the proposed operation of the receiving facility and the deadline for receipt of such comments, which shall be not less than 30 days after publication, posting, or mailing of the notice.

(7) After the deadline for receipt of comments under subsection (6), the person proposing to operate a receiving facility may modify the plan in response to any comments received and shall submit a summary of the

comments and the current version of the proposed operating plan to the department for approval.

(8) The operator of a receiving facility may modify an approved operating plan if the modifications are approved by the department. Subsections (5) to (7) do not apply to the modification of the operating plan.

(9) If the owner or operator of a receiving facility violates this section or rules promulgated under this section, after providing an opportunity for a hearing, the department may order that a receiving facility cease operation as a receiving facility.

(10) The department shall post on its website both of the following:

(a) Approved operating plans, including any modifications under subsection (8).

(b) Notice of any orders under subsection (9).

(11) If construction of a receiving facility commenced before the date on which rules are promulgated under subsection (1), all of the following apply:

(a) Within 1 year after the date on which rules are promulgated under subsection (1), the owner of the receiving facility shall submit to the department and obtain department approval of a report prepared by a professional engineer licensed to practice in Michigan describing the receiving facility's state of compliance with the rules and proposing any modifications to the receiving facility necessary to comply with the rules.

(b) If, according to the report approved under subdivision (a), modifications to the receiving facility are necessary to comply with the rules promulgated under subsection (1), within 18 months after the report is approved under subdivision (a), the owner of the receiving facility shall submit to the department engineering plans for modifying the

receiving facility and shall obtain a construction permit from the department for modifying the receiving facility.

(c) Within 3 years after the report is approved under subdivision (a), the owner of the receiving facility shall complete construction modifying the receiving facility so that it complies with those rules.

(12) After a hearing, the department may order that a receiving facility whose owner fails to comply with this section cease operating as a receiving facility.

History: Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004 ;-- Am. 2005, Act 199, Eff. Nov. 22, 2005
Popular Name: Act 451
Popular Name: NREPA

324.11715d Advisory committee to make recommendations on septage waste storage facility management practices.
Sec. 11715d. (1) Within 60 days after the effective date of the amendatory act that added this section, the department shall convene an advisory committee to make recommendations on septage waste storage facility management practices, including, but not limited to, storage facility inspections. The advisory committee shall include at least all of the following:

(a) A storage facility operator.

(b) A receiving facility operator.

(c) A generator of septage waste.

(d) A representative of township government.

(e) A representative of an environmental protection organization.

(f) A licensed Michigan septage waste hauler.

(2) Within 18 months after the effective date of this section, the department shall establish generally accepted septage storage facility management practices and post the management practices on the department's website.

(3) A person shall not construct a septage waste storage facility without written approval from the department.

History: Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Compiler's Notes: For abolishment of the advisory committee on septage waste storage facility management practices and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-20, compiled at MCL 324.99912.
Popular Name: Act 451
Popular Name: NREPA

324.11716 Certification of city, county, and district departments of health to carry out powers and duties.
Sec. 11716. (1) The department may certify a city, county, or district health department to carry out certain powers and duties of the department under this part.

(2) If a certified health department does not exist in a city, county, or district or does not fulfill its responsibilities under this part, the department may contract with qualified third parties to carry out certain responsibilities of the department under this part in that city, county, or district.

(3) The department and each certified health department or third party that will carry out powers or duties of the department under this part shall enter a memorandum of understanding or contract describing those powers and duties and providing for compensation to be paid by the department from the fund to the certified health department or third party.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11717 Septage waste site contingency fund; creation; authorization of expenditures.

Sec. 11717. (1) There is created in the state treasury a septage waste site contingency fund. Interest earned by the septage waste contingency fund shall remain in the septage waste contingency fund unless expended as provided in subsection (2).

(2) The department shall expend money from the septage waste contingency fund, upon appropriation, only to defray costs of the continuing education courses under section 11703 that would otherwise be paid by persons taking the courses.

(3) The septage waste program fund is created within the state treasury.

(4) Fees and interest on fees collected under this part shall be deposited in the fund. In addition, promptly after the effective date of the 2004 amendatory act that amended this section, the state treasurer shall transfer to the septage waste program fund all the money in the septage waste compliance fund. The state treasurer may receive money or other assets from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(5) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(6) The department shall expend money from the fund, upon appropriation, only for the enforcement and administration of this part, including, but not limited to, compensation to certified health departments or third parties carrying out certain powers and duties of the department under section 11716.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11717b Fees for persons engaged in septage waste servicing.
Sec. 11717b. (1) The cost of administering this part shall be recovered by collecting fees from persons engaged in servicing. Fee categories and, subject to subsection (2), rates are as follows:

(a) The fee for a septage waste servicing license is $200.00 per year.

(b) The fee for a septage waste vehicle license is as follows:

(i) If none of the vehicles owned by the person applying for the septage waste vehicle license will be used at any time during the license period for disposal of septage waste by land application, $350.00 per year for each septage waste vehicle.

(ii) If any of the vehicles owned by the person applying for the septage waste vehicle license will be used at any time during the license period for disposal of septage waste by land application, $480.00 per year for each septage waste vehicle.

(c) The fee for a site permit is $500.00. However, a person shall not be charged a fee to renew a site permit.

(2) If a fee under subsection (1) is paid for a license, permit, or approval but the application for the license or permit or the request for the approval is denied, the department shall promptly refund the fee.

(3) For each state fiscal year, a person possessing a septage waste servicing license and septage waste vehicle license as of January 1 of that fiscal year shall be assessed a septage waste servicing license fee and septage waste vehicle license fee as specified in this section. The department shall notify those persons of their fee assessments by February 1 of that fiscal year. Payment shall be postmarked by March 15 of that fiscal year. Fees assessed in the 2005 calendar year for a septage waste servicing license or a septage waste vehicle license shall be reduced by the amount of the fee paid by the applicant for a septage waste vehicle license for the same vehicle or for a septage waste servicing license, respectively, in effect on January 1, 2005, prorated

based on the portion of the 3-year term of that license remaining after December 31, 2004.

(4) The department shall assess interest on all fee payments received after the due date. The amount of interest shall equal 0.75% of the payment due, for each month or portion of a month the payment remains past due. The failure by a person to timely pay a fee imposed by this section is a violation of this part.

(5) If a person fails to pay a fee required under this section in full, plus any interest accrued, by October 1 of the year following the date of notification of the fee assessment, the department may issue an order that revokes the license or permit held by that person for which the fee was to be paid.

(6) Fees and interest collected under this section shall be deposited in the fund.

History: Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11718 Rules.
Sec. 11718. (1) The department shall promulgate rules that establish both of the following:

(a) Continuing education requirements under section 11706.

(b) Design and operating requirements for receiving facilities, as provided in section 11715b.

(2) The department may, in addition, promulgate rules that do 1 or more of the following:

(a) Add other materials and substances to the definition of septage waste.

(b) Add enclosures to the list of enclosures in the definition of septage waste under section 11701 the servicing of which requires a septage waste servicing license under this part.

(c) Specify information required on an application for a septage waste servicing license, septage waste vehicle license, or site permit.

(d) Establish standards or procedures for a department declaration under section 11708 that a wastewater treatment plant or structure is unavailable as a receiving facility because of excessive hydraulic or organic loading, odor problems, or other factors.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11719 Violation or false statement as misdemeanor; penalties.
Sec. 11719. (1) A person who violates section 11704, 11705, 11708, 11709, 11710, or 11711 is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00, or both. A peace officer may issue an appearance ticket to a person for a violation of any of these sections.

(2) A person who knowingly makes or causes to be made a false statement or entry in a license application or a record required in section 11703 is guilty of a felony punishable by imprisonment for not more than 2 years, or a fine of not less than $2,500.00 or more than $25,000.00, or both.

(3) A person who violates this part or a license or permit issued under this part, except as provided in subsections (1) and (2), is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not less than $1,000.00 and not more than $2,500.00, or both.

(4) Each day that a violation described in subsection (1), (2), or (3) continues constitutes a separate violation.

(5) Upon receipt of information that the servicing of septage waste regulated by this part presents an imminent or substantial threat to the public health, safety, welfare, or the environment, after consultation with the director or a designated representative of the department of community health, the department, or a peace officer if authorized by law, shall do 1 or more of the following:

(a) Pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, summarily suspend a license issued under this part and afford the holder of the license an opportunity for a hearing within 7 days.

(b) Request that the attorney general commence an action to enjoin the act or practice and obtain injunctive relief upon a showing that a person is or has removed, transported, or disposed of septage waste in a manner that is or may become injurious to the public health, safety, welfare, or the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

324.11720 Temporary variance from act.
Sec. 11720. (1) The director may grant a temporary variance from a requirement of this part added by the 2004 amendatory act that amended this part if all of the following requirements are met:

(a) The variance is requested in writing.

(b) The requirements of this part cannot otherwise be met.

(c) The variance will not create or increase the potential for a health hazard, nuisance condition, or pollution of surface water or groundwater.

(d) The activity or condition for which the variance is proposed will not violate any other part of this act.

(2) A variance granted under subsection (1) shall be in writing and shall be posted on the department's website.

History: Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004
Popular Name: Act 451
Popular Name: NREPA

MICHIGAN HEALTH PLANNING AND HEALTH POLICY DEVELOPMENT ACT (EXCERPT)
Act 323 of 1978

325.2010 State health planning council; duties.

Sec. 10. (1) The council shall carry out the following activities relating to state health planning and health policy development:

(a) Subject to subsection (2), prepare and approve the state health plan not less frequently than once every 3 years. The council may revise individual components of the plan as considered necessary by the council.

(b) Submit the proposed state health plan to the governor and the standing committee of each house of the legislature having jurisdiction over public health matters. The governor or legislature may disapprove the plan within 60 legislative session days after submission. If the legislature is not in session at the time of submission, the 60 legislative session days shall commence the first day on which the legislature reconvenes. Legislative disapproval shall be expressed by concurrent resolution which shall be adopted by a record roll call vote of each house of the legislature. The concurrent resolution shall state specific objections to the plan. If the proposed state health plan is disapproved by concurrent resolution, the council shall revise the plan based on the stated objections. If the plan is not disapproved within the 60 legislative session days, the plan shall be considered approved. As used in this subdivision, “legislative session day” means each day in which a quorum of either the house of representatives or senate, following a call to order, officially convenes in Lansing to conduct legislative business.

(c) Annually review program activities and budgets of state departments which are related to health and medical care to determine consistency of these activities and budgets with the state health plan. The council shall report its conclusions to appropriate legislative committees, to the governor, and to other affected agencies.

(d) Actively pursue implementation of the recommendations contained in the state health plan. An annual implementation plan shall be prepared and submitted to the legislature, the governor, and other interested parties.

(e) Provide a public forum for the discussion and identification of priority health issues.

(f) Make recommendations to the governor, the legislature, and other affected agencies regarding current or proposed changes in federal and state health statutes, policies, and budgets, taking into account the state health plan.

(g) Cooperate with legislative committees having jurisdiction over health matters and advise in the development of a consistent and coordinated policy for health affairs in this state.

(h) Assess the policies and rules of state departments and agencies concerning the collection and application of statistics relating to health, health planning, and health policy development, and periodically make recommendations to the governor, the legislature, and other affected agencies for improvement and coordination of the statistics. The council shall report its conclusions under this subdivision to appropriate legislative committees, the governor, and other affected agencies. The report shall recommend, at a minimum, policies concerning accessibility of data, uniformity and reliability of data, independent and shared use of data, and coordination of health data systems.

(i) Perform other duties as specified in part 222 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.22201 to 333.22259 of the Michigan Compiled Laws.

(2) The state health plan shall do all of the following:

(a) Address mechanisms to promote adequate access to health care for all segments of the state's population.

(b) Outline initiatives designed to contain the costs of health care and improve the efficiency with which services are delivered.

(c) Address the ways in which changes in individual behavior and responsibility can assist in reducing the costs of health care.

(d) Promote innovative and cost effective strategies for projecting and addressing the future needs of the population.

(e) Encourage the rational development and distribution of health care services.

(f) Suggest means by which the quality of health care services can be improved through changes in the delivery system.

(g) Promote cooperation between the public and private sectors in achieving subdivisions (a) to (f).

History: 1978, Act 323, Imd. Eff. July 10, 1978 ;-- Am. 1979, Act 61, Imd. Eff. July 24, 1979 ;-- Am. 1988, Act 309, Eff. Oct. 1, 1988

HOSPITAL AUTHORITY (EXCERPT)
Act 47 of 1945

331.1 Hospital authority; formation; issuance and purpose of bonds; enlargement of powers; “hospitals” and “community hospitals and related facilities” defined.

Sec. 1. (1) Two or more cities, villages, or townships, or a combination of cities, villages, or townships, by resolution of their respective legislative bodies, approved by a majority vote of the qualified electors of each of those cities, villages, or townships, may join to form a hospital authority and issue bonds for the purpose of planning, promoting,

acquiring, constructing, improving, enlarging, extending, owning, maintaining, and operating, either within or without the city, village, or township limits, 1 or more community hospitals and related buildings or structures and related facilities, subject to the tax limitation provided in this act. The power granted in this section shall be considered an enlargement of a power granted to a city, village, or township by its respective charter or the laws of this state.

(2) As used in this act, "hospitals" and "community hospitals and related facilities" mean buildings or structures and related facilities suitable, intended for, incidental, or ancillary to the care of the sick, wounded, or elderly, or for the care of persons requiring medical treatment and buildings or structures and related facilities shared by 1 or more hospitals, including an outpatient clinic; an ambulatory care facility; a long-term care facility; an assisted living facility; a home for the aged; a senior citizen housing facility; a health and wellness facility; a diagnostic facility; a shared service facility; a laundry; a nurse's, doctor's, or intern's residence; an administration building; a building or structure used for research directly involved with medical care; a maintenance, storage, or utility building and related equipment; a parking lot or garage; furnishings; and the land necessary or convenient for use for the building or structure; an office facility not less than 80% of which is intended for lease or use by direct providers of health care, and which has been determined by the department of public health to meet a demonstrated need and is geographically or functionally related to 1 or more hospital facilities, if the authority determines that the financing of the office facility is necessary to accomplish the purposes and objectives of this act.

History: 1945, Act 47, Imd. Eff. Mar. 15, 1945 ;-- CL 1948, 331.1 ;-- Am. 1952, Act 170, Imd. Eff. Apr. 24, 1952 ;-- Am. 1960, Act 65, Imd. Eff. Apr. 25, 1960 ;-- Am. 1973, Act 161, Imd. Eff. Dec. 14, 1973 ;-- Am. 1977, Act 71, Imd. Eff. July 27, 1977 ;-- Am. 1978, Act 617, Imd. Eff. Jan. 6, 1979 ;-- Am. 2006, Act 473, Imd. Eff. Dec. 20, 2006
Popular Name: Municipal Hospital Authority Act

MEDICAL CENTER COMMISSION (EXCERPT)
Act 154 of 1949

331.604 Medical commission; district boundaries, development plan.
Sec. 4. The commission shall establish the boundaries of the district and shall draw up a development plan, subject to the approval of the local planning commission, if any, and of the local legislative body. The commission shall administer the plan for the district and shall be responsible for its effectuation.

History: 1949, Act 154, Eff. Sept. 23, 1949

PUBLIC HEALTH CODE (EXCERPTS)
Act 368 of 1978

RELATIONSHIP TO LOCAL PLANNING AND ZONING

333.1203 Approval of certain plans or issuance of certain permits pursuant to code; effect.
Sec. 1203. The approval of plans or the issuance of a permit pursuant to this code which involves the construction, alteration, or renovation of a building, structure, or premises, the use of a site, or the installation or alteration of equipment does not relieve the person receiving the approval or permit from complying with all consistent applicable provisions of building and construction laws, zoning requirements, and other state and local statutes, charters, ordinances, rules, regulations, and orders.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12104 Statutes which impact on environmental health; review; recommendations; state programs related to lead-based paint poisoning and rodent control.
Sec. 12104. (1) The department shall continually review all statutes which impact on environmental health and may recommend the updating or incorporation of those statutes into this code. Recommendations for inclusion of environmental health statutes in this code shall take

cognizance of the alternative preventive health and engineering approaches to environmental health issues and fully consider the roles of local health departments and local governing and planning entities in the implementation of authorized programs and assure their participation in the consideration of their roles.

(2) Not later than 12 months after the effective date of this section, the director shall make recommendations to the governor and legislature for state programs related to lead-based paint poisoning and rodent control.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

Part 124
AGRICULTURAL LABOR CAMPS

333.12401 Definitions and principles of construction.
Sec. 12401. (1) As used in this part:

(a) "Advisory board" means the board appointed pursuant to section 12421.

(b) "Agricultural labor camp" means a tract of land and all tents, vehicles, buildings, or other structures pertaining thereto, part of which is established, occupied, or used as living quarters for 5 or more migratory laborers engaged in agricultural activities, including related food processing.

(c) "Camp operator" means a person who owns, establishes, operates, conducts, manages, or maintains an agricultural labor camp or who causes or permits the occupancy or use of an agricultural labor camp whether or not rent is charged for housing and facilities.

(d) "Fund" means the migratory labor housing fund.

(e) "Migratory laborer" means a person working, or available for work, who moves seasonally 1 or more times from 1 place to another from

within or without the state for the purpose of such employment or availability or who is employed in the growing of mushrooms.

(f) “Person” means a person as defined in section 1106 or a governmental entity.

(g) “Remodeling” means the remodeling, improving, or reconstruction of existing housing or facilities which are incidental or appurtenant thereto for migratory laborers or the construction of new housing or facilities which are incidental or appurtenant thereto for migratory laborers.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code.

History: 1978, Act 368, Eff. Sept. 30, 1978
Compiler's Notes: For transfer of powers and duties of the division of environmental health, with the exception of the food service sanitation program and the shelter environment program, from the director of the department of public health to the director of the department of environmental quality, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.
Popular Name: Act 368

333.12411 License for operation of agricultural labor camp required; posting license or license placard; notice of construction, enlargement, or conversion; violation; fine.

Sec. 12411. (1) A person shall not operate an agricultural labor camp or cause to be operated or allow an agricultural labor camp to be occupied and used as an agricultural labor camp, without a license. The agricultural labor camp shall be operated only while the license remains in effect. The camp operator shall post the license or the license placard issued by the department in a conspicuous place in the agricultural labor camp to which it applies. The license or placard shall continue to remain posted during the entire time the agricultural labor camp is operated.

(2) A person shall not construct or alter for occupancy or use, an agricultural labor camp or any portion or facility thereof, or convert a property for use or occupancy as an agricultural labor camp, without giving written notice of the intent to do so to the department at least 30

days before the date of beginning the construction, enlargement, or conversion. The notice shall give the name of the city, village, or township in which the property is located, the location of the property within that area, a brief description of the proposed construction, enlargement, or conversion, the name and mailing address of the person giving the notice, and the person's telephone number, if any.

(3) A person is not in violation of subsection (1) if the sole reason the person is operating the agricultural labor camp without a license is due to the failure of the department to respond within a timely manner to an application submitted in accordance with section 12412.

(4) In addition to any other penalty provided under this part, a person who violates subsection (1) by operating an agricultural labor camp without a license is subject to an administrative civil fine of not more than $1,000.00. Each day a person operates without a license is a separate violation, however the total administrative civil fine for continued noncompliance shall not exceed $10,000.00. All fines collected under this subsection shall be credited to the migratory labor housing fund created under section 12431.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 2005, Act 43, Imd. Eff. June 16, 2005
Popular Name: Act 368

333.12412 License for operation of agricultural labor camp; form, contents, and time of application.
Sec. 12412. (1) A person desiring to operate an agricultural labor camp in this state shall make application to the department on the forms and in the manner prescribed by the department.

(2) The application shall include:

(a) The full name and address of the applicant. If the applicant is a corporation, partnership, firm, or association, the name and address of the principal officers or partners shall be stated.

(b) The location of the agricultural labor camp.

(c) The maximum number of people who will occupy the camp at any time.

(d) The months during which the camp will be used or occupied.

(e) A brief description of the tents, vehicles, buildings, or other structures in which individuals will be housed.

(f) A brief description of the sanitary, water, cooking, and sewage facilities available.

(g) Other information required by the department.

(3) An application for a license to operate an agricultural labor camp shall be made at least 30 days before the first day that the proposed camp is to be operated.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12413 License for operation of agricultural labor camp; issuance; duration; recital on face of license; transferability or assignability.

Sec. 12413. (1) The department shall issue a license for the operation of the agricultural labor camp, if after investigation and inspection, it finds that the camp and its proposed operation conforms or will conform to the minimum standards of construction, health, sanitation, sewage, water supply, plumbing, garbage and rubbish disposal, and operation set forth in the rules promulgated under section 12421. The license shall be valid for the balance of the calendar year during which it is issued.

(2) The license shall recite on its face that the camp operator shall comply with this part and the rules promulgated under this part.

(3) The license is not transferable or assignable, except with the express written consent of the department.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12414 Temporary license; renewal application.

Sec. 12414. (1) A temporary license may be issued for not more than 3 months pending the results of an inspection or pending the correction of certain designated items. Not more than 2 temporary licenses pending correction of the same violation shall be issued for a camp.

(2) A renewal application shall be filed after January of each year to operate the agricultural labor camp during the year, but at least 30 days before the agricultural labor camp is to commence operation.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12415 Denial of application for license; notice; hearing.

Sec. 12415. When the department denies an application for a license to operate an agricultural labor camp, it shall give written notice of the denial by certified mail to the applicant stating reasons for the denial. An applicant denied a license may request a hearing before the department on the denial not later than 4 days after receipt of the denial. The department shall hold the hearing on the denial not later than 7 days after receipt of the request.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12416 Suspension or revocation of license; grounds; notice; hearing; appeal.

Sec. 12416. (1) The department may suspend or revoke the license of a camp operator, after due notice and hearing, upon a finding that the camp operator is in violation of this part or the rules promulgated pursuant to this part. If the department believes that a camp operator is violating this part or the rules, the department shall set a hearing, give written notice thereof by certified mail at least 4 days before the date of the hearing, and set forth in writing the charges against the camp operator. The

hearing shall be conducted according to the administrative procedures act of 1969.

(2) After a hearing, the department may suspend the license of the camp operator for a fixed period of time or until the camp operator meets the requirements of this part and the rules or may revoke the license.

(3) A camp operator aggrieved by the decision of the department to suspend or revoke the license may appeal as provided by the administrative procedures act of 1969.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12421 Rules.
Sec. 12421. (1) The department shall promulgate rules for the protection of the health, safety, and welfare of migratory laborers and their families who occupy agricultural labor camps.

(2) The rules shall include provisions for:

(a) The appointment by the director of an advisory board representing, among others, growers, processors, local health departments, and religious or fraternal organizations. The advisory board shall advise the department on the allocation of the fund and any matter which pertains to this part and shall make recommendations to the department as to legislation or other measures necessary or advisable to alleviate a migratory farm labor housing problem.

(b) The collection, treatment, and disposal of human wastes and sewage at agricultural labor camps.

(c) The supply and maintenance of safe water at agricultural labor camps.

(d) The temporary storage and removal of food wastes and rubbish at agricultural labor camps.

(e) The housing of seasonal laborers and their families, including adequate and safe construction and repair, fire protection, facilities for laborers and their families to keep and prepare food, and other necessary matters relating to their good health, safety, and welfare.

(f) For the administration of migratory labor housing remodeling grants.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368
Admin Rule: R 325.1501 et seq. and R 325.1531 et seq. of the Michigan Administrative Code.

333.12425 Enforcement; inspection and investigation of premises; assistance; payments to local health departments.
Sec. 12425. (1) The department shall enforce this part and rules promulgated under this part.

(2) An authorized representative of the department may enter upon the premises of an agricultural labor camp at reasonable times to inspect and investigate the premises to ascertain whether the camp operator is in compliance with this part and the rules promulgated under this part.

(3) The department may utilize the services of other state agencies and offices to assist in conducting investigations. The department may use the services of a local health department to inspect the premises before licensing the camp operator and to conduct investigations under rules promulgated under this part. The department may approve payments of $15.00 to local health departments for each licensed agricultural labor camp.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12426 Action for injunction or other process.
Sec. 12426. Notwithstanding the existence and pursuit of any other remedy, the department may maintain an action in the name of this state for an injunction or other process against a person to restrain or prevent

the establishment, conduct, management, maintenance, or operation of an agricultural labor camp without a license.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12431 Migratory labor housing fund; creation; appropriation; amount and basis of grant; prohibition; money in fund.
Sec. 12431. (1) A migratory labor housing fund is created and shall receive funds appropriated by the legislature and as provided under section 12411(4).

(2) An employer of migratory farm laborers may receive a grant from the fund of not more than 50% of the costs of an extensive remodeling which costs shall not exceed $10,000.00.

(3) A grant pursuant to subsection (2) may be made on the basis of a matching payment, grant, or other aid from a person or the federal government.

(4) A grant shall not be made if the remodeling does not meet the requirements of a law or rule.

(5) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 2005, Act 43, Imd. Eff. June 16, 2005
Popular Name: Act 368

333.12432 Filing claim for grant; approval; priority list.
Sec. 12432. (1) A person who qualifies for a grant shall file a claim with the department following completion of construction. The department, after approving the claim, shall make payment to the claimant from the fund.

(2) If the fund is insufficient to cover all applications for grants approved by the department, the department shall establish a priority list which may be funded from subsequent allocations.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12433 Powers of department.
Sec. 12433. The department may:

(a) Contract or execute other instruments necessary to implement this part.

(b) Agree and comply with any condition for receiving federal financial assistance for purposes of remodeling migratory housing.

(c) Survey and investigate migratory labor housing conditions and needs and recommend to the governor and the legislature legislation or other measures necessary or advisable to alleviate an existing housing shortage in the state for migratory laborers.

(d) Encourage community organizations or private employers to assist in initiating remodeling projects as provided in this part.

(e) Enforce compliance with any law or rule regarding health or construction standards for remodeling projects which utilize grants made pursuant to this part.

(f) Provide inspection of remodeling projects to determine if they comply with this part and the rules promulgated under this part.

(g) Accept gifts, grants, or other aid from a person or the federal government for purpose of implementing this part.

(h) Enter into agreements with a recipient of a grant to insure that the purposes of this part are effectuated.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12434 Violation as misdemeanor; each day of violation as separate violation; wilful damage or destruction of camp.
Sec. 12434. (1) A person who violates this part or the rules promulgated under this part is guilty of a misdemeanor. Each day of the violation is considered a separate violation.

(2) A person who wilfully damages or destroys any part of a licensed agricultural labor camp is guilty of a misdemeanor.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

CAMPGROUNDS, SWIMMING AREAS, AND SWIMMERS' ITCH

333.12501 Definitions; principles of construction.
Sec. 12501. (1) As used in sections 12501 to 12516:

(a) "Campground" means a parcel or tract of land under the control of a person in which sites are offered for the use of the public or members of an organization, either free of charge or for a fee, for the establishment of temporary living quarters for 5 or more recreational units. Campground does not include a seasonal mobile home park licensed under the mobile home commission act, 1987 PA 96, MCL 125.2301 to 125.2349.

(b) "Department" means the department of environmental quality.

(c) "Local health department" means that term as defined under section 1105.

(d) "Mobile home" means a structure, transportable in 1 or more sections, which is built on a chassis and designed to be used as a dwelling with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

(e) "Person" means a person as defined in section 1106 or a governmental entity.

(f) "Recreational unit" means a tent or vehicular-type structure, primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle which is self-powered. A tent means a collapsible shelter of canvas or other fabric stretched and sustained by poles and used for camping outdoors. Recreational unit includes the following:

(i) A travel trailer, which is a vehicular portable structure, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a vehicle, primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use.

(ii) A camping trailer, which is a vehicular portable structure mounted on wheels and constructed with collapsible partial sidewalls of fabric, plastic, or other pliable material which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

(iii) A motor home, which is a vehicular structure built on a self-propelled motor vehicle chassis, primarily designed to provide temporary living quarters for recreational, camping, or travel use.

(iv) A truck camper, which is a portable structure designed to be loaded onto, or affixed to, the bed or chassis of a truck, constructed to provide temporary living quarters for recreational, camping, or travel use. Truck campers are of 2 basic types:

(A) A slide-in camper, which is a portable structure designed to be loaded onto and unloaded from the bed of a pickup truck, constructed to provide temporary living quarters for recreational, camping, or travel use.

(B) A chassis-mount camper, which is a portable structure designed to be affixed to a truck chassis, and constructed to provide temporary living quarters for recreational, camping, or travel use.

(v) A single sectional mobile home used only to provide temporary living quarters for recreational, camping, or travel use. Recreational unit does not include a mobile home used as a permanent dwelling, residence, or living quarters.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 1982, Act 525, Eff. Mar. 30, 1983 ;-- Am. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Compiler's Notes: For transfer of powers and duties of the division of environmental health, with the exception of the food service sanitation program and the shelter environment program, from the director of the department of public health to the director of the department of environmental quality, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.
Popular Name: Act 368

333.12505 Construction permit for campground; application; contents.

Sec. 12505. A person shall not begin to construct, alter, or engage in the development of a campground without first obtaining a construction permit from the department. Applications for a construction permit shall be submitted to the department along with the fee as prescribed in section 12506a. The application shall contain the following:

(a) A description of the proposed project.

(b) The name and address of the applicant.

(c) The location of the proposed project.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Popular Name: Act 368

333.12506 Campground license required; application; contents; exemption; expiration.

Sec. 12506. (1) A person shall not operate a campground without a campground license issued by the department, its agent or representative, or a representative of a designated local health department. An application for a campground license shall be submitted to the department, its agent or representative, or a representative of a designated local health department along with the license fee as prescribed in section 12506a.

(2) The application shall contain the following:

(a) The name and address of the applicant.

(b) The location of the campground.

(c) Information regarding physical facilities.

(3) The campground license shall expire on December 31 of every third year if the annual renewal fee is paid or as stipulated on the license, whichever is sooner.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Popular Name: Act 368

333.12506a Campground fees.

Sec. 12506a. (1) The fees related to campground regulation under this part are as follows:

(a) Construction permit fee for a new campground.. $600.00.

(b) Construction permit fee for an addition,

alteration, or modification of an existing campground.. $225.00.

(c) Initial or annual renewal license fee for a new or temporary campground as follows:

(i) One to 25 sites..... $75.00.

(ii) Twenty-six to 50 sites..... $100.00.
(iii) Fifty-one to 75 sites..... $125.00.
(iv) Seventy-six to 100 sites..... $150.00.
(v) One hundred one to 500 sites..... $225.00.
(vi) More than 500 sites..... $500.00.
(d) Late annual renewal license fee, after December 31..... $100.00.
(e) License transfer fee..... $75.00.

(2) The department may adjust the amounts prescribed in subsection (1) every 3 years by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index and rounded to the nearest dollar.

History: Add. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Popular Name: Act 368

333.12506b Campground fund; creation; remaining balance; expenditures; use; annual report.
Sec. 12506b. (1) The campground fund is created in the state treasury and shall be administered by the department. The state treasurer shall credit to the campground fund all fees collected by the department under section 12506a and all money, gifts, and devises received by the fund as otherwise provided by law.

(2) The unencumbered balance remaining in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(3) The money in the campground fund shall be expended only as provided in this section. The department shall use the fund to implement this part and to carry out its powers and duties under sections 12501 to 12516. The department shall not use the money in the campground fund for inspections of any mobile home parks licensed under the mobile home commission act, 1987 PA 96, MCL 125.2301 to 125.2349.

(4) The department shall annually prepare a report containing an accounting of revenues and expenditures from the campground fund. This report shall include details of the departmental costs and activities of the previous year in administering this campground program. This report shall be provided to the senate and house of representatives appropriations committees, the standing committees of the senate and house of representatives with jurisdiction over issues pertaining to natural resources and the environment, and the senate and house of representatives fiscal agencies.

History: Add. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Popular Name: Act 368

333.12507 Campground facilities to meet requirements prescribed under MCL 333.12511.

Sec. 12507. Before an application for a campground license is approved, the department, its agent or representative, or a representative of a designated local health department shall determine that the campground contains facilities which meet the requirements prescribed in rules promulgated under section 12511.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Popular Name: Act 368

333.12508 Campground license; issuance; display; notice of denial; statement of reasons; reconsideration; hearing; appeal.

Sec. 12508. (1) Upon approval of the application for a campground license, the department, its agent or representative, or a representative of a designated local health department shall issue a campground license which shall be displayed in a conspicuous place on the campground.

(2) If the application is not approved, the department, its agent or representative, or a representative of a designated local health department shall give written notice of its denial to the applicant stating reasons for the denial. The applicant may request reconsideration of the application after correction of the reasons for the denial or may request a hearing before the department, or an authorized representative of the

department, on the denial within 10 days after receipt of the denial. The hearing shall be held not later than 20 days after receipt of the request.

(3) A person aggrieved by the decision of the department or its authorized representative may appeal to the courts as provided by the administrative procedures act of 1969.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Popular Name: Act 368

333.12509 Campground license; transfer.

Sec. 12509. A campground license shall not be transferred to another person except where the transferee complies with all the requirements to be licensed under sections 12501 to 12516 and upon submission of an application and the license transfer fee as prescribed in sections 12506 and 12506a.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Popular Name: Act 368

333.12510 Annual inspection by local health department; payments; additional fees.

Sec. 12510. (1) If a representative of the designated local health department performs annual inspections of campgrounds that are applying for a new license, renewal license, or temporary license and have submitted the applicable license fee to the department, the department shall approve payments of $25.00 per campground to that local health department.

(2) The state treasurer shall make the payments upon receipt of approval from the department.

(3) A designated local health department may collect additional fees as provided under section 2444 from the owner of a campground for services provided under sections 12501 to 12516.

History: Add. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Popular Name: Act 368

333.12511 Rules.
Sec. 12511. The department, with the advice, assistance, and approval of the advisory board, shall promulgate rules regarding sanitation and safety standards for campgrounds and public health. The rules shall recognize and provide controls for different types of campgrounds.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368
Admin Rule: R 323.3101 et seq.; R 325.1551 et seq.; R 325.2101 et seq.; and R 325.2111 et seq. of the Michigan Administrative Code.

333.12512 Notice of noncompliance; specifying particular violations; time for compliance; revocation of license; hearing; decision; appeal.
Sec. 12512. (1) The department, its agent or representative, or a representative of a designated local health department shall give written notice to a licensee who fails to comply with sections 12501 to 12516 or a rule promulgated under those sections. The notice shall specify the particular violations and a date by which the licensee shall comply. The time given for compliance shall depend upon the nature of the violation.

(2) If the licensee does not comply within the time specified, the department, its agent or representative, or a representative of a designated local health department may, in accordance with the administrative procedures act of 1969, revoke the license. If the licensee files a request for a hearing within 60 calendar days after the licensee receives notice of revocation, the department shall hold a hearing.

(3) A license revoked under subsection (2) shall not be reissued by the department, its agent or representative, or a representative of a designated local health department until it has been determined that the violations have been corrected.

(4) A licensee aggrieved by a decision of the department, its agent or representative, or a representative of a designated local health

department to revoke the license may appeal to a court of competent jurisdiction as provided by the administrative procedures act of 1969.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Popular Name: Act 368

333.12513 Advisory board; purpose; appointment, qualifications, and terms of members.

Sec. 12513. (1) The director shall appoint an advisory board with broad geographical distribution of members to advise on the administration of sections 12501 to 12516 and the preparation and administration of rules promulgated under those sections.

(2) The board shall consist of 15 members as follows: 1 representing the Michigan association of recreation vehicles and campgrounds; 1 representing the association of RV parks and campgrounds of Michigan; 2 representing consumers, including 1 who represents a recognized campground users association; 3 campground owners or operators, including 1 who represents a primitive type of campground; 2 representing counties; 1 representing townships; 1 representing cities and villages; 2 representing local health departments; the director of the department of natural resources or his or her authorized representative; and the director or his or her authorized representative.

(3) Except for the directors of the departments, or their authorized representatives, the members shall serve for a term of 3 years. However, of the members first appointed, 3 members shall serve for a 1-year term, 3 members shall serve for a 2-year term, and 3 members shall serve for a 3-year term.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Popular Name: Act 368

333.12514 Access to campground; purpose.

Sec. 12514. An agent or representative of the department or a representative of a designated local health department shall have access

during all reasonable hours to a campground for the purpose of inspection or otherwise carrying out sections 12501 to 12516.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Popular Name: Act 368

333.12515 Application and construction of MCL 333.12501 to 333.12516.

Sec. 12515. (1) Sections 12501 to 12516 do not apply to a campground used solely as a children's camp licensed by the department of social services or to properties owned by a person licensed pursuant to part 124, and used for housing seasonal agricultural workers employed by that person. A campground licensed under sections 12501 to 12516 shall not be used for the housing of seasonal agricultural workers unless also licensed under part 124.

(2) Sections 12501 to 12516 shall not be construed to interfere in any way with the enforcement of sanitary controls by a health officer having jurisdiction in the area.

(3) Sections 12501 to 12516 do not relieve a person from complying with local ordinances governing building permits or with a code, regulation, or ordinance not in conflict with sections 12501 to 12516.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12516 Violation as misdemeanor; action for injunction.

Sec. 12516. (1) A person who violates sections 12501 to 12515 is guilty of a misdemeanor.

(2) Notwithstanding the existence of any other remedy, the department, its agent or representative, or a representative of a designated local health department may maintain an action in the name of the state for an injunction against a person to restrain or prevent the construction, enlargement, or alteration of a campground without a permit, or the operation or conduct of a campground without a license.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 2004, Act 408, Imd. Eff. Nov. 29, 2004
Popular Name: Act 368

Part 127

WATER SUPPLY AND SEWER SYSTEMS

333.12751 Definitions used in MCL 333.12752 to 333.12758.
Sec. 12751. As used in sections 12752 to 12758:

(a) "Acceptable alternative greywater system" means a system for the treatment and disposal of waste water which normally does not receive human body wastes or industrial waste and is approved for use by a local health department.

(b) "Acceptable innovative or alternative waste treatment system" means a decentralized or individual waste system which has been approved for use by a local health department and which is properly operated and maintained so as not to cause a health hazard or nuisance. An acceptable innovative or alternative waste treatment system may include, but is not limited to, an organic waste treatment system or compost toilet which operates on the principle of decomposition of heterogeneous organic materials by aerobic and facultatively anaerobic organisms and utilizes an effectively aerobic composting process which produces a stabilized humus. Acceptable innovative or alternative waste treatment system does not include a septic tankdrain field system or any other system which is determined by the department to pose a similar threat to the public health, safety and welfare, and the quality of surface and subsurface waters of this state.

(c) "Available public sanitary sewer system" means a public sanitary sewer system located in a right of way, easement, highway, street, or public way which crosses, adjoins, or abuts upon the property and passing not more than 200 feet at the nearest point from a structure in which sanitary sewage originates.

(d) “Person” means a person as defined in section 1106 or a governmental entity.

(e) “Public sanitary sewer system” means a sanitary sewer or a combined sanitary and storm sewer used or intended for use by the public for the collection and transportation of sanitary sewage for treatment or disposal.

(f) “Structure in which sanitary sewage originates” or “structure” means a building in which toilet, kitchen, laundry, bathing, or other facilities which generate water-carried sanitary sewage are used or are available for use for household, commercial, industrial, or other purposes.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;-- Am. 1980, Act 421, Eff. Mar. 31, 1981
Popular Name: Act 368

333.12752 Public sanitary sewer systems; declaration of necessity.
Sec. 12752. Public sanitary sewer systems are essential to the health, safety, and welfare of the people of the state. Septic tank disposal systems are subject to failure due to soil conditions or other reasons. Failure or potential failure of septic tank disposal systems poses a threat to the public health, safety, and welfare; presents a potential for ill health, transmission of disease, mortality, and economic blight; and constitutes a threat to the quality of surface and subsurface waters of this state. The connection to available public sanitary sewer systems at the earliest, reasonable date is a matter for the protection of the public health, safety, and welfare and necessary in the public interest which is declared as a matter of legislative determination.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12753 Structures in which sanitary sewage originates to be connected to public sanitary sewer; approval; time.
Sec. 12753. (1) Structures in which sanitary sewage originates lying within the limits of a city, village, or township shall be connected to an available public sanitary sewer in the city, village, or township if required by the city, village, or township.

(2) Structures in which sanitary sewage originates lying outside the limits of the city, village, or township in which the available public sanitary sewer lies shall be connected to the available public sanitary sewer after the approval of both the city, village, or township in which the structure and the public sanitary sewer system lies and if required by the city, village, or township in which the sewage originates.

(3) Except as provided in subsection (4), the connection provided for in subsections (1) and (2) shall be completed promptly but not later than 18 months after the date of occurrence of the last of the following events or before the city, village, or township in which the sewage originates requires the connection:

(a) Publication of a notice by the governmental entity which operates the public sanitary sewer system of availability of the public sanitary sewer system in a newspaper of general circulation in the city, village, or township in which the structure is located.

(b) Modification of a structure so as to become a structure in which sanitary sewage originates.

(4) A city, village, or township may enact ordinances, or a county or district board of health, may adopt regulations to require completion of the connection within a shorter period of time for reasons of public health.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12754 Failure to connect structure to public sanitary sewer; notice; action to compel connection.

Sec. 12754. (1) When the structure in which sanitary sewage originates is not connected to an available public sanitary sewer system within the time specified in section 12753, the governmental unit in which the structure lies shall require the connection to be made immediately after notice, which may be by first class or certified mail to the owner of the property or by posting on the property.

(2) The notice shall give the approximate location of the public sanitary sewer system which is available for connection of the structure involved and shall advise the owner of the requirements and enforcement provisions of sections 12752 to 12758 and any applicable ordinance or regulation.

(3) Where a structure in which sanitary sewage originates is not connected to an available public sanitary sewer system within 90 days after the date of mailing or posting of the written notice, the governmental unit which operates the available sanitary sewer system may bring an action for a mandatory injunction or order in the district, municipal, or circuit court in the county in which the structure is situated to compel the owner to connect to the available sanitary sewer system immediately. The governmental unit may join any number of owners of structures situated within the governmental unit in the action to compel each owner to connect to an available sanitary sewer system immediately.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12756 Tap-in fee for connection; deferment of payment by reason of hardship; application; evidence of hardship; ordinance defining hardship and permitting deferred or partial payment; condition to granting deferred or partial payment.
Sec. 12756. (1) An owner of property who by reason of hardship is unable to comply with provisions of sections 12752 to 12758 requiring connection to an available sanitary sewer system when the local unit of government charges a tap-in fee for connection may have the fee payment deferred by application to the assessing officer. Upon receipt of evidence of hardship, the local unit of government may defer partial or total payment of the fee.

(2) The local unit of government may enact ordinances to define hardship in its area and to permit deferred or partial payment of the tap-in fee. As a condition to the granting of the deferred or partial payment of the tap-in fee, the local unit of government may require mortgage

security on the real property of the beneficiary payable on or before death, or, in any event, on the sale or transfer of the property.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

333.12757 Installation and use of acceptable innovative or alternative waste treatment system alone or in combination with acceptable alternative greywater system; regulation by local health department; guidelines; exemption from special assessments not permitted; connection to available public sanitary sewer system not required; payment of sewer availability fee in lieu of connection or user fees; exemption from connection or user fees.

Sec. 12757. (1) Notwithstanding sections 12752 to 12756, a person may install and use in a structure an acceptable innovative or alternative waste treatment system or an acceptable innovative or alternative waste treatment system in combination with an acceptable alternative greywater system. The installation and use of an acceptable innovative or alternative waste treatment system or an acceptable innovative or alternative waste treatment system in combination with an acceptable alternative greywater system in a structure shall be subject to regulation by the local health department in accordance with the ordinances and regulations of the local units of government in which the structure lies. A local health department may inspect each acceptable innovative or alternative waste treatment system within its jurisdiction at least once each year to determine if it is being properly operated and maintained. A local health department may charge the owner of an acceptable innovative or alternative waste treatment system a reasonable fee for such an inspection and for the plan review and installation inspection. A copy of the approved application or permit to install and use an alternative system and a copy of each maintenance inspection report shall be forwarded to the department and to the local unit of government in which the structure lies. The department shall maintain a record of approved alternative systems and their maintenance and operation.

(2) The department, after consultation with the state plumbing board, shall adopt guidelines to assist local health departments in determining what are acceptable alternative greywater systems and what are

acceptable innovative or alternative waste treatment systems. The department shall advise local health departments regarding the appropriate installation and use of acceptable innovative or alternative waste treatment systems and acceptable innovative or alternative waste treatment systems in combination with acceptable alternative greywater systems.

(3) A person who installs and uses an acceptable innovative or alternative waste treatment system or an acceptable innovative or alternative waste treatment system in combination with an acceptable alternative greywater system shall not be exempt from any special assessments levied by a local unit of government for the purpose of financing the construction of an available public sanitary sewer system.

(4) Notwithstanding sections 12752 to 12756, an owner of a structure using an acceptable innovative or alternative waste treatment system in combination with an acceptable alternative greywater system shall not be required to connect to an available public sanitary sewer system.

(5) An owner who does not connect to an available public sanitary sewer system pursuant to subsection (4), shall not be required to pay connection or user fees to a local unit of government except those connection or user fees which are allocated for financing of construction of an available public sanitary sewer system. In lieu of connection or user fees, an owner may be required by the local unit of government to pay a sewer availability fee if that fee is to be used for the purpose of paying a proportionate share of financing the construction of an existing available public sanitary sewer system. The exemption from connection or user fees under this subsection shall not apply to an owner connected to an available public sanitary sewer system on the effective date of this act.

(6) A local unit of government may exempt an owner proposing to use an acceptable innovative or alternative waste treatment system in combination with an acceptable alternative greywater system from connection or user fees related to the financing, construction, use, or maintenance of an available public sanitary sewer system.

History: Add. 1980, Act 421, Eff. Mar. 31, 1981
Popular Name: Act 368

333.12758 Voluntary connection to public sanitary sewer system; provisions cumulative.

Sec. 12758. (1) Sections 12752 to 12758 shall not limit the right of the owner of a structure in which sanitary sewage originates voluntarily to connect the structure to a public sanitary sewer system where the operator of the system agrees to the connection.

(2) Sections 12752 to 12758 are in addition to and not in limitation of the power of a governmental unit to adopt, amend, and enforce ordinances relating to the connection of a structure in which sanitary sewage originates to its public sanitary sewer system.

History: 1978, Act 368, Eff. Sept. 30, 1978
Popular Name: Act 368

LOW-LEVEL RADIOACTIVE WASTE AUTHORITY ACT
Act 204 of 1987

AN ACT to provide for matters pertaining to a low-level radioactive waste disposal site in this state; to create a low-level radioactive waste authority and prescribe its powers and duties; to create certain boards, committees, and institutes and prescribe their powers and duties; to prescribe the powers and duties of certain persons, municipalities, and counties and state departments and agencies; to provide for certain methods of dispute resolution; to create certain funds; and to provide for an appropriation and the expenditure of certain funds.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987
Compiler's Notes: For abolition of the Department of Natural Resources and transfer of its powers, duties, and functions of the Director of the Department of Natural Resources, the Natural Resources Commission, and agencies, boards and commissions contained in the department, including the functions of budget, procurement, and management-related functions to the new Department of Natural Resources, with the exception that the power to designate a member of the commission is vested in the Governor, see E.R.O. No. 1991-22 compiled at MCL 299.13 of the Michigan Compiled Laws.For transfer of powers and duties of the Low-Level Radioactive Waste Authority from the Department of Management and Budget to the Director of the Department of

Commerce, see E.R.O. No. 1991-23, compiled MCL 332.26251 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

333.26201 Short title.

Sec. 1. This act shall be known and may be cited as the "low-level radioactive waste authority act".

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987
Compiler's Notes: For abolition of the Department of Natural Resources and transfer of its powers, duties, and functions of the Director of the Department of Natural Resources, the Natural Resources Commission, and agencies, boards and commissions contained in the department, including the functions of budget, procurement, and management-related functions to the new Department of Natural Resources, with the exception that the power to designate a member of the commission is vested in the Governor, see E.R.O. No. 1991-22 compiled at MCL 299.13 of the Michigan Compiled Laws.For transfer of powers and duties of the Low-Level Radioactive Waste Authority from the Department of Management and Budget to the Director of the Department of Commerce, see E.R.O. No. 1991-23, compiled MCL 332.26251 of the Michigan Compiled Laws.For transfer of powers and duties of the low-level radioactive waste authority from the department of commerce to the Michigan department of environmental quality, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

333.26202 Definitions.

Sec. 2. As used in this act:

(a) "Authority" means the low-level radioactive waste authority established in section 3.

(b) "Candidate site" means a site designated by the authority as a possible host site pursuant to section 11.

(c) "Carrier" means a person authorized pursuant to part 137 who is engaged in the transportation of waste by air, rail, highway, or water.

(d) "Commissioner" means the head of the authority.

(e) “Compact” means a contractual, cooperative agreement among 2 or more states to provide for the disposal of low-level radioactive waste that is reflected by the passage of statutes by the participating states.

(f) “Department” means the department of public health.

(g) “Director” means the director of public health.

(h) “Disposal” means the isolation of waste from the biosphere by emplacement in the disposal site or as otherwise authorized in section 13709(3) of part 137.

(i) “Disposal site” means a geographic location in this state upon which the disposal unit and any other structures and appurtenances are located, the property upon which any monitoring equipment is located, and the isolation distance from the disposal unit to adjacent property lines.

(j) “Disposal unit” means the portion of the disposal site into which waste is placed for disposal.

(k) “Generator” means any person licensed as a generator by the nuclear regulatory commission and authorized pursuant to part 137 whose act or process results in the production of waste or whose act first causes waste to become subject to regulation under part 137 or federal law.

(l) “Groundwater” means water below the land surface in a zone of saturation.

(m) “Host site” means the candidate site that is designated by the commissioner as the location for the disposal site in this state.

(n) “Host site community” means the municipality that is designated by the commissioner as the host site.

(o) “Institute” means the international low-level radioactive waste research and education institute.

(p) “Institutional control” means the continued surveillance, monitoring, and care of the disposal site after site closure and stabilization to insure the protection of the public health, safety, and welfare, and the environment until the contents of the disposal site no longer have a radioactive content that is greater than the natural background radiation of the host site as determined during its site characterization.

(q) “Local monitoring committee” means a committee established pursuant to section 14 to represent a candidate site.

(r) “Low-level radioactive waste” or “waste” means radioactive material that consists of or contains class A, B, or C radioactive waste as defined by 10 C.F.R. 61.55, as in effect on January 26, 1983, but does not include waste or material that is any of the following:

(i) Owned or generated by the department of energy.

(ii) Generated by or resulting from the operation or closure of a superconducting super collider.

(iii) Owned or generated by the United States navy as a result of the decommissioning of vessels of the United States navy.

(iv) Owned or generated as a result of any research, development, testing, or production of an atomic weapon.

(v) Identified under the formerly utilized sites remedial action program.

(vi) High-level radioactive waste, spent nuclear fuel, or byproduct material as defined in section 11(e)(2) of the atomic energy act of 1954, chapter 1073, 68 Stat. 922, 42 U.S.C. 2014.

(vii) Contains greater than or equal to 100 nanocuries per gram of transuranic elements.

(viii) Contains concentrations of radionuclides that exceed the limits established by the nuclear regulatory commission for class C radioactive waste as defined by 10 C.F.R. 61.55, as in effect January 26, 1983.

(ix) Classified as naturally occurring or accelerator-produced radioactive materials known as N.A.R.M. waste.

(x) Waste that after December 22, 1987 is determined by the nuclear regulatory commission to be waste that is beneath regulatory concern, or B.R.C. waste as defined by the nuclear regulatory commission, unless the department and the authority concur with this designation.

(s) "Low-level radioactive waste management fund" or "fund" means the fund created in section 20.

(t) "Manifest" means a form provided or approved by the department that is used for identifying the quantity; composition, including the class, curie count, and radioactive nuclides; origin; routing; and destination of waste from the point of generation to the point of processing, collection, or disposal.

(u) "Municipality" means a city, village, township, or Indian tribe.

(v) "Operation" means the control, supervision, or implementation of the actual physical activities involved in the acceptance, storage, disposal, and monitoring of waste at the disposal site, the maintenance of the disposal site, and any other responsibility pertaining to the disposal unit and the disposal site.

(w) "Part 137" means part 137 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.13701 to 333.13741 of the Michigan Compiled Laws.

(x) "Performance assessment" means an analysis of the potential pathways for release of waste to the environment and the potential impacts of a release during the transportation of radioactive waste to the

disposal site and during the handling and disposal of waste at the disposal site, including, but not limited to:

(i) A description of the potential pathways for radioactive nuclide migration beyond the boundaries of the disposal site during the operation of the site and if there is a release.

(ii) A description of the potential pathways for radioactive nuclide migration beyond the packaging boundaries if a release occurs during transportation.

(iii) An analysis of safety factors pertaining to the transportation of waste.

(iv) The identification of the potential impacts to air, surface water, and groundwater quality, and vegetation, animals, and humans, or any other living thing beyond the boundaries of the disposal site.

(v) A description of potential mechanisms for radioactive release, including, but not limited to, mechanical failure, structural failure, and human error.

(y) “Person” means an individual, partnership, cooperative, association, corporation, receiver, trustee, or assignee.

(z) “Postclosure observation and maintenance” means the surveillance, monitoring, and maintenance of the disposal site after it has been closed and continuing through site closure and stabilization and institutional control.

(aa) “Release” means any intentional or unintentional spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, or placing of waste into the environment, except in compliance with all of the following:

(i) Part 137.

(ii) The rules promulgated under part 135 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.13501 to 333.13536 of the Michigan Compiled Laws.

(iii) A permit or license issued pursuant to federal law, if the person who is responsible for the release holds such a permit or license.

(iv) A permit or license issued pursuant to part 137, if the person who is responsible for the release holds such a permit or license.

(v) The rules promulgated under this part.

(bb) "Remedial actions" means those actions taken in the event of a radioactive release or threatened release into the environment to prevent or minimize the radioactive release so that it does not migrate and cause significant danger to the present or future public health, safety, or welfare, or to the environment. Remedial action includes, but is not limited to, actions at the location of the release such as storage, confinement, perimeter protection which may include using dikes, trenches, and ditches, clay cover, neutralization, dredging or excavation, repair or replacement of leaking containers, collection of leachate and runoff, efforts to minimize the social and economic harm of processing, provision of alternative water supplies, and any required monitoring to assure that the actions taken are sufficient to protect the public health, safety, and welfare, and the environment.

(cc) "Site characterization" means the site specific investigation of a candidate site undertaken pursuant to section 12.

(dd) "Site closure and stabilization" means the actions taken at the disposal site during the time period after the closure of the disposal unit during which on-site low-level radioactive waste is disposed in accordance with part 137, equipment is dismantled, decontaminated, removed for reuse or disposed of, and radioactive residues are removed from, or properly isolated on, the disposal site in preparation for transfer of ownership of the disposal site to the federal government.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995
Admin Rule: R 325.5001 et seq., R 325.5801 et seq., and R 325.5901 et seq. of the Michigan Administrative Code.

333.26203 Low-level radioactive waste authority; creation; autonomous entity; commissioner as head of authority; appointment, qualifications, and term of commissioner; vacancy; salary; exemption from civil service; employment of personnel.
Sec. 3. (1) An authority is created to be known as the low-level radioactive waste authority. The authority is an autonomous entity within the department of commerce. The authority shall exercise its powers and duties independently of the department of commerce, including the budgeting, procurement, contracting for, and actual purchase of all equipment, supplies, and services of whatever kind necessary to implement this act.

(2) The head of the authority is the commissioner who shall be qualified by training and experience to direct the work of the authority. The commissioner shall be appointed by the governor, by and with the advice and consent of the senate, and shall serve a 2-year term at the pleasure of the governor. A vacancy occurring in the office of the commissioner shall be filled in the same manner as the original appointment. The commissioner shall receive a salary as provided by annual appropriation by the legislature from the low-level radioactive waste management fund.

(3) The commissioner is exempt from civil service. The commissioner is responsible directly to the governor to ensure the accountability and integrity of the authority and accordingly should be a position within the department of commerce that is exempt from the classified state civil service. The department of commerce shall request that the civil service commission establish the commissioner's position as a position that is exempt from the classified state civil service.

(4) The commissioner shall employ personnel as necessary to implement this act.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26204 Powers of authority generally.

Sec. 4. In addition to the powers provided in this act and part 137, subject to other applicable requirements of law, the powers of the authority include all of the following:

(a) Hold public meetings in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(b) Accept assistance from public agencies, colleges and universities, private foundations, individuals, corporations, or associations.

(c) Accept and utilize a donation, loan, grant, or reimbursement of money to obtain equipment, supplies, materials, or services from any state or the United States or an agency or a political subdivision of the state or the United States, or from any person. The nature, amount, and conditions, if any, attached to a donation, loan, or grant accepted pursuant to this subdivision, together with the identity of the donor, grantor, or lender, is public information. A donor, lender, or grantor shall not derive any advantage in any matter under this act, part 137, rules promulgated under part 137, or federal law by reason of a donation, loan, or grant. The authority shall forward money obtained under this subdivision to the state treasurer for deposit in the low-level radioactive waste management fund.

(d) Form 1 or more advisory committees as considered appropriate to make recommendations to the authority regarding the performance of 1 or more of the responsibilities of the authority.

(e) Exercise the power of eminent domain under the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws.

(f) Perform other functions considered necessary to implement this act.

(g) Establish and use a computer system to maintain, receive, or transmit any of the following:

(i) A manifest, report, or other record required by this act, or part 137, or the rules promulgated under part 137.

(ii) A disposal shipment certificate.

(iii) The application, or a portion of the application, for a construction and operating license for the disposal site.

(iv) Information the authority is required to provide to the public under this act.

(h) Issue revenue bonds pursuant to section 20a.

(i) Negotiate, create legal mechanisms for the state or private waste generators, or both, or enter into relationships with out-of-state entities for the out-of-state disposal of low-level radioactive waste generated in this state. However, prior to entering into a contractual relationship obligating the state, the authority in addition to other requirements of law shall first submit the proposed contract to the attorney general for review.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26205 Duties of authority generally.

Sec. 5. (1) In addition to the duties provided in this act and in part 137, subject to other applicable requirements of law, the duties of the authority include all of the following:

(a) Select the host site.

(b) Submit an application to the department for a construction and operating license for the disposal site that meets the requirements of part 137.

(c) Acquire, purchase, hold, lease, or manage real property, easements, and rights-of-way to implement this act.

(d) Make available and negotiate on behalf of the state monetary and nonmonetary incentives and benefits for the state, the host site community, the county in which the host site community is located, and the municipalities that have a common border with the host site community.

(e) Make available to local monitoring committees sufficient funding to enable the local monitoring committees to fulfill their responsibilities under section 14.

(f) Establish just and reasonable waste disposal fees and surcharges subject to the requirements of section 19.

(g) Negotiate and arbitrate with the local monitoring committee for the host site as provided in section 16.

(h) Establish and implement a disposal shipment registration system.

(i) Make a continuous study and investigation of the disposal site in order to ascertain and provide remedies for any defects in the disposal site through institutional control.

(j) If this state does not enter a compact, refuse to accept waste that is not generated in this state.

(k) If this state does enter into a compact, refuse to accept waste generated in any state that is not a member of the compact in which this state is a member. In addition, the authority shall refuse to accept waste for disposal in the disposal site from any member of the compact who does either of the following:

(i) Is delinquent in paying dues or fees payable under the compact.

(ii) Fails to establish or maintain a permitting and regulatory system, including penalties and remedies, that equals or exceeds the laws and rules of this state as they apply to generators, carriers, processors, and collectors of waste.

(l) Inspect the construction of the disposal site until construction is completed on a weekly basis and submit to the department the results of the inspection and the date on which the inspection occurred.

(m) Hold public hearings every other month during the process for selecting a site for the disposal site and every 6 months after the site for the disposal site is selected through the period of institutional control.

(n) Assist generators in sharing policies to facilitate waste minimization and volume reduction, including, but not limited to, switching from long-lived radioactive materials to short-lived radioactive materials, switching to nonradioactive materials and processes, waste stream screening and separation, and curtailment of waste producing operations.

(2) In addition to the duties provided in this act and in part 137 and the rules promulgated under part 137, the authority shall do all of the following or enter into contracts to assure that all of the following are accomplished:

(a) Site characterization.

(b) Performance assessment.

(c) Development of siting criteria.

(d) Disposal site monitoring.

(e) Disposal site design, construction, engineering, and inspection.

(f) Selection of disposal technology.

(g) Prepare an application for a construction and operating license for the disposal site.

(h) Disposal site operation.

(i) Site closure and stabilization.

(j) Postclosure observation and maintenance.

(k) Institutional control.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26206 Application for construction and operating license; agreements or contracts with person to perform responsibility of authority; notice; public comment; forwarding copy of contract.
Sec. 6. (1) The authority shall submit an application to the department for a construction and operating license pursuant to the requirements of part 137. If this state is not a full agreement state, the authority shall also apply to the nuclear regulatory commission for a construction and operating license.

(2) If the authority elects to enter into agreements or contracts with a person to perform a responsibility of the authority, the authority shall do all of the following:

(a) Establish minimum qualifications for the person.

(b) Establish the responsibilities of the person and specify the responsibilities that the authority retains.

(c) Determine whether the person is required to obtain a surety bond, a secured trust fund, or other suitable security instrument or mechanism.

(d) Comply with all the requirements in part 137 and the rules promulgated under part 137.

(3) If the authority elects to enter into a contract to prepare an application for a construction and operating license for the disposal site or for the operation of the disposal site, in addition to the requirements under subsection (2), the authority shall provide public notice and an opportunity for public comment on the minimum qualifications required of the person. The authority shall forward a copy of each contract entered into by the authority to perform a responsibility of the authority to the department, the department of natural resources, and the attorney general.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26207 Establishment of process permitting municipality to volunteer as host site; minimum requirement; notice; powers and duties of authority; construction of section.

Sec. 7. (1) Within 60 days of the effective date of this act, the authority shall establish a process by which a municipality may volunteer to be the host site. At a minimum, the process shall require that in order for a municipality to be considered a volunteer host site community there shall be a majority vote of the governing body of the municipality requesting such consideration.

(2) If the authority receives notice that a governing body of a municipality volunteers as a host site community, the authority shall do both of the following:

(a) Provide the municipality with information about the siting process, including relevant federal and state laws pertaining to the generation, transportation, storage, collection, processing, and disposal of waste.

(b) Provide the municipality with specific criteria and information that the authority must consider with regard to candidate site and host site selection.

(3) If the authority receives notice that a governing body of a municipality volunteers as a host site community, the authority may do 1 or both of the following:

(a) Upon the request of that municipality, provide funding to the municipality in an amount determined by the authority to cover the expense of preparing data that the municipality may wish to submit for the consideration of the authority regarding the selection of the municipality as the host site community.

(b) Provide the municipality with other services or information considered appropriate by the authority.

(4) This section shall not be construed as eliminating or reducing any of the requirements for site selection provided for in this act.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987

333.26208 Siting criteria advisory committee; establishment; independent entity; appointment, qualifications, and terms of members; powers of committee; vacancy; quorum; action by committee; staff and services; assistance to committee; meetings; notice; reimbursement for expenses.

Sec. 8. (1) Within 30 days of the effective date of this act, the authority shall organize the establishment of a siting criteria advisory committee. The siting criteria advisory committee shall be formulated as an independent entity within the department of management and budget and shall consist of 5 individuals who shall be appointed by the authority. The members of the committee may be employed by a university or college in this state and shall by education and experience be knowledgeable in a technical specialty related to the siting of a low-level radioactive waste disposal site. The members may include a hydrogeologist, health physicist, radiological engineer, or other specialist meeting the requirements of this subsection.

(2) The members of the siting criteria advisory committee shall be appointed for a term determined by the authority that shall at a minimum

enable the committee to have sufficient opportunity to formulate recommendations to the authority regarding the development of siting criteria for the disposal site and to fulfill the other responsibilities of the committee under this section.

(3) The siting criteria advisory committee may do any or all of the following:

(a) Recommend to the authority proposed siting criteria.

(b) Review existing and proposed federal and state laws and rules pertaining to site criteria.

(c) Review all of the technical information available to the committee and make recommendations regarding siting criteria.

(d) Attend any public hearing that may be scheduled by the authority that pertains to proposed siting criteria.

(e) Assist the authority in drafting responses to the comments of the department or any person regarding the final siting criteria adopted by the authority.

(f) Fulfill the responsibilities provided in this subsection in accordance with target dates established by the authority.

(4) If a vacancy occurs on the siting criteria advisory committee, an appointment shall be made for the unexpired term in the same manner as the original appointment.

(5) A majority of the members of the siting criteria advisory committee shall constitute a quorum for the transaction of business at a meeting of the committee. Action by the committee shall be by a majority of the votes cast.

(6) The department of management and budget shall provide staff and services to the siting criteria advisory committee as are necessary to implement this act.

(7) The directors of the departments of natural resources, attorney general, management and budget, state police, and public health shall provide assistance to the siting criteria advisory committee upon the request of the committee.

(8) A meeting of the siting criteria advisory committee shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(9) The siting criteria advisory committee shall meet immediately upon complete formation and then shall meet each month or more frequently as considered necessary by the members of the committee.

(10) A member of the siting criteria advisory committee shall not receive compensation for his or her service, but shall be reimbursed for expenses that are necessarily incurred in the performance of duties as a member of the committee.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987

333.26209 Final siting criteria; establishment; review and consideration of proposed siting criteria; draft version; public hearing.

Sec. 9. (1) The authority shall establish final siting criteria.

(2) In establishing final siting criteria, the authority shall review and consider the proposed siting criteria that may be presented by the siting criteria advisory committee established pursuant to section 8. Thirty days before establishing final siting criteria, the authority shall prepare a draft version of the final siting criteria and shall make this draft siting criteria

available for public comment. During that 30-day period, the authority shall hold a public hearing.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26210 Final siting criteria; establishment; minimum requirement.

Sec. 10. The authority shall establish final siting criteria that at a minimum excludes a candidate site that is any of the following:

(a) Located in a 500-year floodplain.

(b) Located over a sole source aquifer.

(c) Located 1 mile or less from a fault where tectonic movement has occurred within the 10,000 years preceding the effective date of this act.

(d) Not sufficiently large to assure that an isolation distance of 3,000 feet or more from the disposal unit and adjacent property lines is available.

(e) Has wetlands within the boundaries of the candidate site as defined in part 303 (wetland protection) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.30301 to 324.30323 of the Michigan Compiled Laws.

(f) An environmental area or a high risk area as defined in part 323 (shorelands protection and management) of Act No. 451 of the Public Acts of 1994, being sections 324.32301 to 324.32315 of the Michigan Compiled Laws.

(g) A floodway designated under part 31 (water resources protection) of Act No. 451 of the Public Acts of 1994, being sections 324.3101 to 324.3119 of the Michigan Compiled Laws.

(h) Located where the hydrogeology beneath the site discharges groundwater to the land surface within 3,000 feet of the boundaries of the candidate site.

(i) Located within 10 miles of Lake Michigan, Lake Superior, Lake Huron, Lake Erie, Saint Marys river, Detroit river, St. Clair river, or lake St. Clair. This subdivision shall not apply to a site that is located at or adjacent to a nuclear power generating facility.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1996, Act 68, Imd. Eff. Feb. 26, 1996

333.26211 Designation of 3 qualified candidate sites; exclusion of certain sites; preference to be given certain sites; waiver of criteria; notice; public hearing.

Sec. 11. (1) The authority shall utilize the powers and exercise the duties provided in this act to designate 3 qualified and available candidate sites in this state.

(2) In designating 3 candidate sites, the authority shall exclude any site that is not all of the following:

(a) Suitable for providing a stable foundation for engineered containment structures that comprise the disposal unit.

(b) Located where the groundwater travel time along any 100-foot flow path from the edge of the disposal unit is greater than approximately 100 years.

(c) Located where there is 6 or more meters of soil with a maximum permeability of 1.0 times 10 to the minus 6 cm/sec at all points below and lateral to the bottommost portions of the leak detection system of the disposal unit or an area that provides equivalent environmental protection to the public health, safety, and welfare, and the environment.

(d) Located where the unconfined water table which is not the potentiometric surface, is sufficiently low to prevent the intrusion of

groundwater into the disposal unit, except as outlined under 10 C.F.R. 61.50 (a)(7).

(e) Located in an area that is not above an aquifer that is the primary source of water for a municipality or county or for persons residing or doing business in the municipality or county where a candidate site is located.

(f) Free of ponding or capable of being drained in a manner that insures the integrity of the disposal unit.

(g) Suitable to insure the isolation of the waste.

(3) In designating 3 candidate sites, the authority shall give preference to sites that are all of the following:

(a) Able to meet the long-term performance objectives of subpart C of 10 C.F.R. part 61.

(b) Able to be characterized, modeled, analyzed, and monitored.

(c) Located where natural resources do not exist on or significantly near to the candidate site that, if exploited, would result in failure to meet the performance objectives in subpart C of 10 C.F.R. part 61.

(d) Located where projected population growth and future developments within the municipality and county where the candidate site is located are not likely to affect the ability of the disposal site to meet the performance objectives in subpart C of 10 C.F.R. part 61 or could not significantly interfere with an environmental monitoring program.

(e) Consistent with the requirements of federal laws, including all of the following:

(i) Atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(ii) Federal water pollution control act, chapter 758, 86 Stat.816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1271, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387.

(iii) Coastal zone management act of 1972, title III of the marine resources and engineering development act of 1966, Public Law 89-454, 16 U.S.C. 1451 to 1455a, 1456 to 1463, and 1464.

(iv) Endangered species act of 1973, Public Law 93-205, 87 Stat. 884.

(v) Wild and scenic rivers act, Public Law 90-542, 16 U.S.C. 1271 to 1287.

(vi) Wilderness act, Public Law 88-577, 16 U.S.C. 1131 to 1136.

(vii) National wildlife refuge system administration act of 1966, sections 4 and 5 of Public Law 89-669, 16 U.S.C. 668dd and 668ee.

(viii) Chapter 593, 49 Stat. 666, 16 U.S.C. 461 to 467.

(ix) National historic preservation act, Public Law 89-665, 16 U.S.C. 470 to 470a, 470b, and 470c to 470x-6.

(h) Located so that the upstream drainage area is minimized to decrease runoff that could erode or inundate waste placed in the disposal unit.

(i) Located where geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering do not occur to the extent and with such frequency that the ability of the disposal site to meet the performance objectives in subpart C, 10 C.F.R. 61.40 to 61.44, is significantly affected or may preclude defensible modeling and prediction of the long-term impact of such occurrences.

(4) The authority may waive 1 or more of the criteria in subsection (3) if the authority obtains written approval for the waiver from the director and the authority and the director determine that the waiver will not

compromise the public health, safety, or welfare, or the environment and that a site for which a waiver is sought is an appropriate candidate site despite the site's inability to meet 1 or more of the criteria in subsection (3). In addition, prior to waiving 1 or more of the criteria in subsection (3), the authority shall provide public notice of a proposed waiver of 1 or more of the criteria in subsection (3) and shall conduct a public hearing to provide for public comment regarding the waiver.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26212 Site characterization; comprehensive baseline environmental monitoring program; data; access to candidate site.
Sec. 12. (1) Immediately following designation of the candidate sites by the authority, the authority, after consultation with the department and the department of natural resources, shall begin site characterization at each candidate site. The site characterization shall establish a comprehensive baseline environmental monitoring program at each of the candidate sites.

(2) The monitoring program at each candidate site shall provide, to the maximum extent feasible, for the participation of the local monitoring committee for each candidate site and the training of the members to facilitate their participation. The program shall be designed to establish baseline environmental data for at least 1 year at each candidate site, to determine compliance with the applicable final siting criteria provided for in section 10, to provide early warning of the magnitude and extent of any release, and to provide reliable environmental data to be utilized in preparing the construction and operating license submitted to the department by the authority and to be utilized in the design, construction, operation, site closure and stabilization, postclosure observation and maintenance, and institutional control of the disposal site. The monitoring program for each candidate site shall include collected and analyzed data concerning standing and running surface water and drainage; groundwater samples off-site and at the candidate site boundary; soil, vegetation, animal, and insect samples; atmospheric samples; and radiological measurements off-site, at the candidate site boundary, and within the candidate site. Each local monitoring

committee shall be entitled to obtain portions of all samples collected pursuant to the monitoring program for the candidate site which that local monitoring committee represents for analysis by an independent laboratory. Each local monitoring committee is entitled to receive a copy of the results of each test prepared as a part of site characterization by any state department or agency.

(3) The authority shall provide the review board established pursuant to section 13 with 12 months of site characterization data as soon as 12 months of data for each site are available.

(4) The authority and authorized representatives of the authority and the authorized representatives of the department, the department of natural resources, and the department of agriculture shall have access to each candidate site for the purpose of conducting site characterization and performing any of the authority's responsibilities or duties provided in this act.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26213 Review board; establishment; purpose; public hearings; recommendations; appointment and qualifications of members; chairperson; quorum; meetings; notice; reimbursement for expenses.

Sec. 13. (1) Not more than 90 days following the designation of each candidate site, a review board shall be established to provide recommendations to the authority regarding provisions and stipulations that would mitigate the concerns of the municipality in which each candidate site is located if that municipality is selected as the host site. The review board shall hold public hearings to provide for the participation of each local monitoring committee and to provide the opportunity for public participation. The review board shall make its recommendations to the authority no later than 30 days after 12 months of site characterization data are available. The recommendations of the review board shall also be made available to each local monitoring committee. The review board may recommend to the authority 1 of the 3 candidate sites as the proposed host site.

(2) The review board shall consist of the following 7 voting members and 1 nonvoting chairperson:

(a) Four members shall be members appointed by the governor with the advice and consent of the senate. The 4 members shall include:

(i) One representative of county governments at large.

(ii) Two individuals who by education and experience are knowledgeable in a technical specialty that is pertinent to issues related to a disposal site, such as a hydrogeologist, health physicist, radiation engineer, or a biologist.

(iii) One individual who by education and experience is knowledgeable in a specialty that is pertinent to issues concerning the assessment of social, economic, and community impacts related to a disposal site.

(b) Three members shall be representatives for the municipalities in which the 3 candidate sites are located. The governing body of each of the municipalities where the 3 candidate sites are located shall appoint 1 member to serve on the review board.

(c) An attorney shall be appointed by the governor, with the advice and consent of the senate, to serve as the nonvoting chairperson of the review board. The chairperson shall have experience in conducting public meetings.

(3) Four of the 7 voting members of the board constitutes a quorum for the transaction of the business of the board and the concurrence of 4 members shall constitute a legal action of the board. A meeting of the board shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(4) A member of the board shall not receive compensation for his or her services, but shall be reimbursed for expenses that are necessarily incurred in the performance of duties as a member of the board.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26214 Local monitoring committee; establishment; purpose; powers and duties; disbandment; duration.

Sec. 14. (1) Within 30 days of the designation by the authority of the candidate sites, the governing body of a municipality in which a candidate site is located shall establish a local monitoring committee to represent the interests of the citizens of the municipality in which the candidate site is located. Each governing body shall determine the size and membership of its local monitoring committee. The local monitoring committees shall assure the protection of the public health, safety, and welfare and the protection of the environment in the municipality in which the candidate site is located. Each of the local monitoring committees may do all of the following:

(a) Represent the interests of the municipality in which the candidate site is located in proceedings regarding the selection of the host site.

(b) Independently review site characterization data.

(c) Prepare for the possible designation of the candidate site as the host site.

(d) Seek funding from the authority to fulfill the responsibilities of the local monitoring committee.

(e) Provide for independent technical assistance to fulfill the responsibilities of the local monitoring committee.

(f) Present recommendations to the authority and the review board established pursuant to section 13 regarding provisions and stipulations

that would mitigate the concerns of the municipality that is represented by the local monitoring committee if it is selected as the host site.

(2) The local monitoring committees for the municipalities that are not selected as the host site community shall disband upon the designation by the commissioner of the host site community.

(3) The local monitoring committee of the host site shall continue in existence through the period of institutional control. The local monitoring committee for the host site community may do all of the following:

(a) Evaluate and submit comments to the department, department of natural resources, and the authority regarding the application for a construction and operating license submitted by the authority.

(b) Select a representative for the local monitoring committee or a technical advisor, or both, to inspect and monitor at reasonable times and in a reasonable manner the construction of the disposal site and the monitoring and operation of the completed disposal site, site closure and stabilization, postclosure operation and maintenance and institutional control, with due regard as determined by the authority to the safety of the representative of the committee and the technical advisor.

(c) Engage in any other activities that are mutually agreed upon between the local monitoring committee and the authority or the department, or both.

(d) Negotiate and enter arbitration with the authority as provided in section 16.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26215 Preliminary designation of host site; transmittal and availability of information; rejection of site; terms of agreement;

design and construction of disposal site; "legislative working day" defined.

Sec. 15. (1) The commissioner shall make a preliminary designation of the host site. Immediately following the preliminary designation of the host site, the authority shall transmit to the secretary of the senate and the clerk of the house of representatives the name and location of that site and any other information that the authority has regarding that site and the 2 remaining candidate sites. Upon request, the authority shall also make any information that the authority has regarding the preliminarily designated host site and the 2 remaining candidate sites available to members of the legislature. Upon the expiration of 30 days after transmittal, that 30 days to commence on the first legislative working day after the designation is transmitted, the preliminary host site designated by the commissioner shall be the host site unless within that time period the legislature either rejects the designated host site, or rejects the designated host site and designates 1 of the 2 remaining candidate sites. If the legislature rejects the preliminarily designated host site but does not designate 1 of the 2 remaining candidate sites as the host site, the commissioner shall designate 1 of the 2 remaining candidate sites as the host site. Once the host site is designated by the commissioner, the terms of the final complete agreement reached with the authority pursuant to section 16 for the host site community shall commence.

(2) The authority shall assure that the design and construction of the disposal site is completed in accord with the minimum criteria established by the department in part 137.

(3) As used in this section, "legislative working day" means a day on which both the senate and the house of representatives are called to order and a quorum of both the senate and the house of representatives is present.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26216 Negotiations; final report; final summary; appointment of arbitration committee; arbitration and resolution of issues; written

final agreement; copies; meetings of arbitration committee; cessation of arbitration; decision by chairperson; final arbitration report; costs of chairperson; statement; incorporation of final determinations into final complete agreement.

Sec. 16. (1) The local monitoring committee for the host site community may negotiate with the authority regarding any of the following:

(a) Monetary and nonmonetary forms of compensation.

(b) Matters pertaining to disposal site access and transportation issues resulting from the siting of the disposal site.

(c) The landscaping and appearance of the disposal site.

(d) Technical assistance available to the municipality and the local monitoring committee of the candidate site and the host site community.

(e) Matters pertaining to host site community utility and natural resource utilization.

(2) Negotiations between the local monitoring committee for the host site and the authority may commence no later than 30 days after the designation of the host site. The time and place of negotiating sessions shall be determined by agreement between the local monitoring committee and the authority.

(3) If negotiations are conducted between the local monitoring committee for the host site and the authority, the local monitoring committee and the authority shall prepare a final report summarizing the agreements reached during negotiation. The final report shall be signed by the authority and by a member of the local monitoring committee who is designated by that local monitoring committee. The final report shall be a public document which shall be the subject of a public meeting conducted by the authority.

(4) If the local monitoring committee and the authority cannot resolve an issue considered during negotiation, the local monitoring committee and

the authority shall each prepare a final summary of each issue on which there is disagreement. That final summary shall include both of the following:

(a) A statement of the party to negotiation's final best offer on each issue on which there is disagreement.

(b) Information and documentation that supports the party to negotiation's final best offer on each issue on which there is disagreement.

(5) If the local monitoring committee and the authority cannot reach agreement on an issue that has been raised during negotiations, the local monitoring committee or the authority may require the appointment of an arbitration committee for the purpose of the arbitration of each issue that was considered but unresolved during negotiations. Arbitration as provided for under this subsection shall not occur unless the local monitoring committee or the authority requires the appointment of an arbitration committee. Arbitration shall pertain to only an unresolved issue included in the summary prepared pursuant to subsection (4). The arbitration committee shall consist of 3 members and shall include a representative designated by the local monitoring committee, a representative designated by the authority, and a chairperson who shall be an arbitrator and shall be selected pursuant to the rules and procedures of the American arbitration association.

(6) All issues resolved during arbitration to the satisfaction of both the representative of the local monitoring committee and the representative of the authority shall be incorporated into a written final agreement to be signed by each member of the arbitration committee. A copy of the agreement shall be made available to each member of the arbitration committee, the local monitoring committee, and the authority, and shall be considered a public document.

(7) The arbitration committee shall meet on a schedule and at a time and place that shall be established by agreement between the members of the arbitration committee. If the arbitration committee cannot agree on the

schedule, time, and place of the arbitration meetings, the chairperson shall determine the schedule, time, and place for the meetings.

(8) If there is 1 or more issues that are not resolved to the satisfaction of both the representative of the local monitoring committee and the representative of the authority within 45 days of the commencement of arbitration, arbitration shall cease and each unresolved issue shall be decided by the chairperson. The decision of the chairperson as to each unresolved issue shall be limited to the chairperson's choice of either the final best offer of the local monitoring committee on an unresolved issue prepared pursuant to subsection (4) or the final best offer of the authority on an unresolved issue prepared pursuant to subsection (4). The decision of the chairperson is final and binding and shall be incorporated into a final arbitration report issued within 30 days of the date on which arbitration ceased. The final arbitration report shall include a final report prepared pursuant to subsection (3), a final summary prepared pursuant to subsection (4), a final agreement prepared pursuant to subsection (6), and a final decision made by the chairperson pursuant to this subsection. To be valid the final arbitration report shall be signed by the chairperson. A copy of the final arbitration report shall be made available immediately to each member of the arbitration committee, the local monitoring committee, and the authority, and shall be considered a public document.

(9) The chairperson shall submit a statement of his or her costs to the authority. The costs of the chairperson shall be paid by the authority.

(10) Each final determination of an issue negotiated or arbitrated under this section shall be incorporated into a final complete agreement between the authority and the local monitoring committee for the host site.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26217 International low-level radioactive waste research and education institute; establishment; agreements; independent entity; board of governors; appointment, qualifications, and terms of

governors; powers and duties of institute; vacancy; quorum; action of board; meetings; general operating expenses; compensation of governor; formation of private nonprofit corporation; reports; availability of writings.

Sec. 17. (1) No later than October 1, 1988, the authority shall organize the establishment of an international low-level radioactive waste research and education institute. The authority may enter into agreements with a state university or college or a consortium of universities or colleges as may be necessary to establish the institute in accordance with this section. The authority shall establish a process by which a state university or college or a consortium of universities or colleges may indicate an interest in accepting the institute as an independent entity. The institute shall be governed by a board of governors who are jointly selected and appointed by the authority and the designated representative of the university, college, or consortium. The governors shall be as follows:

(a) One individual from a public utility that produces low-level radioactive waste as a result of the generation of electrical power.

(b) One individual from a business that is not a public utility but produces low-level radioactive waste.

(c) One individual from a medical facility that generates radioactive waste.

(d) Two individuals from environmental or public interest organizations.

(e) Three college or university faculty or staff members who have expertise in nuclear physics or nuclear chemistry and in the handling, processing, or reduction of low-level radioactive waste.

(f) One individual representing the general public.

(g) The director of public health or his or her authorized representative.

(h) The attorney general or his or her authorized representative.

(2) In addition to the governors appointed under subsection (1), if this state is a member of a compact, the governing body of the compact may appoint 1 representative to the board of governors who shall serve as an ex officio nonvoting member.

(3) The powers and duties of the institute shall include all of the following:

(a) To develop contracts with universities and other research institutions to conduct research on waste issues, including, but not limited to, all of the following:

(i) The method by which a determination can be made regarding the amounts of wastes specified by radionuclide that are generated within this state, and within compact member states as long as this state remains a member of a compact, to be disposed of in the disposal site in order to provide an inventory and guide disposal options and risk assessments.

(ii) The construction media, waste forms, and other engineering features necessary to assure containment of wastes, to reduce the potential for a release of waste.

(iii) The development of features to detect and control a release of waste.

(iv) The cost versus risk analysis of available waste treatment methods, with an emphasis on waste treatment methods that could adversely or positively affect the long-term performance of the disposal site.

(v) Transportation management systems that prevent public radiation exposure and facilitate incident response planning.

(vi) The use of mediation and human resource methods to facilitate positive interaction between the operators of the disposal site and the public.

(vii) The basic frameworks to provide for institutional control and the accumulation and use of economic resources necessary for institutional control.

(viii) Development of new materials and methods to reduce or eliminate the generation of waste.

(ix) Development of methods for state-of-the-art environmental monitoring of the disposal site.

(x) Economic implications of different waste management and treatment options.

(b) To develop and operate a technical resource program to provide information and assistance to persons involved with public policy issues surrounding the management of the disposal of waste.

(c) To develop and implement education programs that assist the public in understanding issues surrounding the generation, possession, transportation, processing, collecting, and disposal of waste and the site closure and stabilization, post closure observation and maintenance, and institutional control of the disposal site.

(4) The governors appointed as provided in subsections (1) and (2) shall serve for terms of 4 years, or until a successor is appointed, whichever is later, except that of the members first appointed, 3 shall serve for 2 years and 3 shall serve for 3 years.

(5) If a vacancy occurs on the board of governors, an appointment shall be made for the unexpired term in the same manner as the original appointment.

(6) A majority of the governors of the institute shall constitute a quorum for the transaction of business at a meeting of the board. Action by the board of governors shall be by a majority of the votes cast.

(7) A meeting of the board of governors shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(8) In addition to research grant awards, not more than $250,000.00 annually shall be available for appropriation from the low-level radioactive waste management fund to meet the general operating expenses of the institute.

(9) A governor of the institute may receive compensation for his or her service, and shall be reimbursed for expenses that are necessarily incurred in the performance of duties as a member of the institute.

(10) The board of governors shall meet at least quarterly.

(11) The institute may form a private nonprofit corporation, if the board of governors determines that doing so will assist in fulfilling its functions under this section.

(12) The board of governors shall annually prepare a report that details the sources of funds, amount of funds received from each source, and the use of all funds that are received by the institute or a nonprofit corporation formed by the board of governors during the reporting year. Any report prepared by or on behalf of the board of governors shall include a list of all of the sources that contribute funds for the operation of the institute.

(13) Within 180 days after the effective date of the amendatory act that added this subsection, the board of governors shall prepare the following reports and provide these reports to the appropriate standing committees of the senate and house of representatives that primarily address issues pertaining to the environment and natural resources.

(a) A report on waste management options available to this state. The report shall also list and evaluate feasible options to encourage a

reduction in the amount of waste generated in this state. The board of governors shall identify and evaluate options and make recommendations to the authority regarding iterim waste storage and provision of final disposal capacity.

(b) A volunteer host community program plan which, at a minimum, incorporates the provisions of section 7. The authority shall obtain public comment in the preparation of this plan.

(14) A writing prepared, owned, used, in possession of, or retained by the board of governors in the performance of an official function is subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26218 Report and recommendations; preparation and submission.

Sec. 18. (1) The authority shall each month prepare and submit to the department a report that sets forth all of the following information:

(a) The character, volume, class, and curie count of waste received by the authority.

(b) The number of manifests and shipments of waste received by the authority during the reporting period.

(c) The number of manifests received by the authority that properly and improperly reflected the waste received.

(d) The response of the authority to any discrepancies in the manifest.

(e) The recommendation of the authority to the department for follow-up action regarding a discrepancy in a manifest or other impropriety.

(2) The authority shall prepare and submit to the department and the attorney general recommendations regarding sanctions against a generator, carrier, collector, or processor who the authority suspects has violated part 137 or a rule promulgated under that part or a permit issued under part 137.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987

333.26218a Report by generator; contents; preparation and presentation of summary.

Sec. 18a. (1) By October 1 of each year, or as otherwise required by the authority, a generator shall report to the authority the following information about the waste it generates:

(a) Volume of waste.

(b) Curie content and principal radionuclides present.

(c) Form of waste.

(d) Methods used to store waste.

(e) Any other information about the waste that the authority considers necessary or helpful in implementing its duties under this act.

(2) A summary of information reported under subsection (1) shall be prepared by the authority and presented to the appropriate standing committees of the senate and house of representatives of the legislature that primarily address issues pertaining to the environment and natural resources.

History: Add. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26219 Establishment of fee system for disposal site; assurance of sufficient funding; creation of remedial action fund, long-term liability fund, long-term care fund, and tax contingency fund; administration; disposition of income and earnings; expenditure of

funds; surcharges; increase of fees; basis of fee system; disposition of revenues.

Sec. 19. (1) The authority shall establish a fee system that is reasonable and equitable and that provides the authority with sufficient revenue to cover any and all costs associated with the disposal site, including, but not limited to, the planning, siting, licensure, operation, regulation, monitoring, site closure and stabilization, post closure monitoring and maintenance, institutional control, and liability pertaining to the disposal site. In addition, the authority shall assure that sufficient funds will be available in the low-level radioactive waste fund for all of the following:

(a) The authority and all of the expenses the authority incurs in meeting the requirements of this act, part 137, and the rules promulgated under part 137.

(b) The expenses of the department that pertain to the department's regulatory responsibility under part 137.

(c) If this state is a member of a compact, the expenses related to compact membership.

(d) The international low-level radioactive waste research and education institute established pursuant to section 17.

(e) The review board established pursuant to section 13.

(f) Local monitoring committees.

(g) The siting criteria advisory committee established pursuant to section 8.

(h) If this state is a member of a compact, the expenses of compact member states that are incurred to obtain privileges in this state to enable waste generated in the compact member states to be disposed of in the disposal site.

(i) If this state is a member of a compact, the funds required to be paid to the commission by the compact member states.

(j) Compensation to the host site community and any county or municipality in this state for the reasonable direct costs related to the disposal site including, but not limited to, necessary road and other capital improvements, emergency response training, and other specialized personnel training.

(k) Benefits to the candidate sites and host site community including incentives available to candidate sites and the host site community, pursuant to agreements reached by the commission and with the authority.

(l) Provide funds sufficient to fulfill the provisions of sections 13714 and 13715 of part 137.

(m) Annually to this state for unrestricted purposes, $500,000.00.

(n) Annually to the host site community for unrestricted purposes, $800,000.00.

(o) Costs incurred by a municipality or county as a result of externalities associated with the disposal site.

(p) Revenue for the funds created in subsection (2).

(q) Paying debt service on revenue bonds issued pursuant to section 20a.

(2) The remedial action fund, the long-term liability fund, the long-term care fund, and the tax contingency fund are created as separate funds in the department of treasury. The funds created in this subsection shall be administered by the authority. The income and earnings of the funds created in this subsection shall be added to the assets of the fund which generated the income. The funds created in this subsection shall be funded and expended as follows:

(a) Not less than $10,000,000.00 during the period the disposal site accepts waste for disposal, for deposit in the remedial action fund which is available only to pay for remedial action taken by the authority in the event of a release or threatened release from the disposal site that presents a danger to the public health, safety, or welfare, or the environment.

(b) Not less than $500,000.00 annually for deposit in the long-term liability fund which shall be available only to pay judgments or judicially approved settlements of claims against the authority or, if this state is a member of a compact any compact member state for death, personal injury, illness, or property damage resulting from the disposal of low-level radioactive waste at the disposal site. The long-term liability fund shall be used only after funds available pursuant to sections 13714 and 13715 of part 137 have been exhausted.

(c) Not less than $600,000.00 annually for deposit in the long-term care fund which is available only to pay for the expenses of site closure and stabilization and institutional control.

(d) Not more than $100,000.00 annually for deposit in the tax contingency fund which is available for reasonable payments in lieu of real property taxes which, but for ownership of the disposal site by the authority, would be payable with respect to the disposal site, for as long as the disposal site is not subject to pay property taxes.

(3) The authority shall impose a 20% surcharge to be added to the disposal fees established under subsection (1). The surcharge shall be sufficient to cover the following expenses and shall be distributed by the authority according to the following:

(a) The host site community shall receive 35% of the surcharge or $400,000.00, whichever is greater.

(b) One or more municipalities that share a boundary with the host site community shall receive 20% of the surcharge or $400,000.00, whichever is greater. If there is more than 1 municipality that is eligible

for funding under this subdivision, the eligible municipalities shall split equally that funding.

(c) The county in which the host site is located shall receive 15% of the surcharge or $300,000.00, whichever is greater.

(d) The environmental response fund created in part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.20101 to 324.20142 of the Michigan Compiled Laws, shall receive 15% of the surcharge or $400,000.00, whichever is greater.

(e) The clean Michigan fund created in part 191 (clean Michigan fund) of Act No. 451 of the Public Acts of 1994, being sections 324.19101 to 324.19121 of the Michigan Compiled Laws, shall receive 15% of the surcharge or $200,000.00, whichever is greater.

(4) The authority may impose a just and reasonable surcharge on any generator, carrier, processor, or collector who does not comply with part 137 or the rules promulgated under part 137.

(5) In the second and each subsequent year of the operation of the disposal site, the amount of each fee established in subsection (1) shall be increased in proportion to each annual increase for the preceding year in the annual consumer price index for all urban consumers as defined and officially reported by the bureau of labor statistics of the United States department of labor for the north central region of the United States. If the disposal site does not operate for the entire year during the second or last year the disposal site accepts waste, the proportional increase provided for in this subsection shall be prorated according to the number of months of operation.

(6) The fee system created by the authority under subsection (1) for the disposal of waste in the disposal site shall not be dependent on revenues received for the disposal of class C waste and shall be based on both of the following:

(a) The volume, radioactivity, and half-life of the waste deposited in the disposal site. The fee shall be proportionately higher for waste that has higher levels of radioactivity as measured in curies, and for waste that has longer half-lives.

(b) A realistic model of the projected cost of the disposal of each classification of waste.

(7) All revenues in the fee system created under subsection (1) that result from the disposal of class C waste in the disposal site shall be deposited in the clean Michigan fund created in part 191 of Act No. 451 of the Public Acts of 1994.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995 ;-- Am. 1996, Act 68, Imd. Eff. Feb. 26, 1996

333.26219a Michigan as host state; agreement to include provision providing penalty for default.

Sec. 19a. If this state enters into a compact and, pursuant to agreements entered into by the compact members, Michigan is selected as the host state for the disposal site and fulfills its obligations to serve as the host state, the contractual agreement among the compact members shall include a provision that provides a penalty if any other compact member state subsequently defaults in any respect on its obligation to serve as the host state for the disposal site. This penalty shall include at least all of the following:

(a) Exemplary damages.

(b) The costs estimated to be incurred by this state due to the default.

(c) The costs estimated to be incurred by this state due to the lost opportunity to join another compact or to have proceeded as an independent state.

(d) Other expenses and costs that this state will incur as a result of the default as determined by the authority.

History: Add. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26220 Low-level radioactive waste management fund; creation; administration; appropriations; expenditures; sources of revenue; exemption of assets from taxation; preservation and use of assets.
Sec. 20. (1) There is hereby created in the state treasury a low-level radioactive waste management fund that shall be administered by the authority. The legislature shall make appropriations from the fund as provided in part 137 and as necessary to assure that the authority is able to fully implement its powers and responsibilities.

(2) The authority may expend appropriations by the legislature from the low-level radioactive waste fund for purposes listed in section 19 and as are otherwise reasonably related to the full implementation of the powers and duties of the authority.

(3) The source of the revenue of the fund shall include revenue from the following sources:

(a) Funds provided by other states, if this state is a member of a compact and this state is the host state for the compact, including export fees, funds to be allocated to candidate site communities, and any other revenue.

(b) Rebates received from the United States department of energy.

(c) Funds received pursuant to section 4(c).

(d) Disposal fees and surcharges established by the authority under section 19.

(4) The assets of the low-level radioactive waste management fund shall be exempt from all taxation by this state or any of its political subdivisions.

(5) The assets of the low-level radioactive waste management fund shall be preserved, invested, and expended solely pursuant to and for the

purposes set forth in this act and in part 137 and shall not be loaned or otherwise transferred or used by the state for any other purpose.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 1994, Act 434, Imd. Eff. Jan. 6, 1995

333.26220a Bonds.

Sec. 20a. (1) For the purpose of financing the project costs associated with the disposal site, the authority may borrow money and issue its revenue bonds payable solely from the disposal site revenues, except to the extent paid from the proceeds of sale of revenue bonds or from any other security provided for and pledged as provided by this act. The bonds shall be serial bonds or term bonds, or a combination of serial bonds and term bonds, and shall be payable as provided in the resolution authorizing the bonds. The last annual principal installment shall not be longer than the estimated period of usefulness of the disposal site for which the bonds were issued as determined by the authority. The resolution of the authority authorizing the issuance of the bonds may provide for sinking fund payments; for the bonds to bear interest at a fixed or variable rate or rates of interest per annum or at no interest; for the establishment of a reserve and the method of funding the reserve; for the investment of bond proceeds and other money held in funds and accounts created by the resolution; for the denomination or denominations of the bonds; for the form, either coupon or registered, of the bonds; for the conversion or registration privileges; for the manner of execution; for the sources, medium of payment, and place or places within or without the state of payment; and that the bond be subject to redemption at the option of the holder or the authority with the terms and redemption premiums as the resolution provides.

(2) Bonds issued may be sold at a discount but may not be sold at a price that would make the interest cost on the money borrowed after deducting any premium or adding any discount exceed 10% per annum or the maximum rate permitted by the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, whichever is greater. Bonds of the authority may be sold at public or private sale. Bonds issued under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(3) Bonds of the authority shall not be in any way a debt or liability of the state and shall not create or constitute an indebtedness, liability, or obligation of the state or constitute a pledge of the faith and credit of the state, but all bonds issued by the authority, unless funded or refunded by bonds issued by the authority, shall be payable solely from revenues or funds pledged or available for their payment from disposal site revenues, or as otherwise provided by this act. The authority shall not be personally liable for an indebtedness, liability, or obligation under this section. Each bond issued under this section shall contain on its face a statement to the effect that the bond is not in any way a debt or liability of the state, that the state is not obligated to pay principal or interest on the bond, that neither the faith and credit nor the taxing power of the state is pledged for the payment of principal of or interest on the bond, and that the authority is obligated to pay the principal of and interest on the bond only from the disposal site revenues.

(4) The authority may authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase bonds, an agreement to remarket bonds or not to call for prior redemption of bonds, swaps, or interest protection agreements including interest rates, hedges, or similar agreements, and any other transaction to provide security to assure timely payment of the bond. The authority may authorize payment from the proceeds of the bond or from other funds available, of the costs of issuance including, but not limited to, fees for placement, charges for replacement, letters of credit, lines of credit, remarketing agreements, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of the bonds.

(5) A pledge of the disposal site revenues and the funds and accounts pledged by the resolution is valid and binding from the time when the pledge is made. The disposal site revenues pledged and thereafter received by the authority shall be subject to a statutory lien of the pledge without physical delivery of the revenues or money or further act, until payment in full of the principal of and interest upon the bonds, unless the authorizing resolution provides for an earlier discharge of the lien. The lien of a pledge of the disposal site revenue is valid and binding against a

party having a claim of any kind in tort, contract, or otherwise against the authority, irrespective of whether that party has notice of the pledge. Neither the resolution authorizing the issuance of the bonds, the trust indenture, nor any other instrument by which a pledge is created need be filed or recorded in order to establish and perfect a lien or security interest in the property pledged.

(6) In the resolution authorizing the issuance of the bonds, the authority may authorize the state treasurer, as agent for the authority, to do 1 or more of the following:

(a) Sell and deliver, and receive payment for, bonds.

(b) Refund bonds by the delivery of new bonds, whether or not the bonds to be refunded have matured or are subject to redemption.

(c) Deliver bonds, partly to refund bonds, and partly for any other authorized purpose.

(d) Buy bonds that have been issued and resell those bonds.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(7) The authority may provide in the resolution authorizing the issuance of the bonds for 1 or more of the following:

(a) A provision that the disposal site revenues shall be pledged for the payment of the bonds.

(b) To covenant that the fees and surcharges provided for by section 19 shall be revised from time to time within the limits permitted by law and under the compact when necessary to insure that the revenues to be derived shall be sufficient to pay the principal of and interest on the

bonds issued pursuant to this section and other obligations incurred in connection with the issuance of the bonds.

(c) To establish, make provision for, and make regulation regarding and disposition of reserves or sinking funds.

(d) To covenant with respect to or against limitations on the right to sell or otherwise dispose of property of any kind.

(e) A provision for deposit and expenditure of the proceeds of sale of the bonds and for investment of the proceeds and of other funds relating to the bonds.

(f) To covenant as to the issuance of additional bonds or notes, or as to limitations on the issuance of additional bonds, and on incurring other debts of the authority.

(g) To covenant as to the payment of principal and interest on the bonds, as to the sources and methods of that payment, as to the rank and priority of the bonds with respect to a lien or security, or as to the acceleration of the maturity of the bonds.

(h) To covenant as to the redemption of the bonds, and privileges for exchange of other bonds of the authority.

(i) To covenant as to create or authorize the creation of special funds or money to be held or pledged or otherwise for operating expenses, payment or redemption of bonds, reserves, or other purposes, and as the use and disposition of the money held in these special funds.

(j) To establish the procedure by which the terms of a contract or covenant with or for the benefit of the holders of the bonds may be amended or abrogated, the amount of bonds the holders of which must consent to the amendment of abrogation, and to the manner in which the consent may be given.

(k) To provide for the rights and liabilities, powers, and duties arising upon the breach of a covenant, condition, or obligation, and to prescribe the events of default and the terms and conditions upon which any or all the bonds shall become or may be declared due and payable before maturity, and the terms and conditions upon which such declarations and its consequences may be waived.

(l) Provide for the appointment of a trustee, to vest in a trustee property, rights, powers, and duties in trust as the authority determines, which may include all or any of the rights, powers, or duties of a trustee appointed by the holders of bonds or notes, and to limit or abrogate the right of holders of bonds of the authority to appoint a trustee under this section or to limit the rights, powers, and duties of such trustee.

(m) To limit the rights of holders of bonds to enforce a pledge or covenant securing the bonds.

(n) Any other matters of like or different character, which in any way affects the security or protection of the bonds.

(8) Notwithstanding any other restriction contained in any other law, the state and the public officer, governmental unit, or agencies of the state or governmental unit; a bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business; an insurance company, insurance association, or any other person carrying on an insurance business; or an executor, administrator, guardian, trustee, or other fiduciary may legally invest a sinking fund, money, or any other fund belonging to them or within their control in bonds or notes issued under this section, and authority bonds shall be authorized security for public deposits. If the interest of the bonds is excluded from gross income for federal income tax purposes, bonds and interest on those bonds shall be exempt from all taxation by the state or a subdivision of the state.

(9) The authority may provide for the issuance of bonds in the amount the authority considers necessary for the purpose of refunding bonds of the authority then outstanding, including the payment of any redemption

premium and interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of these bonds. The proceeds of these refunding bonds may be applied to the purchase or retirement at maturity or redemption of outstanding bonds either on the earliest or subsequent redemption date, and pending the application, may be placed in escrow to be applied to the purchase or retirement at maturity or redemption on a date or dates determined by the authority. Pending the application and subject to agreements with the bondholders, the escrowed proceeds may be invested and reinvested in the manner the authority determines, maturing at the time or times as appropriate to assure prompt payment of the principal, interest, and redemption premium, if any, of the outstanding bonds to be refunded. After the terms of the escrow have been fully satisfied and carried out, the balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment of the proceeds shall be returned to the authority for use by the authority in any lawful manner. In the resolution authorizing bonds, the authority may provide that the bonds that have been refunded shall be considered paid when there has been deposited in trust money or direct obligations of the United States, or other obligations secured by the foregoing that will provide payments of principal and interest adequate to pay the principal and interest on the refunded bonds as that principal and interest becomes due whether by maturity or prior redemption and that, upon the deposit of the money or obligations, the obligations of the authority to the holders of the refunded bonds are terminated except as to the rights to the money or obligations deposited in trust.

(10) As used in this section:

(a) “Annual principal installment” means a maturity of serial bonds, an amount of term bonds required to be redeemed in that year, or a maturity of term bonds less amounts previously required to be redeemed.

(b) “Bonds” means any note, bond, or other obligation or evidence of indebtedness of the authority.

(c) “Disposal site revenues” means fees and surcharges established by the authority under section 19; other revenues generated by the operation of the disposal site; and other revenues received by the bond holders pursuant to the resolution authorizing the bond, after deduction of reasonable expenses of administration, operation, and maintenance of the disposal site.

(d) “Project costs” means the costs of assurance of title, construction, insurance during construction, acquisition, improvement, enlargement, extension, or repair of the disposal site unit including any engineering, architectural, legal, accounting, financial, surveying, and other expenses incidental to the disposal site. Project costs shall also include interest on the bonds and other obligations of the borrower issued to pay project costs or to secure the timely payment of the bonds, a reserve or an addition to a reserve for payment of principal and interest on the bonds, the amount determined by the authority required for the operation of maintenance of the disposal site until sufficient revenues have developed, and all costs associated with the issuance of the bonds.

(11) The issuance of bonds under this act is subject to the agency financing reporting act.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987 ;-- Am. 2002, Act 414, Imd. Eff. June 3, 2002

333.26221 Repealed. 1994, Act 434, Imd. Eff. Jan. 6, 1995.

Compiler's Notes: The repealed section pertained to report to governor and legislature.

333.26222 Noncompliance.

Sec. 22. The failure of the authority to comply with a requirement of this act that pertains to specified dates by which certain acts are to occur shall not invalidate an action taken by the authority after the specified date, if that action is otherwise in compliance with this act.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987

333.26223 Annual report.
Sec. 23. The authority shall make an annual report to the governor and to the legislature. The annual report shall include a full account of the activities of the authority.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987

333.26224 Assistance from other department or agencies; reimbursement for costs.
Sec. 24. Upon the request of the authority, any department or agency of this state shall assist the authority in fulfilling its responsibilities under this act and that department or agency shall be reimbursed for costs associated with that assistance.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987

333.26225 Annual appropriation.
Sec. 25. The legislature shall annually appropriate to the authority sufficient funding from the low-level radioactive waste management fund to ensure the effective implementation of this act.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987

333.26226 Conditional effective date.
Sec. 26. This act shall not take effect unless all of the following bills of the 84th Legislature are enacted into law:

(a) Senate Bill No. 65.

(b) Senate Bill No. 66.

History: 1987, Act 204, Imd. Eff. Dec. 22, 1987

STATE FOOD STAMP DISTRIBUTION ACT (EXCERPT)
Act 387 of 1984

400.759 Contract requirements.
Sec. 9. A contract shall require a distributor to do or comply with not less than all of the following:

(a) Require fidelity bonds of those employees of the distributor who, according to standards established by the department of management and budget, are involved with the distribution of coupons.

(b) Maintain and supply proof of insurance against destruction, theft, and robbery in amounts adequate to cover loss of the maximum value of coupons that would be at the distribution site or under the control of the distributor at any time.

(c) Provide security measures at the distribution site that adequately protect recipients while on the distribution site.

(d) Demonstrate financial solvency sufficient to ensure continued operation during the contract period.

(e) With respect to all bids submitted after the effective date of this act, not maintain a financial or business relationship with, or share retail space or maintain adjoining retail space with, a retail food establishment.

(f) Be registered to do business in this state, if otherwise required by law.

(g) Make the distribution site accessible to persons with disabilities.

(h) Operate the distribution site in compliance with state and local health, building, or zoning ordinances.

(i) Make available to inspection by the family independence agency the distributor's coupon inventories and coupon inventory records.

History: 1984, Act 387, Eff. Mar. 29, 1985 ;-- Am. 1998, Act 89, Imd. Eff. May 13, 1998

RACING AND CARRIER PIGEONS (EXCERPT)
Act 57 of 1974

433.352 Carrier pigeon permit; issuance; requirements.
Sec. 2. (1) The department shall issue a carrier pigeon permit to the owner of carrier pigeons who complies with the following requirements:

(a) The loft is found on inspection to be in compliance with regulations prescribed by the department and is maintained in a clean, orderly condition and kept in good repair.

(b) The construction of a loft complies with the building code regulations of the city, village, township, or county in which it is erected.

(2) The requirements of zoning regulations relating to restrictions on the location of stables and poultry enclosures shall not apply to a loft for which a permit has been issued.

History: 1974, Act 57, Imd. Eff. Apr. 1, 1974

F. SUMMER RESORT AND PARK AUTHORITY

RESORT DISTRICT REHABILITATION ACT
Act 59 of 1986

AN ACT to authorize the establishment of a resort district authority; to prescribe its powers and duties; to correct and prevent deterioration in resort districts; to encourage historic preservation; to authorize the acquisition and disposal of interests in real and personal property; to authorize the creation and implementation of rehabilitation plans in the districts; to create a board and to prescribe its powers and duties; to authorize the levy and collection of taxes; and to authorize the issuance of bonds and other evidences of indebtedness.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

The People of the State of Michigan enact:

125.2201 Short title.
Sec. 1. This act shall be known and may be cited as the "resort district rehabilitation act".

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2202 Definitions.
Sec. 2. As used in this act:

(a) "Authority" means a resort district authority created pursuant to this act.

(b) "Board" means the governing body of an authority.

(c) "Operation" means office maintenance, including salaries and expenses of employees, office supplies, consultation fees, design costs, and other expenses incurred in the daily management of the authority and planning of its activities.

(d) "Rehabilitation" means construction, reconstruction, repair, or maintenance of a road, street lighting, a sanitary sewer, a storm sewer, storm water drainage, or a flood control project within a resort district, or establishment and operation of a system of garbage collection within the resort district.

(e) "Rehabilitation plan" means the information and requirements set forth in section 15.

(f) "Resort district" means an area which encompasses a natural geographic feature used for recreation, such as an inland lake or the Great Lakes shoreline, which is specifically designated by resolution and approved as provided in this act, and a portion of which area is land that is or was a part of a resort association incorporated under 1 of the following:

(i) Act No. 230 of the Public Acts of 1897, being sections 455.1 to 455.24 of the Michigan Compiled Laws.

(ii) Act No. 39 of the Public Acts of 1889, being sections 455.51 to 455.72 of the Michigan Compiled Laws.

(iii) Act No. 69 of the Public Acts of 1887, being sections 455.101 to 455.113 of the Michigan Compiled Laws.

(iv) Act No. 137 of the Public Acts of 1929, being sections 455.201 to 455.220 of the Michigan Compiled Laws.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2203 Resort district authority; establishment; inclusion of parcel of property; approval by resolution; nature and powers of authority; tax limitations.

Sec. 3. (1) A township may establish a resort district authority. A parcel of property shall not be included in more than 1 authority created under this act. A parcel of property that is in a village shall not be included in a resort district established by a township except upon approval by resolution of the governing body of the village and subject to such conditions as may be set forth in the resolution.

(2) The authority shall be a public body corporate which may sue and be sued in any court of this state. The authority possesses all the powers necessary to carry out the purposes of its incorporation. The enumeration of a power in this act shall not be construed as a limitation upon the general powers of the authority.

(3) An authority is intended and shall be considered to be an authority the tax limitations of which are provided by charter or general law within the meaning of section 6 of article IX of the state constitution of 1963.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2204 Resolution of intent to create and provide for operation of authority; public hearing; notice; right to be heard.
Sec. 4. (1) If a township board determines that it is in the best interests of the public to halt or prevent property deterioration or increase property valuation where possible in a resort district, or to eliminate the causes of that deterioration, the township board may declare by resolution the intention to create and provide for the operation of an authority. In the resolution of intent, the township board shall set a date for holding a public hearing on adopting an ordinance or resolution creating the authority and establishing the board.

(2) Notice of the public hearing shall be published twice in a newspaper of general circulation in the township, not less than 20 nor more than 40 days before the date of the hearing.

(3) A resident, taxpayer, or property owner of the township has the right to be heard in regard to the establishment of the authority.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2205 Ordinance or resolution establishing authority; filing; publication.
Sec. 5. After the public hearing, if the township board intends to proceed with the establishment of the authority, it shall adopt, by majority vote of its members, an ordinance or resolution establishing the authority. The ordinance or resolution shall promptly be filed with the secretary of state after its adoption and shall be published at least once in a newspaper of general circulation in the township.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2206 Board; appointment, qualifications, and terms of members; vacancy; compensation; election of chairperson; oath of office.
Sec. 6. (1) The authority shall be under the supervision and control of a board consisting of 2 elected officials of the township, 2 residents of an area that is or was a resort association as described in section 2(f), and 1 individual designated by the industrial or commercial facility located

within the township which has the highest state equalized valuation as of December 31 of the year preceding the year of the designation. The board members shall be appointed or designated within 30 days after adoption of the ordinance or resolution under section 5.

(2) A member shall be appointed by the township supervisor subject to approval by the township board. Of the 2 resident members first appointed, 1 shall be appointed for a term expiring December 31 of the year after the year of appointment and 1 for a term expiring December 31 of the third year after the year of appointment. Thereafter, each resident member shall serve for a term of 4 years. A member shall hold office until the member's successor is appointed. An appointment to fill a vacancy shall be made by the township supervisor for the unexpired term.

(3) If approved by the township board, a board member shall receive compensation limited to a reasonable per diem which shall include actual and necessary expenses.

(4) The chairperson of the board shall be elected by the board from among its members. Before assuming the duties of office, a board member shall qualify by taking and subscribing to the constitutional oath of office provided in section 1 of article XI of the state constitution of 1963.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2207 Determination and submission of proposed boundaries and millage to township board; approval by resolution; election; notice; approval of proposition.

Sec. 7. (1) The board shall determine the boundaries of the proposed resort district. Subject to the limitations of section 8, the board shall determine the millage necessary for rehabilitation of the resort district. The board shall submit the proposed boundaries and millage to the township board. If the township board approves the boundaries and millage by resolution, ordinance, or otherwise, the boundaries and millage shall be submitted to a vote of the electors who reside in the

proposed resort district. An election shall not be held under this section after December 31, 1987.

(2) Notice of the election shall be published twice in a newspaper of general circulation in the township, not less than 5 and not more than 10 days before the date of the election. Notice of the election shall be posted in not less than 20 conspicuous and public places in the proposed resort district not less than 20 days before the election. The notice shall state the date of the election and shall describe the boundaries of the proposed resort district.

(3) If a majority of the electors voting on the question approve the proposition, then the resort district is established and the authority is authorized to levy the millage up to the amount and duration specified in the proposition.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2208 Ad valorem tax on property located in resort district; mills; limitation; collection; disposition; borrowing money and issuing notes; extension of tax.

Sec. 8. (1) Subject to the provisions of section 7, an authority may levy an ad valorem tax on the taxable value of the real and tangible personal property located in the resort district and not exempt by law. The tax shall not be more than 3 mills for a period of not more than 5 years. The tax shall be collected by the township creating the authority levying the tax. The township shall collect the tax at the same time and in the same manner as it collects its other ad valorem taxes. The tax shall be paid to the treasurer of the authority and credited to the general fund of the authority for purposes of the authority.

(2) An authority may borrow money and issue its notes for that money pursuant to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, in anticipation of collection of the ad valorem tax authorized in this section.

(3) Except as provided in subsection (4), the authority may extend the tax levied under this section for periods of not more than 5 years. An extension of the tax shall not be more than 3 mills. An extension shall not be levied unless, before September 15 of the year following the year in which a previously approved tax levy expires, the extension is approved by a majority of the electors who reside in the resort district and who vote on the proposition.

(4) If a tax levy has been previously levied and approved by a majority of electors who reside within the resort district on 2 previous occasions, the authority may extend the tax levied under this section for a period of not more than 10 years. An extension of the tax shall not be more than 3 mills. An extension under this subsection shall not be levied unless, before September 15 following the year in which a previously approved tax levy expires, the extension is approved by a majority of the electors who reside in the resort district and who vote on the proposition.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986 ;-- Am. 1996, Act 209, Imd. Eff. May 22, 1996 ;-- Am. 2002, Act 236, Imd. Eff. Apr. 29, 2002

125.2209 Conducting business at public meeting; notice; procedural rules; meetings; removal of member; review; expense items; financial records; writings available to public.

Sec. 9. (1) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. The board shall adopt rules consistent with Act No. 267 of the Public Acts of 1976 governing its procedure and the holding of regular meetings, subject to the approval of the township board. Special board meetings may be held if called in the manner provided in the rules of the board.

(2) Pursuant to notice and after having been given an opportunity to be heard, a board member may be removed for cause by the township board. Removal of a member is subject to review by the circuit court.

(3) All expense items of the authority shall be publicized monthly and the financial records shall always be open to the public.

(4) In addition to the items and records prescribed in subsection (3), a writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2210 Director.

Sec. 10. (1) Subject to the approval of the township board, the board may employ and fix the compensation of a director or may enter into a contract with an individual, the township, a corporation, or other legal entity to perform the functions of the director. The director shall serve at the pleasure of the board. A board member shall not be eligible to hold the position of director or acting director. Before entering upon the duties of office, the director shall take and subscribe to the constitutional oath of office, and shall furnish bond by posting a bond in the penal sum determined in the ordinance establishing the authority, which bond is payable to the authority for use and benefit of the authority, approved by the board, and filed with the municipal clerk. The premium on the bond shall be considered to be an operating expense of the authority, payable from funds available to the authority for operating expenses.

(2) The director shall be the chief executive officer of the authority. Subject to the board's approval, the director shall supervise, and be responsible for, preparing plans and performing the functions of the authority in the manner authorized by this act. The director shall attend board meetings and shall provide the board and township board with a regular report covering the activities and financial condition of the authority.

(3) If the director is absent or disabled, the board may designate a qualified person as acting director to perform the duties of the office.

Before entering upon the duties of office, the acting director shall take and subscribe to the oath of office and furnish bond as required of the director. The director shall furnish the board with information or reports governing the operation of the authority as the board requires.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2211 Employment of personnel; contracts.
Sec. 11. The board may employ other personnel considered necessary by the board including, but not limited to, a treasurer and secretary. The board may enter into a contract with an individual, the township, a corporation, or other legal entity to perform the duties of a treasurer, secretary, or other functions the board considers necessary.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2212 Powers of board.
Sec. 12. The board may do any of the following:

(a) Prepare an analysis of infrastructure changes taking place in the resort district.

(b) Plan and propose rehabilitation within the resort district.

(c) Implement any plan of rehabilitation in the resort district necessary to achieve the purposes of this act, in accordance with the powers of the authority as granted by this act.

(d) Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.

(e) Acquire by purchase or otherwise, on terms and conditions and in a manner the authority considers proper, or own, convey, or otherwise dispose of, or lease as lessor or lessee, land or other property, real or personal, or rights or interests in land or other property, which the authority determines is reasonably necessary to achieve the purposes of

this act, and to grant or acquire licenses, easements, and options with respect to the property.

(f) Fix, charge, and collect fees, rents, and charges for the use of a building or property under its control or a part of such a building or property, and pledge the fees, rents, and charges for the payment of revenue bonds issued by the authority.

(g) Lease a building or property under its control, or a part of such a building or property.

(h) Accept grants and donations of property, labor, or other things of value from a public or private source.

(i) Acquire and construct public facilities.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2213 Revenue bonds.

Sec. 13. The authority may borrow money and issue its negotiable revenue bonds for that money pursuant to the revenue bond act of 1933, Act No. 94 of the Public Acts of 1933, being sections 141.101 to 141.139 of the Michigan Compiled Laws. Except as otherwise provided in this act, a revenue bond issued by the authority shall not be considered a debt of the township or the state. By majority vote of the members of the township board, the township may make a limited tax pledge of its full faith and credit to support the authority's revenue bonds.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2214 Bonds to finance rehabilitation plan.

Sec. 14. (1) If authorized in the ordinance or resolution of the township creating the authority, by resolution of its board, and subject to the limitations set forth in this section, the authority may authorize, issue, and sell its bonds to finance a rehabilitation plan. The bonds shall mature not later than the last year for which the authority is entitled to levy an ad

valorem tax pursuant to section 8 and shall be subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) If electors have approved the millage pursuant to section 7, the township board may, by a majority vote of its members make a limited tax pledge of its full faith and credit for the payment of principal and interest on the authority's bonds issued pursuant to this section.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986 ;-- Am. 2002, Act 236, Imd. Eff. Apr. 29, 2002

125.2215 Rehabilitation plan; preparation; contents.
Sec. 15. (1) If a board decides to finance the rehabilitation of the resort district by the use of revenue bonds as authorized in section 13 or 14, the board shall prepare a rehabilitation plan.

(2) The rehabilitation plan shall contain all of the following:

(a) The designation of boundaries of the resort district in relation to highways, streets, streams, or otherwise.

(b) The location and extent of existing roads, sewers, and drains within the resort district.

(c) A description of existing improvements in the resort district to be demolished, repaired, or altered, a description of any repairs and alterations, and an estimate of the time required for completion.

(d) The location, extent, character, and estimated cost of the improvements including rehabilitation contemplated for the resort district and an estimate of the time required for completion.

(e) A statement of the construction or stages of construction planned, and the estimated time of completion of each stage.

(f) A description of desired changes in streets, street levels, intersections, and utilities.

(g) An estimate of the cost of the rehabilitation with a statement of the proposed method of financing the rehabilitation and the ability of the authority to arrange the financing.

(h) Other material which the authority, local public agency, or township board considers pertinent.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2216 Rehabilitation plan; public hearing; notice; opportunity for interested persons to be heard; receipt and consideration of written communications; opinions; arguments; documentary evidence; record of hearing.

Sec. 16. (1) Before adopting a resolution approving a rehabilitation plan, the township board shall hold a public hearing on the rehabilitation plan. In addition to the notice requirements of the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, notice of the time and place of the hearing shall be given by publication 3 times in a newspaper of general circulation designated by the township, the first of which shall be not less than 20 days before the date set for the hearing. Notice of the hearing shall be posted in at least 20 conspicuous and public places in the resort district not less than 20 days before the hearing.

(2) Notice of the time and place of hearing on a rehabilitation plan shall contain a description of the resort district in relation to highways, streets, streams, or otherwise; a statement that maps, plats, and a description of the rehabilitation plan are available for public inspection at a place designated in the notice; and a statement that all aspects of the rehabilitation plan are open for discussion at the public hearing. The notice may include other information that the township board considers appropriate.

(3) At the time set for the hearing, the township board shall provide an opportunity for interested persons to be heard and shall receive and consider written communications with reference to the testimony. The hearing shall provide the fullest opportunity for expression of opinion,

for argument on the merits, and for introduction of documentary evidence pertinent to the rehabilitation plan. The township board shall make and preserve a record of the public hearing, including all data presented at the hearing.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2217 Rehabilitation plan as constituting public purpose; approval or rejection of plan; consideration; amendments to plan.
Sec. 17. (1) After a public hearing on the rehabilitation plan as provided in section 16, the township board shall determine whether the rehabilitation plan constitutes a public purpose. If it determines that the rehabilitation plan constitutes a public purpose, the township board, by resolution, shall approve or reject the plan, or approve it with modification, based on all of the following considerations:

(a) The plan meets the requirements set forth in section 15.

(b) The proposed method of financing the rehabilitation is feasible and the authority has the ability to arrange the financing.

(c) The rehabilitation is reasonable and necessary to carry out the purposes of this act.

(d) The rehabilitation plan is in reasonable accord with the master plan of the township.

(2) Amendments to an approved rehabilitation plan shall be submitted by the authority to the township board for approval or rejection.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2218 Budget; assessment.
Sec. 18. (1) The director of the authority shall prepare and submit for the approval of the board a budget for the operation of the authority for the ensuing fiscal year. Before the budget may be adopted by the board, the budget shall be approved by the township board. Funds of the township

shall not be included in the budget of the authority except those funds authorized in this act or by the township board.

(2) If the township does not impose a property tax administration fee as provided in the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws, the township board may assess against the funds of the authority an amount equal to the actual cost of collecting those funds, which amount shall not exceed 1% of the amount collected under the ad valorem tax levied under this act.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

125.2219 Dissolution of authority; resolution; disposition of property and assets.

Sec. 19. An authority which has completed the purposes for which it was organized shall be dissolved by resolution of the township board. The property and assets of the authority remaining after the satisfaction of the obligations of the authority shall belong to the township.

History: 1986, Act 59, Imd. Eff. Mar. 26, 1986

SUMMER RESORT AND ASSEMBLY ASSOCIATIONS
Act 39 of 1889

AN ACT to authorize the formation of corporations for the purchase and improvement of grounds to be occupied for summer homes, for camp-meetings, for meetings of assemblies or associations and societies organized for intellectual and scientific culture and for the promotion of the cause of religion and morality, or for any or all of such purposes; and to impose certain duties on the department of commerce.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- Am. 1982, Act 85, Imd. Eff. Apr. 19, 1982

The People of the State of Michigan enact:

455.51 Summer resort and assembly associations; incorporation, purpose.

Sec. 1. That any number of persons not less than 10, who may desire to form an association for the purchase and improvement of lands to be occupied for summer homes, for camp-meetings, for meetings and assemblies of associations and societies organized for scientific or intellectual culture and for the promotion of religion and morality, or any or all such purposes, may, with their associates, successors and assigns, become a body politic and corporate under any name by them assumed in their articles of incorporation, in the manner herein provided.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983d-6 ;-- CL 1897, 7639 ;-- CL 1915, 10062 ;-- CL 1929, 10327 ;-- CL 1948, 455.51

455.52 Articles of association; capital stock; reorganization.

Sec. 2. The persons so associating shall sign articles of association which shall state:

First, The corporate name of the association;

Second, The names and residences of the persons thus associating;

Third, The purpose or purposes of such association;

Fourth, The number of trustees to manage the business of the association and their terms of office, also the names of trustees for the first year or until the annual meeting of the association;

Fifth, The county in which its real estate shall be situate and its meetings held;

Sixth, The term of its existence, which shall not exceed 30 years;

Seventh, They may also state therein the qualifications of persons eligible to the office of trustee and the terms and conditions of

membership, and such other provisions for the management of the business, and the disposition of the real and personal property of the association, as they may desire, not inconsistent with the provisions of this act and the laws of this state. The persons so associating may, by a majority vote, provide for capital stock, in which case the articles of association shall state the amount thereof, which shall not exceed 50,000 dollars, in shares of 25 dollars each. Any corporation or association heretofore organized under any other law of this state, for the purposes named in this act, may, by a majority vote of the stock represented at any annual meeting thereof, reorganize under the provisions of this act.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983d-7 ;-- Am. 1897, Act 39, Imd. Eff. Mar. 26, 1897 ;-- CL 1897, 7640 ;-- CL 1915, 10063 ;-- CL 1929, 10328 ;-- CL 1948, 455.52

455.53 Execution of articles of association; acknowledgment; filing articles with department of commerce; certification.

Sec. 3. The execution of such articles of association shall be acknowledged by the persons signing the same before some officer authorized to take the acknowledgment of deeds. Such articles shall thereupon be filed with the corporation and securities bureau of the department of commerce, which, after making such record, shall certify upon such articles the date and place of record thereof and return the same to the association.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983d-8 ;-- CL 1897, 7641 ;-- CL 1915, 10064 ;-- CL 1929, 10329 ;-- CL 1948, 455.53 ;-- Am. 1982, Act 85, Imd. Eff. Apr. 19, 1982

455.54 Powers, privileges, and liabilities of incorporated association; limitation on land holdings; voting.

Sec. 4. (1) An association incorporated under this act has all the general powers and privileges and is subject to all the liabilities of a corporation. The association may have a common seal; may sue and be sued in all the courts of this state; and, subject to subsection (2), may acquire, hold, and possess within any 1 county any real and personal property for the purposes described in its articles of association.

(2) An association incorporated under this act shall not at any time own or hold more than 1,000 acres of land.

(3) If authorized by a majority vote of the members of an association incorporated under this act voting at any annual meeting or any special meeting called expressly for that purpose or pursuant to a general bylaw adopted and recorded, the trustees of the association may sell, give, grant, and convey or lease all or part of the association's real property to any party and on the terms and subject to the provisions, reservations, and restrictions that the trustees deem advisable.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983d-9 ;-- CL 1897, 7642 ;-- CL 1915, 10065 ;-- CL 1929, 10330 ;-- CL 1948, 455.54 ;-- Am. 1982, Act 85, Imd. Eff. Apr. 19, 1982 ;-- Am. 2006, Act 45, Imd. Eff. Mar. 2, 2006

455.55 Corporation; powers.

Sec. 5. Such corporation may improve and ornament its nds, erect and maintain churches, houses of worship, and other buildings thereon for its own use, or for the use and occupation of assemblies, societies and people who may desire the same, and may hold meetings, employ speakers and lecturers for the promotion of intellectual and scientific culture, religion and morals, and may also lease portions of its lands to societies organized for the promotion of like purposes. It may cause its lands to be drained, construct docks necessary and convenient upon the banks or shores of any stream, bay or lake upon which its lands border, and may make such provision as may be necessary for supplying its grounds and the people thereon with water and for sanitary and fire purposes.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983e ;-- CL 1897, 7643 ;-- CL 1915, 10066 ;-- CL 1929, 10331 ;-- CL 1948, 455.55

455.56 Annual meeting; place; board of trustees, report, powers.

Sec. 6. The annual meeting of such association shall be held at some suitable place on its grounds at such time as shall be fixed by the board of trustees, and may adjourn from day to day as may be necessary for the transaction of its business. At the first annual meeting the entire number of the board of trustees shall be elected, and at each annual meeting

thereafter there shall be elected such number of trustees as shall be necessary to fill the places of trustees whose term of office then expires, and all vacancies in such board. Such election shall be by ballot, and any person receiving a majority of all the votes cast shall be elected. Any and all business of the association may be considered and acted upon at such meeting, and such instructions given to the board of trustees as may be determined upon. If, for any reason, the annual meeting of the association shall not be held at the time fixed therefor, the board of trustees shall, within 60 days thereafter, call a special meeting of the association, at a time fixed by it for that purpose, and notify each member of the association thereof by mailing a notice addressed to him or her to his or her place of residence, if known; and such special meeting, when so called and held, shall have the same powers as the annual meeting would have had if held at the time fixed therefor. At any meeting of the association each member thereof shall be entitled to 1 vote. The trustees shall make to such annual meeting a report, in writing, of their doings and of the management of the business of the association, the condition of its property, concerns, and its assets and liabilities, and such other matters as to them shall seem proper.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983e-1 ;-- CL 1897, 7644 ;-- CL 1915, 10067 ;-- CL 1929, 10332 ;-- CL 1948, 455.56

455.57 Board of trustees; quorum, vacancy; election of officers, terms.

Sec. 7. Such trustees shall be known and designated as the board of trustees. They shall elect a president, vice-president, a secretary and a treasurer from their members, who shall hold their offices for 1 year and until their successors shall be elected. They shall discharge the usual duties attached to such offices and such other duties as may be prescribed by the by-laws or general directions of the association. Two-thirds of the members of the board shall constitute a quorum for the transaction of business, and any vacancy in the board may be filled by the board, and the trustee or trustees so appointed shall hold office until the next annual meeting of the association.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983e-2 ;-- CL 1897, 7645 ;-- CL 1915, 10068 ;-- CL 1929, 10333 ;-- CL 1948, 455.57

455.58 Board of trustees; powers; annual meeting; streets, control.
Sec. 8. The board of trustees shall have the management and control of the business, finances, rights, interests, buildings and all property, real and personal, of the association, and shall represent the association with full power and authority to act for it in all things whatsoever, subject only to the provisions of this act and the by-laws of the association and any special directions that may be given in regard thereto by a vote of any annual meeting. It shall fix the time for holding the annual meeting of the association and all special meetings thereof. Such board shall have jurisdiction over the lands of the association, the streets and highways passing through or over the same and the water within or in front thereof, and all buildings thereon, whether leased or not; to keep all such lands and premises of the association and the water within or in front thereof in good sanitary condition; to preserve the purity of the waters of all streams, springs, bays or lakes within or bordering upon said lands; to license such number of drays as may be thought desirable upon such terms and conditions as the board shall determine; and to prohibit any person from carrying on the business of carrying goods, trunks, baggage or commodities on the lands of the association or the highways, streets or alleys thereon without such license first being had; to provide for protection from loss or damage from fire and to protect the occupants of its grounds from contagious diseases; to remove therefrom any and all persons afflicted with any such disease; to prevent and prohibit on its grounds vice and immorality; to prohibit all disorderly assemblies and conduct, all gaming and disorderly houses, all billiard tables, bowling alleys, fraudulent and gaming devices, the selling or giving away any spirituous or fermented liquors; to prohibit and abate all nuisances and all slaughter houses, meat markets, butcher shops, glue factories, and all such other offensive houses and places as the board of trustees may deem necessary for the health, comfort and convenience of the occupants upon such lands; to prohibit immoderate driving or riding upon said premises or the streets and highways lying along or across the same; to prevent the running at large of any dog or other animal; to compel persons occupying any part of said premises to keep the same in good sanitary condition and the streets, sidewalks and highways in front thereof free from dirt and obstruction and in good repair; to fix the place or places where and the time when persons may bathe in the waters within or in

front of its land and regulate the same in the interests of decency and good morals; to prohibit all boating upon any of its said waters on Sunday to and from the lands of the association; and they may also prohibit or consent to the erection and maintenance of stables and horse barns upon said grounds: Provided always, That the right of the public to control, repair and use all such highways and streets as are now or may hereafter be used and necessary for the public travel through or across said grounds shall not be affected hereby: And further provided, That the public shall not be liable for the condition, safety or repair of such streets, alleys or highways, as may be laid out and used under the authority of said association. The board may also prohibit or consent to the holding of meetings or assemblies for religious or other purposes upon its grounds, and may fix and determine the terms and conditions upon which hotels and boarding houses may be kept thereon.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983e-3 ;-- Am. 1895, Act 116, Imd. Eff. May 4, 1895 ;-- CL 1897, 7646 ;-- CL 1915, 10069 ;-- CL 1929, 10334 ;-- CL 1948, 455.58

455.59 Board of trustees; by-laws and orders, amendment, rescission.

Sec. 9. Such board of trustees may from time to time make such orders and by-laws relating to the matters hereinbefore specified and to the business and property of the association as shall seem proper, and may amend the same from time to time, provided always that the same may be amended or rescinded by a majority vote at any annual meeting of the association.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983e-4 ;-- Am. 1895, Act 116, Imd. Eff. May 4, 1895 ;-- CL 1897, 7647 ;-- CL 1915, 10070 ;-- CL 1929, 10335 ;-- CL 1948, 455.59

455.60 Violation of by-laws; penalty.

Sec. 10. Any person who shall violate any of such by-laws made as in said last section provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding 25 dollars or imprisonment in the county jail not to exceed 30 days, or by both such fine and imprisonment in the discretion of the court, which

fine shall go to the same fund as other fines for misdemeanor in the township where such association lands may be located.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983e-5 ;-- Am. 1895, Act 116, Imd. Eff. May 4, 1895 ;-- CL 1897, 7648 ;-- CL 1915, 10071 ;-- CL 1929, 10336 ;-- CL 1948, 455.60

455.61 Marshal; appointment by board of trustees, compensation, duties, removal, powers, responsibility.

Sec. 11. The board of trustees may, for the preservation of peace and good order, appoint a marshal, whose duties and compensation shall be fixed by such board in and by a by-law passed and approved as hereinbefore provided for the adoption and approval of its by-laws; he shall have all the powers conferred upon, and the duties required of, constables elected under the general laws of this state, for the preservation of peace and good order upon the grounds of the association; and said association shall in its corporate capacity be held responsible to the public and parties interested for his official conduct in lieu of other bonds or security therefor; he may be removed at any time by a 2/3 vote of the trustees, with or without cause. In all cases where any fees or expense shall be due to or incurred by him in the discharge of his duties in any matter that would be an offense against the general laws of the state, his fees and charges shall be regulated and paid in the same manner as other constables, but in all matters under the by-laws or regulations of the association, provision shall be made therein for his payment by the association.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983e-6 ;-- CL 1897, 7649 ;-- CL 1915, 10072 ;-- CL 1929, 10337 ;-- CL 1948, 455.61

455.62 Marshal; authority over person arrested.

Sec. 12. The marshal shall have authority to take any person arrested, before the district or municipal court of the judicial district or municipality in which the association lands are situated, to be dealt with according to law.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983e-7 ;-- CL 1897, 7650 ;-- CL 1915, 10073 ;-- CL 1929, 10338 ;-- CL 1948, 455.62 ;-- Am. 1991, Act 152, Imd. Eff. Nov. 25, 1991

455.63 Property; injury or destruction, penalty.

Sec. 13. Any person who shall willfully destroy, injure or remove any statuary, fence, fountain, hydrant, building or other structure placed on the grounds of the association, any dock, landing, quay or boat house thereon, or boat upon the waters upon which such lands are located, the property of any association incorporated under this act, or of any individual member thereof, or who shall willfully cut or injure any tree, shrub or plant upon such grounds, or shall deposit in any spring, stream, reservoir or water pipe, or water upon or within such grounds or in front thereof, any filth or impurity, or who shall in any way injure any water pipe, lock or reservoir for the storage or passage of water along or upon such grounds, or any sewer or drain, shall be deemed guilty of a misdemeanor, and shall be liable, on conviction thereof, to a fine not exceeding 25 dollars, or imprisonment in the county jail not exceeding 30 days, or by both such fine and imprisonment, in the discretion of the court.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983e-8 ;-- Am. 1895, Act 116, Imd. Eff. May 4, 1895 ;-- CL 1897, 7651 ;-- CL 1915, 10074 ;-- CL 1929, 10339 ;-- CL 1948, 455.63

455.64 Property; taxation, exemption.

Sec. 14. The property of such corporation shall be subject to taxation, except all houses of public worship, and also all school buildings used exclusively for school purposes and the lot upon which they stand, and the furniture therein, which shall be exempt therefrom.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983e-9 ;-- CL 1897, 7652 ;-- CL 1915, 10075 ;-- CL 1929, 10340 ;-- CL 1948, 455.64

455.65 Property; disposition; conflict of powers and duties.

Sec. 15. Every corporation organized under the provisions of this act may, at any time within 2 years next preceding the time fixed for the termination of its existence, make such disposition of its property, real and personal, as a 2/3 majority of the members present and voting at an annual meeting may, by vote, direct: And provided, That at the time of organization or whenever during the existence of any such corporation the lands of such association shall be embraced within the corporate

limits of any city or village, that then the powers and obligations herein conferred upon such association and its officers partaking of a public or municipal nature, so far as the same shall conflict or interfere with the powers and duties of such city or village, those of said association shall to that extent be suspended and the provisions of this act are and shall be limited in their operation in that regard.

History: 1889, Act 39, Imd. Eff. Mar. 29, 1889 ;-- How. 3983f ;-- CL 1897, 7653 ;-- CL 1915, 10076 ;-- CL 1929, 10341 ;-- CL 1948, 455.65

455.66 Assessment of association.

Sec. 16. Whenever the board of trustees of any such association shall serve upon the assessing officer of the township, city or village in which its real estate is situated a notice in writing, signed by its secretary and under its corporate seal, requesting that all of the cottages and buildings owned by its lessees, situate upon the lands of the association, and not exempt from taxation as hereinbefore provided, be assessed to the association as a part of its real estate, the same as if owned by it, then and thereafter all such real estate and cottages, and buildings thereon, shall be assessed to such association as real estate and taxes paid thereon, by the association the same as if in fact the owner thereof, and no lease had been made.

History: Add. 1901, Act 57, Imd. Eff. Apr. 11, 1901 ;-- CL 1915, 10077 ;-- CL 1929, 10342 ;-- CL 1948, 455.66

455.67 Assessment; collection from members.

Sec. 17. Whenever the real estate of any such association and the cottages and buildings thereon shall be assessed to the association and taxes paid as provided in the last preceding section, the association may assess, levy and collect from its several lessees, owners of cottages and buildings, such fair and just proportion of the taxes thus levied and paid as the value of such cottages and buildings shall bear to the total valuation of such real estate assessed in the manner aforesaid, such assessment and levy to be made in the manner hereinafter provided, and the amount to be paid by any such owner or lessee when so fixed and determined shall constitute and be a debt against such owner of and a lien upon the cottage or building thus assessed, payable with interest as

hereinafter provided, and the association may enforce the payment thereof in the same manner as in the case of non-payment of rent or non-performance of any condition in the lease under which said lessee holds, and no transfer or assignment of any such lease shall be valid until such assessment or tax is paid.

History: Add. 1901, Act 57, Imd. Eff. Apr. 11, 1901 ;-- CL 1915, 10078 ;-- CL 1929, 10343 ;-- CL 1948, 455.67

455.68 Board of assessors; election, terms, vacancy.

Sec. 18. There shall be elected at each annual meeting of the association, or at some special meeting thereof called for that purpose, 3 assessors, members of the association, to be known and called the board of assessors, who shall hold their office until the next annual meeting. In case of a vacancy in such board, caused by death, resignation, failure to accept office, or otherwise, the board of trustees may fill such vacancy by the appointment of some suitable member of the association, who shall hold the office until the next annual meeting.

History: Add. 1901, Act 57, Imd. Eff. Apr. 11, 1901 ;-- CL 1915, 10079 ;-- CL 1929, 10344 ;-- CL 1948, 455.68

455.69 Board of assessors; members, assessment; trustees, report; interest; fees.

Sec. 19. It shall be the duty of such board of assessors and they are hereby authorized and empowered, to ascertain the amount of all taxes paid by the association, as herein contemplated, as soon as practicable after the payment thereof, and thereupon to fix and determine on the basis aforesaid the sum or sums of money to be paid to the association by each of the owners of such cottages or buildings as his, her, or their just proportion of taxes paid by the association, and shall report to the board of trustees such determination and finding in writing, and the sum or sums of money thus fixed and determined, as shown by said report, shall be final and conclusive upon all parties, and shall constitute an indebtedness and lien as aforesaid payable from the date of filing of such report with the collection fees allowed township treasurers for the collection of taxes. To all taxes unpaid on the first day of March next after their assessment, there shall be added interest and collection fees at

the same rate as provided by law for the non-payment of taxes on and after said date.

History: Add. 1901, Act 57, Imd. Eff. Apr. 11, 1901 ;-- CL 1915, 10080 ;-- Am. 1929, Act 218, Eff. Aug. 28, 1929 ;-- CL 1929, 10345 ;-- CL 1948, 455.69

455.70 Board of assessors; report; board of trustees, additions and corrections.

Sec. 20. The board of trustees may correct any error or mistake in such report in the name of any owner or lessee of any such cottage or building, or of the description of the premises upon which the same is situated, and insert therein the right name and description of any such premises, and may also insert therein any cottage or building liable to be assessed as herein contemplated which does not appear in such report with apt description thereof, and assess and determine the just and fair amount that should be paid by the owner thereof, and the amount thus determined shall constitute a debt against the owner of such cottage or building and a lien thereon, and have the same force and effect as if made by said board of assessors and embraced in their report.

History: Add. 1901, Act 57, Imd. Eff. Apr. 11, 1901 ;-- CL 1915, 10081 ;-- CL 1929, 10346 ;-- CL 1948, 455.70

455.71 Board of assessors; report, majority rule.

Sec. 21. The finding and determination and report of a majority of the members of the board of assessors, as set forth in their report, shall have the same force and effect as if the same had been made and the report signed by the entire board.

History: Add. 1901, Act 57, Imd. Eff. Apr. 11, 1901 ;-- CL 1915, ORYDATA> ;-- CL 1929, 10347 ;-- CL 1948, 455.71

455.72 Highway assessments; expenditure.

Sec. 22. All moneys assessed, levied and paid upon the property of such association for highway purposes, including labor tax or assessment, shall be expended and laid out upon the highways and streets upon or running across the lands of the association at such time and times, at such place and places, and in such manner as shall be directed by the

board of trustees, or by the association's superintendent of the grounds: Provided always, That such expenditure shall not in any manner do away with, lessen or abridge the jurisdiction and control of the association or its trustees over or upon such streets and highways hereinbefore granted.

History: Add. 1901, Act 57, Imd. Eff. Apr. 11, 1901 ;-- CL 1915, 10083 ;-- CL 1929, 10348 ;-- CL 1948, 455.72

SUBURBAN HOMESTEAD, VILLA PARK, AND SUMMER RESORT ASSOCIATIONS
Act 69 of 1887

AN ACT to authorize the incorporation of suburban homestead, villa park and summer resort associations; and to impose certain duties on the department of commerce.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- Am. 1982, Act 86, Imd. Eff. Apr. 19, 1982

The People of the State of Michigan enact:

455.101 Suburban homestead, villa park and summer resort associations; incorporation; purposes; corporate life; trustees, number, election.

Sec. 1. That any number of persons not less than 5 who shall desire to form an association for the purpose of purchasing, holding, improving and disposing of lands or lots for suburban homesteads or residences, or for a villa park or summer resort, may meet at such time and place as they or a majority of them may agree, and appoint a chairman and secretary by vote of a majority of the persons present at the meeting, and proceed to form an association by determining on a corporate name by which the association shall be known, and the period for which it is incorporated, not exceeding 30 years, the number of trustees to manage the concerns of the association, which number shall not be less than 3 nor more than 13, and the day in each year upon which the future annual elections of trustees shall be held, and thereupon may proceed to elect by ballot the number of trustees so determined upon, and the trustees so elected shall hold their offices for 1 year, and until their successors are elected and qualified.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983f-1 ;-- CL 1897, 7654 ;-- CL 1915, 10085 ;-- CL 1929, 10350 ;-- CL 1948, 455.101

455.102 Certificate; signing and acknowledgment; contents; filing with department of commerce.

Sec. 2. The chairperson and secretary of the meeting shall within 10 days after such meeting make a written certificate and sign their names thereto, and acknowledge the same before an officer authorized to take acknowledgments of conveyances; which certificate shall state the names and residences of the associates who attended such meeting; the corporate name of the association determined upon by the majority of the persons who met, the number of trustees fixed on to manage the concerns of the association; the names of trustees chosen at the meeting and the day fixed on for the annual election of trustees, which certificate shall be filed with the corporation and securities bureau of the department of commerce.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983f-2 ;-- CL 1897, 7655 ;-- CL 1915, 10086 ;-- CL 1929, 10351 ;-- CL 1948, 455.102 ;-- Am. 1982, Act 86, Imd. Eff. Apr. 19, 1982

455.103 Corporate powers; articles, certified copy as evidence; trustees, powers.

Sec. 3. When a [the] certificate shall have been recorded and filed as aforesaid, the association mentioned therein shall be deemed legally incorporated and shall have and possess the general powers and privileges, and be subject to the liabilities of a corporation. Such association may adopt a common seal, and may sue and be sued in and by its corporate name in the courts of this state and of the United States, and a certified copy of its articles of association shall be prima facie evidence in all courts and proceedings of the organization of such association. The affairs and property of such association shall be managed by the trustees, who may make all necessary by-laws, rules and regulations for such purpose, subject to the ratification of a majority of the lot owners, and who shall annually appoint from among their own number a president and vice-president, and also appoint a secretary and treasurer from members of the association other than the trustees, if deemed expedient so to do, said officers to hold their places for such

term and under such conditions and requirements as the by-laws of the association may provide.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983f-3 ;-- CL 1897, 7656 ;-- CL 1915, 10087 ;-- CL 1929, 10352 ;-- CL 1948, 455.103

455.104 Taking and holding of land by incorporated association; purposes; sale and conveyance or lease; personal property.

Sec. 4. Any association incorporated under this act may take by purchase, devise or gift, and hold within any 1 county, not exceeding 320 acres of land, to be held and possessed by it for the purposes mentioned in the first section of this act. The trustees may sell and convey or lease the said lands, or any portion thereof, for such price, and upon such terms as they may deem advisable, and subject to such conditions and restrictions, as may be imposed upon the same, by rules and regulations to be adopted by them, and inserted in, or annexed to conveyances of the same. Any such association may hold personal property to an amount not exceeding $20,000.00, besides sums of money that may arise from the sale of lots or plots of land as hereinbefore provided.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983f-4 ;-- CL 1897, 7657 ;-- CL 1915, 10088 ;-- CL 1929, 10353 ;-- CL 1948, 455.104 ;-- Am. 1982, Act 86, Imd. Eff. Apr. 19, 1982

455.105 Trustees; election, vacancy.

Sec. 5. The annual election of trustees shall be held on the day prescribed in the certificate of incorporation, and at such hour and place as the trustees shall direct, notice of which election shall be given by publication for 4 successive weeks in some paper published in the county in which the real estate of such association is situated. And if there be no paper printed in such county, then such notice shall be published as aforesaid in some newspaper printed in the city of Lansing in this state. The trustees chosen at any election subsequent to the first, shall hold their offices for 1 year and until their successors are elected and qualified. The election shall be by ballot, and every person of full age, the owner or holder of 1 or more lots or plots purchased from the association or its grantees as hereinbefore provided, or the owner or holder of a sufficient number of shares as provided in the seventh section

of this act, to entitle such person to vote according to the terms of the agreement authorized by said section, or if there are more than 1 owner or holder of any such shares, or of any such lot or plot, then such 1 of them as the majority of joint ners or holders shall designate to represent such shares or such lots or plots, may, either in person or by proxy, cast 1 vote for each 1, or other number of shares as authorized and specified in said agreement, and 1 vote for each lot or plot by them owned or held as aforesaid, and the persons receiving a majority of all the votes given at such election, shall be declared duly elected as trustees to succeed those whose term of office expires: Provided, That in all elections after the first, the trustees shall be chosen from among the owners of lots or plots. Vacancies in the office of trustee [trustees] or of president or vice-president may be filled in such manner as shall be prescribed by the by-laws of the association.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983f-5 ;-- CL 1897, 7658 ;-- CL 1915, 10089 ;-- CL 1929, 10354 ;-- CL 1948, 455.105

455.106 Lots and plots; proceeds of sale, disposition.

Sec. 6. At least 60 per cent of the proceeds of all sales of lots and plots shall first be appropriated to the payment of the purchase money of the lands acquired by the association, until the purchase money shall be paid, and the residue thereof, as also the proceeds of all sales thereafter made, shall be applied to the payment of the assessments and taxes against the lands of the association, and to the preserving, improving and embellishing such lands and the roads, avenues and walks thereon and leading thereto, and also to the erection of docks or landings where said lands may be situate upon any lake or river, and for quays or breakwaters, necessary to the preservation of such lands from the encroachment of the waters of such lakes or rivers, or for the construction of steam or other yachts for ferriage or pleasure purposes, and to defray the incidental expenses of the association: Provided, That any proceeds remaining after the payments aforesaid, and after providing in a reasonable manner for expenses and improvements to be thereafter incurred and made, may, upon the vote of 2/3 of the trustees in favor thereof, be distributed among the owners of lots purchased from the association or to the grantees thereof; such distribution to be made

proportionately among such lot owners according to the sums originally paid for the lots or plots so owned or held by them to the association.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983f-6 ;-- CL 1897, 7659 ;-- CL 1915, 10090 ;-- CL 1929, 10355 ;-- CL 1948, 455.106

455.107 Lots and plots; purchase agreement.

Sec. 7. Associations formed under the provisions of this act may agree with the person or persons from whom its lands, or any part thereof may be purchased, to pay for such lands, as the purchase price thereof, any specified part or portion of the proceeds of all sales of lots and plots made from such lands, in which case the part or portion of such proceeds so agreed upon shall be first appropriated and applied to the payment of the purchase money of the lands so acquired, and the residue thereof shall be applied and distributed in all respects as provided in the last preceding section in respect to the residue of proceeds therein mentioned. The part or portion of the proceeds constituting the purchase price of the lands may be divided into as many equal shares as may be agreed upon between the association and the person or persons from whom the said lands are purchased; and the said shares shall entitle the owners thereof to such number of votes at any election for trustees of the association, and shall be transferable on the books of the association in such manner as shall also be agreed upon between the said parties. In all cases where lands shall be purchased and agreed to be paid for in the manner herein provided, the price for lots or plots specified in the agreement between the association and the person or persons from whom the said lands are purchased, shall not be changed without the written consent of a majority in interest of such persons, their heirs, representatives and assigns.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983f-7 ;-- CL 1897, 7660 ;-- CL 1915, 10091 ;-- CL 1929, 10356 ;-- CL 1948, 455.107

455.108 Lots and plots; plot prerequisite to sale.

Sec. 8. Before proceeding to sell any lots or plots as hereinbefore provided, the trustees of the association shall cause to be made and filed, as required by the provisions of acts relating to the making, recording and vacating of plats, a plat of the grounds belonging to said association,

which shall indicate by numbers all lots or plots intended to be sold, and all parks, park lots or reserves of any character intended for common use, by letter or name. Such map shall also show by name all roadways or avenues laid out upon the grounds of the association, but such roadways and avenues shall in all respects, be deemed private ways, and only open to the public upon such conditions and restrictions and under such rules and regulations as the trustees shall prescribe.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983f-8 ;-- CL 1897, 7661 ;-- CL 1915, 10092 ;-- Am. 1929, Act 100, Eff. Aug. 28, 1929 ;-- CL 1929, 10357 ;-- CL 1948, 455.108

455.109 Lots and plots; tax assessment; sale for taxes, association as purchaser.

Sec. 9. All lots or plots sold shall be assessed and taxed to the owners and holders thereof, and sold in default of the payment of taxes, in like manner as provided by law for the taxation and sale of other real estate; and in case of any such sale the trustees of the association may purchase such lots or plots upon the same terms and conditions, and with like effect as in case of individual or other bidders.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983f-9 ;-- CL 1897, 7662 ;-- CL 1915, 10093 ;-- CL 1929, 10358 ;-- CL 1948, 455.109

455.110 Annual report to lot owners; special election, trustees, appointment, term.

Sec. 10. The trustees at each annual election shall make a report to the lot owners of their doings and of the management and condition of the property and concerns of the association. If the annual election shall not be held on the day fixed in the certificate of incorporation, the trustees shall have power to appoint another day not more than 60 days thereafter, and shall give public notice of the time and place as hereinbefore provided for the regular annual meeting for the election of trustees, and at such time the election may be held with like effect as if holden on the day fixed on in the certificate of incorporation. The term of office of the trustees chosen at such special election shall expire at the same time as they would have done in case said trustees had been elected on the day fixed by the certificate of incorporation.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983g ;-- CL 1897, 7663 ;-- CL 1915, 10094 ;-- CL 1929, 10359 ;-- CL 1948, 455.110

455.111 Property; injury, penalty; trespass action.

Sec. 11. Any person who shall willfully destroy, injure or remove any statuary, fence, fountain, building or other structure placed on the grounds, or any dock, landing, quay, boat house, or boat upon the waters upon which said grounds are located, the property of any association incorporated under this act, or of any individual member thereof, or who shall willfully cut or injure any trees, shrub or plant within the said grounds, shall be deemed guilty of a misdemeanor, and shall be liable on conviction thereof to a fine not exceeding 25 dollars, or in default of fine to imprisonment in the county jail for a period not exceeding 30 days, action for the enforcement of such penalty to be brought in the name of the people of the state of Michigan upon the complaint of the trustees of the association or an individual member thereof; and such offender shall also be liable in an action of trespass to be brought in the name of such association for all damages caused by such unlawful act or acts.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983g-1 ;-- CL 1897, 7664 ;-- CL 1915, 10095 ;-- CL 1929, 10360 ;-- CL 1948, 455.111

455.112 Property; acceptance of gift, devise or bequest; holding.

Sec. 12. Any association incorporated under this act may take by gift, devise or bequest, and hold any property real or personal in trust, to apply the income thereof, under the direction of the trustees of the association, for the improvement or embellishment of the ground or water-front of the association, or the erection, repair or preservation of any statuary, fountain, fence, buildings, docks, quays and landings erected or to be erected upon the same, or in planting trees, shrubs and flowers in the grounds of the association, or for the improvement or embellishment of such grounds in any other manner or form consistent with the design or purposes of the association, and as specified in such gift, devise or bequest.

History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983g-2 ;-- CL 1897, 7665 ;-- CL 1915, 10096 ;-- CL 1929, 10361 ;-- CL 1948, 455.112

455.113 Repeal or amendment of act; dissolution; effect.
Sec. 13. This act may at any time be altered, amended or repealed, but such alteration, amendment or repeal shall not affect the rights of property of associations organized under it, nor of the individual members thereof, nor shall the dissolution of any such association take away or impair any remedy given for or against such corporation, its members or officers, for any liability which shall have been previously incurred.
History: 1887, Act 69, Imd. Eff. Apr. 15, 1887 ;-- How. 3983g-3 ;-- CL 1897, 7666 ;-- CL 1915, 10097 ;-- CL 1929, 10362 ;-- CL 1948, 455.113

INCORPORATION OF SUMMER RESORT OWNERS
Act 137 of 1929

AN ACT to authorize the formation of corporations by summer resort owners; to authorize the purchase, improvement, sale, and lease of lands; to authorize the exercise of certain police powers over the lands owned by said corporation and within its jurisdiction; to impose certain duties on the department of commerce; and to provide penalties for the violation of by-laws established under police powers.
History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- Am. 1982, Act 89, Imd. Eff. Apr. 19, 1982

The People of the State of Michigan enact:

455.201 Summer resort owners; incorporation, purpose.
Sec. 1. That any number of freeholders, not less than 10, who may desire to form a summer resort owners corporation for the better welfare of said community and for the purchase and improvement of lands to be occupied for summer homes and summer resort purposes, may, with their associates and successors, become a body politic and corporate, under any name by them assumed in their articles of incorporation, in the manner herein provided.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10363 ;-- CL 1948, 455.201

455.202 Articles of association; contents.
Sec. 2. The persons so associating shall subscribe and verify articles of association stating:

First: The corporate name chosen;

Second: The names and residences of the persons thus associating;

Third: A legal description of the land owned by each of such persons and to be subject to the jurisdiction of the corporations;

Fourth: The purposes of such corporation;

Fifth: The number of trustees to manage the affairs of said corporation, their terms of office, the names of the trustees for the first year or until the annual meeting of the corporation;

Sixth: The county in which its real estate shall be situate and its meetings held;

Seventh: The term of its existence, which shall not exceed 30 years;

Eighth: The persons so associating may provide for capital stock, in which case the articles of association shall state the amount thereof, which shall not exceed 50,000 dollars in total par value. The names, residences and number of shares subscribed by each, if any, at the time of the execution of the said articles of association.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10364 ;-- CL 1948, 455.202

455.203 Execution and acknowledgment of articles of association; filing articles with department of commerce; classification of corporation as nonprofit.

Sec. 3. The execution of such articles of association shall be acknowledged by the persons signing the same before some officer authorized to take the acknowledgment of deeds. Such articles shall thereupon be filed with the corporation and securities bureau of the department of commerce. For the purpose of payment of all fees to the state, such corporation shall be classed as nonprofit.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10365 ;-- CL 1948, 455.203 ;-- Am. 1982, Act 89, Imd. Eff. Apr. 19, 1982

455.204 Corporate powers and liabilities; property ownership, limitation.

Sec. 4. On compliance with the foregoing provisions of this act, the persons so associating, their successors and assigns, shall become and be a body politic and corporate, under the name assumed in their articles of association and shall have and possess all the general powers and privileges and be subject to all the liabilities of a municipal corporation and become the local governing body. Such corporation may acquire by purchase, devise or gift such real and personal property as it may desire for the purposes mentioned in its articles of association: Provided always, It shall not at any time own to exceed 320 acres of land, but this proviso shall not be construed to limit the area of its jurisdiction to exercise the police powers herein conferred over lands of members.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10366 ;-- Am. 1939, Act 133, Imd. Eff. May 23, 1939 ;-- CL 1948, 455.204

455.205 Property; sale and disposition, proceedings.

Sec. 5. The trustees of such corporation, when thereunto authorized, by majority vote of the members of such corporation voting thereon at any annual meeting, or any special meeting called expressly for that purpose, by a general by-law, adopted and recorded, may sell, mortgage, give, grant, convey and lease said lands or any part or portion thereof, upon such terms and subject to such reservations and restrictions as may be deemed advisable.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10367 ;-- CL 1948, 455.205

455.206 Membership; eligibility; corporate jurisdiction as to property of nonmembers; election.

Sec. 6. Persons eligible to membership in said corporation, at any and all times, must be freeholders of land in the county of its organization and such land must be contiguous to the resort community in which the corporation is organized: Provided, however, It shall not be necessary that the lands of all members shall join, but it shall be sufficient if such lands are reasonably adjacent to the resort community, so as to be benefited by membership therein, and the trustees of the corporation, when lawfully authorized by the corporation, shall be judges as to

whether the lands of such proposed members are sufficiently identified with the common interests of the other lands embraced within said corporate jurisdiction, to make proposed members eligible: And provided further, That the land of no owner that does not voluntarily join such corporation can be compelled to come under the jurisdiction of the corporation until after a body politic and corporate has been incorporated under this act in the territory to be affected and has continued to function as such for a period of 2 years. Thereafter an election may be called by the board of trustees or board of directors within the territory to be affected for the purpose of determining whether the entire territory comprising the subdivisions or parts of subdivisions affected should become entirely incorporated.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10368 ;-- Am. 1939, Act 133, Imd. Eff. May 23, 1939 ;-- CL 1948, 455.206
Constitutionality: In Whitman v Lake Diane Corp, 267 MA 176 (2005), the Michigan court of appeals held that the provisions concerning elections in the summer resort owners corporation act, MCL 455.201 et seq, violate the constitutional due process rights of the persons whose property interests would be affected by the election.

455.206a Election and registration; notice.

Sec. 6a. For the foregoing purpose the said board of trustees or board of directors shall cause a notice of such election and notice of registration to be published in 4 succeeding issues of some newspaper printed within the county in which such territory is situated and having circulation within the affected territory, for 4 weeks immediately preceding such election. If no newspaper be published in such county, then such notice shall be published in a newspaper published in an adjacent county.

History: Add. 1939, Act 133, Imd. Eff. May 23, 1939 ;-- CL 1948, 455.206a
Constitutionality: In Whitman v Lake Diane Corp, 267 MA 176 (2005), the Michigan court of appeals held that the provisions concerning elections in the summer resort owners corporation act, MCL 455.201 et seq, violate the constitutional due process rights of the persons whose property interests would be affected by the election.

455.206b Registration board; appointment, duties.

Sec. 6b. The board of trustees or board of directors shall cause a 3 man board of registration to be appointed who shall establish a set of registration books to be opened and shall register therein all of the

qualified voters of such territory who shall apply for registration between the hours of 9 o'clock a.m. and 7 o'clock p.m. during the week prior to such election and at such other times prior to election day as such registration board may permit.

History: Add. 1939, Act 133, Imd. Eff. May 23, 1939 ;-- CL 1948, 455.206b
Constitutionality: In Whitman v Lake Diane Corp, 267 MA 176 (2005), the Michigan court of appeals held that the provisions concerning elections in the summer resort owners corporation act, MCL 455.201 et seq, violate the constitutional due process rights of the persons whose property interests would be affected by the election.

455.206c Election; voters, eligibility.

Sec. 6c. For the purpose of such election all freeholders who have resided week-ends in the territory to be affected for a period 1 month prior to such election and who are qualified voters in any voting precinct of the state of Michigan at general elections, are qualified voters for the purpose of this act.

History: Add. 1939, Act 133, Imd. Eff. May 23, 1939 ;-- CL 1948, 455.206c
Constitutionality: The residency requirement of this section constitutes a denial of equal protection in violation of Mich. Const., Art. I, § 2, and U.S. Const., amend. XIV, § 1. Baldwin v. North Shore Estates Association, 384 Mich. 42, 179 N.W.2d 398 (1970).In Whitman v Lake Diane Corp, 267 MA 176 (2005), the Michigan court of appeals held that the provisions concerning elections in the summer resort owners corporation act, MCL 455.201 et seq, violate the constitutional due process rights of the persons whose property interests would be affected by the election.

455.206d Election board; polls, hours open.

Sec. 6d. The board of trustees or board of directors of such summer resort incorporation shall appoint an election board of 5 members who shall keep the polls open from 7 o'clock a.m. until 8 o'clock p.m. and permit all registered qualified voters to vote upon the proposition submitted.

History: Add. 1939, Act 133, Imd. Eff. May 23, 1939 ;-- CL 1948, 455.206d
Constitutionality: In Whitman v Lake Diane Corp, 267 MA 176 (2005), the Michigan court of appeals held that the provisions concerning elections in the summer resort owners corporation act, MCL 455.201 et seq, violate the constitutional due process rights of the persons whose property interests would be affected by the election.

455.206e Election; adoption of resolution, record.
Sec. 6e. If a majority of the said qualified voters of the entire territory comprised in the territorial description contained in the notice of election shall vote in favor of the incorporation under this act, then the said board of trustees or directors shall declare the entire territory so affected to be incorporated under this act, and shall file with the county clerk and record with the register of deeds of the county wherein the territory is situated copies of the notice of election, and the resolution of the board of directors or board of trustees declaring the election carried and thereafter such territory shall all become so incorporated.

History: Add. 1939, Act 133, Imd. Eff. May 23, 1939 ;-- CL 1948, 455.206e
Constitutionality: In Whitman v Lake Diane Corp, 267 MA 176 (2005), the Michigan court of appeals held that the provisions concerning elections in the summer resort owners corporation act, MCL 455.201 et seq, violate the constitutional due process rights of the persons whose property interests would be affected by the election.

455.207 Members; grant of authority, procedure.
Sec. 7. Members admitted to said corporation at its organization and afterwards, shall file with the secretary of said corporation a writing, subscribed, witnessed and acknowledged, in accordance with the requirements of deeds, which writing shall grant to the corporation the right to exercise all jurisdiction, conferred by this act, over the lands owned by members of said corporation. Such grant of authority to the corporation shall be duly recorded in the office of the register of deeds of the county.
History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10369 ;-- CL 1948, 455.207

455.208 Annual meeting; trustees, election, report.
Sec. 8. The annual meeting of such association shall be held in its own county between June first and August thirty-first of each year, at such time and place as may be fixed by the board of trustees and such meeting may adjourn from day to day as may be necessary for the transaction of its business. At each annual meeting there shall be elected such number of trustees as shall be necessary to fill the places of trustees whose terms of office then expire, and all vacancies on such board. Such election shall be by ballot and choice of trustees shall be by a majority of all votes cast. Members may vote in person or by proxy filed with the secretary. Each

member shall be entitled to 1 vote. Husbands and wives, owning property by entireties, shall each be entitled to 1 vote. Membership shall terminate upon the alienation of the property of a member. At each annual meeting the trustees shall make a report, in writing, of the management of the business of the corporation, the condition of its property, its assets and liabilities, and upon such other matters as may be proper and of general interest to the members.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10370 ;-- CL 1948, 455.208

455.209 Board of trustees; officers, quorum, vacancy.

Sec. 9. Immediately following the election of trustees, the trustees so chosen shall elect a president, vice-president, secretary and treasurer from their members, who shall hold their offices for 1 year and until their successors shall be elected and qualified. They shall discharge the usual duties of such offices and such other duties as may be prescribed by the by-laws and orders of the corporation. Two-thirds of the members of the board shall constitute a quorum for the transaction of business, and any vacancy in the board may be filled by the remaining members, and the appointee shall hold office until the next annual meeting of the corporation.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10371 ;-- CL 1948, 455.209

455.210 Board of trustees; powers.

Sec. 10. The board of trustees shall have the management and control of all the business and all the property, real and personal, of the corporation and shall represent the corporation, with full power of authority to act for it in all things legal whatsoever, and subject only to restrictions or limitations imposed by the by-laws of the corporation and any special restriction or limitation imposed by a vote of the members at any annual or regularly called special meeting. The time and manner of special meeting shall be provided for in the by-laws.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10372 ;-- CL 1948, 455.210

455.211 Corporate jurisdiction; liability for condition of streets.
Sec. 11. Such corporation, through its properly delegated officers, shall have jurisdiction over the lands owned by the corporation and over the lands owned by the members of said corporation for the exercise of the police powers herein conferred. The corporation shall have jurisdiction over the streets and highways passing through or over such lands: Provided always, That the right of the public to control, repair and use all such highways and streets as are necessary for the public travel through or across said lands, shall not be affected hereby: And provided further, That the public shall not be liable for the condition, safety or repair of such streets, alleys or highways as may be laid out and used on the authority of said corporation.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10373 ;-- CL 1948, 455.211

455.212 By-laws; enactment, authority of board of trustees.
Sec. 12. The board of trustees shall have the authority to enact by-laws, subject to repeal or modification by the members at any regular or special meeting, calculated and designed to carry into effect the following jurisdiction over the lands owned by the corporation and its members, viz.: To keep all such lands in good sanitary condition; to preserve the purity of the water of all streams, springs, bays or lakes within or bordering upon said lands; to protect all occupants from contagious diseases and to remove from said lands any and all persons afflicted with contagious diseases; to prevent and prohibit all forms of vice and immorality; to prevent and prohibit all disorderly assemblies, disorderly conduct, games of chance, gaming and disorderly houses; to regulate billiard and pool rooms, bowling alleys, dance halls and bath houses; to prohibit and abate all nuisances; to regulate meat markets, butcher shops and such other places of business as may become offensive to the health and comfort of the members and occupants of such lands; to regulate the speed of vehicles over its streets and alleys and make general traffic regulations thereon; to prevent the roaming at large of any dog or any other animal; to compel persons occupying any part of said lands to keep the same in good sanitary condition and the abutting streets and highways and sidewalks free from dirt and obstruction and in good repair.

History: 1929, Act 137, Eff. Aug. 28, > ;-- CL 1929, 10374 ;-- CL 1948, 455.212

455.213 By-laws; effective date, posting.

Sec. 13. All by-laws, so established by the corporation, shall take effect 10 days after passage and each of said by-laws shall be posted conspicuously in 3 public places within the jurisdictional area of said corporation, at least 5 days before the time of taking effect and proof of such posting shall be made by an officer of the corporation and entered on the records of said corporation. Complete and accurate copies of all by-laws shall be kept, at the office of the corporation, for public inspection.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10375 ;-- CL 1948, 455.213

455.214 By-laws; violation, penalty.

Sec. 14. Any person who shall violate any of such by-laws shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding 25 dollars or imprisonment in the county jail not to exceed 30 days or by both such fine and imprisonment in the discretion of the court, which fine shall be distributed to the same fund as other misdemeanor fines in the township where such lands may be located.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10376 ;-- CL 1948, 455.214

455.215 Marshal; powers, compensation, removal.

Sec. 15. The board of trustees may appoint a marshal, whose duties shall be to enforce the by-laws of said corporation. Said marshal shall have the authority of a deputy sheriff in maintaining peace and order and the enforcement of law on the lands under the jurisdiction of the corporation, and in addition thereto shall be vested with authority to make arrests, in accordance with law, for the violation of the by-laws of said corporation. Compensation of said marshal shall be fixed and paid by said corporation and the said corporation shall alone be responsible for his acts; he may be removed at any time by a majority vote of the trustees, with or without cause; in the discharge of his duties in respect to any matter that is an offense against the general laws of the state, his fees and charges shall be regulated and paid in the same manner as other officers.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10377 ;-- CL 1948, 455.215

455.216 Marshal; authority over person arrested.
Sec. 16. The marshal shall have authority to take any person arrested before the district or municipal court of the judicial district or municipality in which the lands of the corporation are situated, to be there dealt with according to law.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10378 ;-- CL 1948, 455.216 ;-- Am. 1991, Act 151, Imd. Eff. Nov. 25, 1991

455.217 Public utilities; corporate authority.
Sec. 17. The corporation shall have authority to provide a water system for its members and occupants, a sewage system, fire protection and electric light service.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10379 ;-- CL 1948, 455.217

455.218 Lands owned by corporation; annexation to city.
Sec. 18. Lands owned by the said corporation and its members may not be annexed to any city or village without the consent of a 2/3 majority of the members of said corporation, at a regular or special meeting.

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10380 ;-- CL 1948, 455.218

455.219 Members; dues and assessments.
Sec. 19. (1) The board of trustees may require that the members of a corporation pay annual dues and special assessments for any purpose authorized under this act. All of the following apply to an assessment of annual dues or a special assessment under this subsection:

(a) The approval of the members under subsection (2) is required.

(b) With the approval of the members under subsection (2), the board of trustees shall prescribe the time and manner of payment and manner of collection of the annual dues or special assessment.

(c) With the approval of the members under subsection (2), the board of trustees may provide that delinquent annual dues or assessments shall become a lien upon the land of the delinquent member and may provide the manner and method of enforcing that lien.

(2) Unless the members by a vote of a majority of all of the members have by resolution specifically provided for approval by a majority of the votes cast by the members voting, the vote of a majority of all of the members of the corporation is required to approve an action of the board under subsection (1).

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10381 ;-- CL 1948, 455.219 ;-- Am. 2006, Act 44, Imd. Eff. Mar. 2, 2006
Compiler's Notes: Enacting section 1 of Act 44 of 2006 provides:"Enacting section 1. It is the intent of the legislature to reconcile conflicting opinions of the attorney general in the interpretation of this act, and to ratify the opinion of the attorney general in attorney general opinion no. 7164 of 2004, concerning the appropriate vote of the members required to approve an action of the board under section 19."

455.220 Corporate term of existence; expiration; cessation of jurisdiction.

Sec. 20. When a corporation, organized under this act, shall dissolve or its term of existence expires by limitation, all jurisdiction over streets, alleys and highways shall cease and the said streets, alleys and highways shall thereupon become dedicated to the use of the public, and in such case the lands of the members shall be cleared of all jurisdiction conferred by the provisions of this act.
History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10382 ;-- CL 1948, 455.220

SUMMER RESORT ASSOCIATIONS; EXTENSION OF CORPORATE LIFE
Act 12 of 1901

AN ACT to provide for an extension of the corporate life of summer resort associations, organized under the laws of the state, whose term of existence would otherwise expire; to fix the duties and liabilities of such renewal corporations; and to impose certain duties upon the department of commerce.

History: 1901, Act 12, Imd. Eff. Feb. 26, 1901 ;-- Am. 1982, Act 93, Imd. Eff. Apr. 19, 1982

The People of the State of Michigan enact:

455.251 Continuance of corporate existence; term; resolution; filing copy of resolution with department of commerce; copy of resolution or record as evidence of passage and extension of corporate life; franchise fee.

Sec. 1. It shall be lawful for any summer resort association, whose term is about to expire by limitation, at any time within 8 years next preceding the expiration of such term, by a vote of 2/3 of its capital stock, at any annual meeting, to direct the continuance of its corporate existence for such further term not exceeding 30 years from the expiration of the existing term, as may be expressed in a resolution for that purpose. The president and secretary of such stockholders' meeting shall make and sign a copy of such resolution, and its passage shall be verified by the oath of such secretary attached to the copy. The copy shall be filed in the corporation and securities bureau of the department of commerce, and the copy so filed, or the record thereof or a certified copy of such record, shall be prima facie evidence of the passage of such resolution and of the extension of said corporate life: Provided, That the franchise fee, which may be provided by law for new corporations, shall be paid before such term shall be extended.

History: 1901, Act 12, Imd. Eff. Feb. 26, 1901 ;-- CL 1915, 10060 ;-- CL 1929, 10383 ;-- CL 1948, 455.251 ;-- Am. 1982, Act 93, Imd. Eff. Apr. 19, 1982

455.252 Renewed corporations; time, liabilities, rights.

Sec. 2. The renewal term of such corporation shall begin from the expiration of the former term, and the corporation whose term has thus been renewed shall be the same corporation, and own all its property, and be subject to all its liabilities, have the same stockholders and members and the same officers. The rights of all persons interested in said corporation shall continue as before such extension. The articles of association and by-laws shall continue the same until changed or amended by the corporation in the manner required by law.

History: 1901, Act 12, Imd. Eff. Feb. 26, 1901 ;-- CL 1915, 10061 ;-- CL 1929, 10384 ;-- CL 1948, 455.252

REORGANIZATION OF SUMMER RESORT CORPORATIONS
Act 55 of 1911

AN ACT to provide for the reorganization of corporations for owning, maintaining and improving lands and other property kept for the purposes of summer resorts or for ornament, recreation or amusement, the term of existence of which has heretofore expired or may hereafter expire by limitation, and for the renewal of the corporate term and to fix the rights, duties and liabilities of such renewed corporation.

History: 1911, Act 55, Eff. Aug. 1, 1911

The People of the State of Michigan enact:

455.281 Reorganization of certain corporations; procedure, evidence, franchise fee.

Sec. 1. It shall be lawful for any corporation heretofore or hereafter organized or existing under the laws of this state for the purpose of owning, maintaining and improving lands and other property kept for the purposes of summer resorts or for ornament, recreation or amusement, whose corporate term has expired, or shall expire by limitation, at a special meeting of its stockholders called for that purpose, by a vote of at least 4/5 of its capital stock, to direct the reorganization of such corporation and the renewal, continuance and extension of its corporate term for such further period not exceeding 30 years from the expiration of its former term as may be expressed in a resolution for that purpose. Such meeting may be called by order of the directors de facto of such corporation, in accordance with the by-laws of such corporation and the laws of this state applicable to such class of corporations whose term has not expired. It shall be lawful to embrace in the call for such meeting a notice for the election of directors of such reorganized and renewed corporation. Upon the adoption of such resolution by a vote in person or by proxy duly filed, of a majority of at least 4/5 of the capital stock it shall be the duty of the president and secretary of such stockholders' meeting to certify under oath duplicate copies of such resolution and its

adoption by at least 4/5 of the capital stock of such corporation, which copies shall be filed and recorded at the expense of said corporation in the same public offices wherein articles of association of the same class of corporations are required to be filed and recorded by the laws of this state, and the copies so filed or a certified copy of either of such records shall be prima facie evidence of the facts therein recited. The franchise fee provided by law shall apply to and be paid by such corporations so reorganized and renewed.

History: 1911, Act 55, Eff. Aug. 1, 1911 ;-- CL 1915, 10057 ;-- CL 1929, 10385 ;-- CL 1948, 455.281

455.282 Reorganized corporations; rights, obligations.

Sec. 2. Upon the filing of such duplicate certificates in said public offices, such corporation shall be deemed reorganized and its term renewed, continued and extended as of the time of the expiration of the former term thereof, and such reorganized and renewed corporation and as well the stockholders thereof shall have all the rights, powers, privileges and franchises and be seized and possessed of all of the property and of the same estate and interest therein, which said corporation and its stockholders or their assigns had or were seized or possessed of before the expiration of said corporate term, and as well all property acquired by or in the name of such corporation since the expiration of said corporate term in all respects without change, diminution or prejudice by reason of the expiration of said corporate term or lapse of time thereafter, as fully and absolutely as if said corporate term had not expired; and said reorganized and renewed corporation shall be subject to and liable for all of the debts, obligations and liabilities of such corporation in all respects as if said corporate term had not expired.

History: 1911, Act 55, Eff. Aug. 1, 1911 ;-- CL 1915, 10058 ;-- CL 1929, 10386 ;-- CL 1948, 455.282

455.283 Reorganized corporations; time limit.

Sec. 3. Any such corporation whose term has already expired may take advantage of this act at any time within 5 years of the date of such

expiration, and any such corporation whose term shall hereafter expire may be so reorganized and renewed within 3 years of such expired term.

History: 1911, Act 55, Eff. Aug. 1, 1911 ;-- CL 1915, 10059 ;-- CL 1929, 10387 ;-- CL 1948, 455.283

PARKS, PLAYGROUNDS, DRIVES, AND BOULEVARDS
Act 161 of 1911

AN ACT to provide for the formation of corporations with power to acquire, control, own, maintain, improve, and convey property for parks, playgrounds, drives, and boulevards, and hold the same and the proceeds thereof in trust for municipalities and take private property therefor; and to impose certain duties upon the department of commerce.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- Am. 1982, Act 105, Imd. Eff. Apr. 19, 1982

The People of the State of Michigan enact:

455.301 Parks, playgrounds, drives and boulevards; incorporation, purpose.

Sec. 1. Any number of persons, not less than 5, who shall desire to form a corporation for the purpose of acquiring, owning, controlling, maintaining and improving lands for the purposes of parks, playgrounds, drives and boulevards, or any 1 or more such purposes, and holding the same in trust for any 1 or more municipal corporations of this state, may, by articles of agreement in writing under their hands and seals, associate for such purposes under a name to be assumed by them in their articles of association: Provided, That no 2 corporations shall assume the same name.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10130 ;-- CL 1929, 10388 ;-- CL 1948, 455.301

455.302 Articles of association; acknowledgment, contents.

Sec. 2. Such articles of association shall be signed by the persons associating in the first instance, and be duly acknowledged before some

officer authorized by the laws of this state to take acknowledgment of deeds, and shall set forth:

(1) The name by which the corporation shall be known in law;

(2) The purpose or purposes for which the corporation is formed;

(3) The city, village or township where the office of the corporation shall be located;

(4) The municipality or municipalities for which the corporation is to hold property in trust;

(5) The names of those incorporating and their respective residences;

(6) The number of directors of the corporation.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10131 ;-- CL 1929, 10389 ;-- CL 1948, 455.302

455.303 Filing articles of association with department of commerce.
Sec. 3. The articles of association shall be filed with the corporation and securities bureau of the department of commerce.
History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10132 ;-- CL 1929, 10390 ;-- CL 1948, 455.303 ;-- Am. 1982, Act 105, Imd. Eff. Apr. 19, 1982

455.304 Body corporate; powers.
Sec. 4. Upon the recording of such articles of association the persons who have signed and acknowledged the same, their associates and successors, shall thereupon become a body politic and corporate and shall have power:

(1) To sue and be sued;

(2) To appoint and employ such officers, managers and agents as the affairs of the corporation may require;

(3) To make rules and by-laws for the regulation and management of its affairs, and alter and repeal the same;

(4) To acquire, hold, sell and convey all real and personal property suitable or necessary for the transaction of the business of the corporation, and to do all things in relation thereto in the same manner and to the same extent as a natural person.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10133 ;-- CL 1929, 10391 ;-- CL 1948, 455.304

455.305 Corporation; shares of stock; directors, election, terms, powers.

Sec. 5. The corporation shall not have any shares of stock or be for pecuniary profit. It shall have not less than 5 directors to be chosen annually from and by the members at the time and place fixed by the by-laws, they to hold office for 1 year and until their successors are elected. The directors shall manage the affairs of the corporation.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10134 ;-- CL 1929, 10392 ;-- CL 1948, 455.305

455.306 Membership.

Sec. 6. There shall be 2 classes of members, life and annual. Any person may become a life member by paying to the corporation $100.00 or more in cash, or donating property or services of that value, which the corporation is willing to accept. Any person over 18 years of age may become an annual member by the payment of $1.00 or more. His membership shall terminate if he fails to pay dues for any year of at least $1.00 before the election of directors for the ensuing year.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10135 ;-- CL 1929, 10393 ;-- CL 1948, 455.306 ;-- Am. 1972, Act 41, Imd. Eff. Feb. 19, 1972

455.307 Corporation; powers; condemnation.

Sec. 7. Corporations organized under this act shall have power to govern, manage, control, lay out and improve parks, playgrounds, boulevards and pleasure drives over which their powers and jurisdiction extend, and

shall have the right to purchase and by voluntary grants, bequests and donations to receive, take, hold and use all such lands and other property as may be necessary for carrying out its purposes, and if the corporation shall at any time be unable to make a reasonable agreement with the owners of land needed as herein provided for the purchase thereof, or with any railroad company as to crossing its railroad, or with any municipal corporation as to crossing or changing highways, streets or streams, then in all such cases upon the vote of its board of directors, such corporation shall have the power to take such property, within the limits of the state constitution, as it may require in carrying out its purposes, and may bring suit therefor in any court of competent jurisdiction, and the laws of Michigan providing for the condemnation of lands for public use shall govern and be the rule of procedure so far as the same may be practicable and applicable thereto.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10136 ;-- CL 1929, 10394 ;-- CL 1948, 455.307

455.308 Municipal corporation; transfer of realty, revocation.

Sec. 8. Any municipal corporation, by vote of its governing body, may transfer to any such corporation in trust as hereinbefore provided, the management and control of any real property held by it, for the purpose of laying out, maintaining or carrying on parks, playgrounds, boulevards or pleasure drives, and may by like vote revoke the said transfer to such corporation and re-vest the management and control of said property in its own officers, at any time it shall be for the public benefit so to do.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10137 ;-- CL 1929, 10395 ;-- CL 1948, 455.308

455.309 Municipal corporation; aid.

Sec. 9. It shall be lawful for any such municipal corporation to appropriate, by a vote of its common council, or other governing body, to any such corporation, moneys for the uses and purposes of such corporation.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10138 ;-- CL 1929, 10396 ;-- CL 1948, 455.309

455.310 Lands held in trust; free access, tax exemption.

Sec. 10. All lands acquired by any corporation organized under this act or subject to its control and management shall be held in trust as aforesaid for public parks, playgrounds, boulevards and pleasure drives for the recreation, health, welfare and benefit of the public and shall be free to all persons, subject to such necessary and reasonable rules and regulations as shall, from time to time, be adopted for the well-ordering and government thereof. And all such lands and personal property so held in trust for such purposes shall be exempt from taxation.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10139 ;-- CL 1929, 10397 ;-- CL 1948, 455.310

455.311 Trustees; court appointment.

Sec. 11. If any corporation organized under this act shall at any time fail, from any cause, to perform the duties of trustee as herein provided, and by reason of such failure injury may result to any of the drives, parks, playgrounds, boulevards or other property held by such corporation as trustee, or shall make unreasonable rules and regulations regarding the same, or do other acts to the permanent injury of the public, then upon petition to the circuit court in chancery of the county in which said corporation shall be located of any 5 citizens and freeholders residing within said county, said court may, upon notice to such corporation, appoint a day for hearing said petition, and if upon such hearing it shall appear that damage has resulted to, or is likely to result to, the public or to any of the property held by such corporation, said court may appoint such number of trustees ad interim as shall be deemed necessary to protect the interests of the public in said trust, until such time as the disability of said corporation as trustee shall have been removed.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10140 ;-- CL 1929, 10398 ;-- CL 1948, 455.311

455.312 Vesting of property in municipality.

Sec. 12. If any such corporation fail at any time to have members and no trustees ad interim shall have been appointed, then until such time as the disability of such corporation as trustee shall have been removed, the

title to the property thus held in trust shall vest in the municipality or municipalities for which the corporation has held the same in trust.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10141 ;-- CL 1929, 10399 ;-- CL 1948, 455.312

455.313 Construction of act.

Sec. 13. In all proceedings of suits that may arise or be brought in any of the courts of this state touching or concerning corporations under this act, all other acts or parts of acts inconsistent herewith shall be interpreted and construed in such manner as to give full force and effect to all the provisions of this act and to all the rights and privileges hereby granted.

History: 1911, Act 161, Eff. Aug. 1, 1911 ;-- CL 1915, 10142 ;-- CL 1929, 10400 ;-- CL 1948, 455.313

G. OTHER

DRIVER EDUCATION PROVIDER AND INSTRUCTOR ACT (EXCERPTS)
Act 384 of 2006

256.625 Definitions; D to M.

Sec. 5. As used in this act:

(a) "Driver education instructor preparation program" means a program of driver education instructor preparation courses offered by a college or university or by a person approved by the secretary of state.

(b) Except as otherwise provided in this act, "driver education instructor preparation courses" means the courses that are required to obtain a driver education instructor certificate.

(c) "Driver education provider" or "provider" means a person who meets the requirements in subparagraph (i), if not excluded under subparagraph (ii), as follows:

(i) Maintains or obtains the facilities and certified instructors to give instruction in the driving of a motor vehicle or maintains or obtains the facilities and certified instructors to prepare an applicant for an exam given by the secretary of state for a license as defined in section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, or a vehicle indorsement issued under former section 312e of the Michigan vehicle code, 1949 PA 300.

(ii) Driver education provider does not include a person who provides instruction as follows:

(A) Only for the benefit of its employees if that instruction is not open to the public.

(B) In the driving or operating of a motorcycle as defined in section 31 of the Michigan vehicle code, 1949 PA 300, MCL 257.31, or the preparing of an applicant for an exam given by the secretary of state for a motorcycle indorsement issued under section 312a of the Michigan vehicle code, 1949 PA 300, MCL 257.312a.

(C) On an unpaid, casual basis to a relative or friend.

(d) "Driver education provider certificate" means a written or electronic authorization issued by the secretary of state to indicate that a person has met the driver education provider qualifications of this act.

(e) "Educational institution" means a public school, nonpublic school, or public school academy as those terms are defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5; a consortium that is defined to mean a partnership, association, or alliance of 2 or more school districts in a common venture; a community college, a 4-year college, a university, or any other body of higher education.

(f) "Established office location" means a building that meets all of the following requirements:

(i) Is of a permanent nature where the provider's communications and notices are received.

(ii) Is heated, lighted, and ventilated and contains appropriate space to properly store and preserve the information, records, or other documents required to be maintained under this act.

(iii) Complies with applicable zoning and municipal requirements.

(g) "Governmental agency" means an agency of the federal government, a state government, a county, city, village, or township, or a combination of any of these entities.

(h) "Graduated driver license" means a license issued by the secretary of state under section 310e of the Michigan vehicle code, 1949 PA 300, MCL 257.310e.

(i) "Multiple vehicle driving facility" means that part of a driver education course that enables the driver education instructor, from a position outside the vehicle, and using electronic or oral communication, to teach and supervise several students simultaneously, each of whom is operating a vehicle at an off-street facility specifically designed for that type of instruction.

History: 2006, Act 384, Eff. Oct. 1, 2006

256.629 Driver education provider certificate; application; classifications; investigation; eligibility requirements; evidence; bond or renewal certificate; stipulation of agreement to service of process; applicability of subsection (3); classroom facility; liability insurance; multiple driving facility; orientation and education program; fees.

Sec. 9. (1) A person may apply to the secretary of state for a driver education provider certificate in 1 or more of the following classifications:

(a) Adult driver training.

(b) Teen driver training.

(c) Truck driver training.

(2) The secretary of state shall not grant an original driver education provider certificate under this act until an investigation is made of the applicant's qualification.

(3) Except as provided in this act, an applicant must do or submit evidence that he or she has done or will do, as applicable, all of the following to be eligible to receive a driver education provider certificate:

(a) Submit a properly completed application signed by the applicant.

(b) Maintain an established office location.

(c) Maintain classroom facilities in a public or commercial setting.

(d) Maintain the surety bond required under this section.

(e) Require each of their designated representatives or coordinators to complete a criminal history check as described in section 29.

(f) Provide the name and address of each designated representative or coordinator of the applicant, if applicable.

(g) Provide the name, address, date of birth, and social security number of each owner or partner and, if a corporation, of each of the principal officers.

(h) Provide a statement of the previous history, record, and associations of the applicant and of each owner, partner, officer, director, and designated representative or coordinator. The statement shall be sufficient to establish to the satisfaction of the secretary of state the business reputation and character of the applicant.

(i) Provide a statement indicating whether the applicant or its designated representative or coordinator has ever applied for a driver education provider certificate in this state or any other state, and the result of that application.

(j) Provide a statement indicating whether the applicant or its designated representative or coordinator has ever been denied a driver education provider certificate or has ever been the holder of a certificate that was suspended or revoked.

(k) If the applicant is a corporation or partnership, provide a statement indicating whether a partner, employee, officer, director, or its designated representative or coordinator has ever been denied a driver education provider certificate or has ever been the holder of a certificate that was suspended or revoked.

(l) Certify that the applicant or another person named on the application is not acting as the alter ego of any other person or persons in seeking the certificate. For the purpose of this subdivision, "alter ego" means a person who acts for and on behalf of, or in the place of, another person for purposes of obtaining a driver education provider certificate.

(m) Affirm that the established office location meets all applicable zoning and municipal requirements.

(n) Obtain written or electronic verification from the state fire marshal or his or her representative that the proposed classroom facilities have been inspected and approved by the state fire marshal or his or her representative according to state and local building code and public occupancy requirements.

(o) Obtain written or electronic verification from an insurer that the applicant maintains or will maintain bodily injury and property damage liability insurance on each motor vehicle used in a driver education course.

(p) Except as otherwise provided in this subdivision, submit a nonrefundable application processing fee with each application for a separate established place of business where records will be maintained as follows:

(i) $225.00 for a driver education provider who offers adult or teen driver training.

(ii) $360.00 for a driver education provider who offers truck driver training.

(iii) A fee is not required for an additional location that is used for the sole purpose of conducting classroom instruction and at which records are not maintained, enrollments are not made, and staff is not ordinarily assigned, except for the purpose of conducting classroom instruction.

(q) Provide a statement indicating whether the applicant will use a multiple vehicle driving facility in a driver education course. If a facility will be used, both of the following apply:

(i) The statement shall include a detailed description of the facility as determined necessary by the secretary of state and its address.

(ii) A multiple vehicle driving facility review and approval fee of $125.00 shall accompany the applicant's application for a driver education provider certificate.

(r) Provide other information and documents as prescribed by the secretary of state necessary to determine whether the applicant meets the requirements of this act.

(4) An application for an original driver education provider certificate shall include a properly executed surety bond or renewal certificate with the application. If a renewal certificate is used, the bond is considered renewed for each succeeding year in the same amount and with the same effect as an original bond. The bond or certificate shall be maintained continuously without interruption to protect the contractual rights of

students. The bond or certificate of an adult or teen driver education provider with 999 or fewer students in a calendar year shall be in the principal sum of $20,000.00 with good and sufficient surety to be approved by the secretary of state. The bond or certificate of an adult or teen driver education provider with 1,000 or more students in a calendar year shall be in the principal sum of $40,000.00 with good and sufficient surety to be approved by the secretary of state. The bond or certificate of a truck driver education provider shall be in the principal sum of $50,000.00 with good and sufficient surety to be approved by the secretary of state. The bond shall indemnify or reimburse a student, financing agency, or governmental agency for monetary loss caused through fraud, cheating, or misrepresentation in the conduct of the driver education provider's business where the fraud, cheating, or misrepresentation was made by the provider or by an employee, agent, instructor, or salesperson of the provider. The surety shall make indemnification or reimbursement for a monetary loss only after judgment based on fraud, cheating, or misrepresentation has been entered in a court of record against the provider. The aggregate liability of the surety shall not exceed the sum of the bond. The surety on the bond may cancel the bond by giving 30 days' written or electronic notice to the secretary of state and after giving notice is not liable for a breach of condition occurring after the effective date of the cancellation.

(5) A driver education provider who offers adult driver training, teen driver training, and truck driver training shall furnish a separate bond for each driver education provider certificate issued by the secretary of state to the applicant. When the secretary of state receives written or electronic notice that a driver education provider's surety bond required under subsection (4) or insurance coverage required under subsection (10) has been canceled, the secretary of state shall notify the provider that the provider's certificate shall be automatically canceled unless the secretary of state receives a new surety bond or a new insurance certificate within 30 days or less. If the provider fails to submit a new surety bond or insurance certificate to the secretary of state within 30 days or less, the secretary of state may automatically cancel the provider's certificate. A driver education provider who changes or terminates the provider's surety bond or the insurance coverage before

the expiration date of the bond or insurance coverage shall immediately furnish the secretary of state with written or electronic notice as prescribed by the secretary of state of that change or termination and proof of a new bond or insurance coverage.

(6) As a condition precedent to the granting of a certificate, an applicant shall file with the secretary of state, on a form prescribed by the secretary of state, an irrevocable written or electronic stipulation. The stipulation shall be signed by the applicant and state that the applicant agrees that legal process affecting the applicant, served on the secretary of state against the applicant or the applicant's successor in interest for a violation of this act, a rule promulgated under this act, or an order issued under this act, has the same effect as if personally served on the applicant. This appointment remains in force as long as the provider has any outstanding liability within this state under this act.

(7) Subsections (3)(d), (g), and (p) and (4) do not apply to an educational institution or a governmental agency.

(8) Subsection (3)(c) does not apply to a classroom location currently in use that was approved by the secretary of state in writing before the effective date of this act.

(9) A classroom facility may not be located in a person's residence or a structure attached or adjacent to the person's residence unless the classroom facility was used and approved by the secretary of state in writing before the effective date of this act.

(10) A driver education provider shall maintain bodily injury and property damage liability insurance on a motor vehicle used in driver education course instruction. The insurance shall insure the liability of the driver education provider, the driver education instructors, and a person taking instruction in the amount of $100,000.00 for bodily injury to or the death of 1 person in 1 accident, and, subject to the limit for 1 person; $300,000.00 for bodily injury to or the death of 2 or more persons in 1 accident; and $50,000.00 for damage to the property of others in 1 accident. The insurer shall be authorized to do insurance

business in this state. The insurer shall not cancel the insurance before its expiration date unless it gives the secretary of state written or electronic notice as prescribed by the secretary of state of the insurer's intent to cancel the insurance at least 30 days before the cancellation.

(11) The secretary of state shall review and, in writing, approve or deny the use of a multiple vehicle driving facility under this act as determined necessary by the secretary of state. The secretary of state shall approve a facility only if it meets criteria prescribed by the secretary of state. The secretary of state shall perform an on-site inspection of a multiple vehicle driving facility as determined necessary by the secretary of state.

(12) The secretary of state may develop and prescribe an orientation and education program that a person must complete before the secretary of state issues that person an original driver education provider certificate under section 13.

(13) Nonrefundable application processing and multiple vehicle driving facility review and approval fees collected under this section shall be deposited into the driver education provider and instructor fund created in section 83.

History: 2006, Act 384, Eff. Oct. 1, 2006

MICHIGAN VEHICLE CODE (EXCERPTS)
Act 300 of 1949

257.14 "Established place of business" defined.
Sec. 14. (1) Except as provided in subsection (2), "established place of business" means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where his or her books and records are kept and a large share of his or her business transacted.

(2) Established place of business for a class (a) or class (b) dealer means premises that meet all of the following requirements:

(a) The premises contain, except as otherwise provided in this act, a permanently enclosed building or structure either owned, leased, or rented by a dealer, which is not a residence, tent, temporary stand, or any temporary quarters; the building or structure is continuously occupied in good faith for the purpose of selling, buying, trading, leasing, or otherwise dealing in motor vehicles; all books, records, and files necessary to conduct the business of a class (a) or class (b) dealer are maintained in the building or structure; and the building or structure houses an office of at least 150 square feet in size, equipped with standard office furniture, working utilities, a working restroom, and a working telephone listed in the name of the business on the dealer's license.

(b) The premises have land space of no less than 1,300 square feet to accommodate the display of a minimum of 10 vehicles of the kind and type that the dealer is licensed to sell and an additional 650 square feet for customer parking. The display and customer parking areas shall be adequately surfaced and well-lit during business hours.

(c) The premises are identified by an exterior sign displaying the name of the dealership that is permanently affixed to the building or land with letters clearly visible from a highway.

(d) The premises contain a conspicuous posting of the dealer's regular hours of operation. The posted hours shall be not less than 30 hours per week.

(e) The premises contain a registered repair facility on site for the repair and servicing of motor vehicles of a type sold at the established place of business, unless the dealer has entered into a written servicing agreement with a registered repair facility at a location not to exceed 10 miles' distance from the established place of business. If repairs are conducted pursuant to a servicing agreement, the servicing agreement shall be conspicuously posted in the office.

(f) The premises meet all applicable zoning requirements and municipal requirements.

History: 1949, Act 300, Eff. Sept. 23, 1949 ;-- Am. 2004, Act 495, Eff. Jan. 31, 2005

257.248 Dealer license; investigation; report; bond or renewal certificate; dealer plates; stipulation as to service of process; prohibited conduct, application, and classification; expiration; conduct not requiring separate or supplemental license.

Sec. 248. (1) The secretary of state shall not grant a dealer license under this section until an investigation is made of the applicant's qualifications under this act, except that this subsection does not apply to license renewals. The secretary of state shall make the investigation within 15 days after receiving the application and make a report on the investigation.

(2) An applicant for a new vehicle dealer or a used or secondhand vehicle dealer or broker license shall include a properly executed bond or renewal certificate with the application. If a renewal certificate is used, the bond is considered renewed for each succeeding year in the same amount and with the same effect as an original bond. The bond shall be in the sum of $10,000.00 with good and sufficient surety to be approved by the secretary of state. The bond shall indemnify or reimburse a purchaser, seller, lessee, financing agency, or governmental agency for monetary loss caused through fraud, cheating, or misrepresentation in the conduct of the vehicle business whether the fraud, cheating, or misrepresentation was made by the dealer or by an employee, agent, or salesperson of the dealer. The surety shall make indemnification or reimbursement for a monetary loss only after judgment based on fraud, cheating, or misrepresentation has been entered in a court of record against the licensee. The bond shall also indemnify or reimburse the state for any sales tax deficiency as provided in the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, or use tax deficiency as provided in the use tax act, 1937 PA 94, MCL 205.91 to 205.111, for the year in which the bond is in force. The surety shall make indemnification or reimbursement only after final judgment has been entered in a court of record against the licensee. A dealer or applicant who has furnished satisfactory proof that a bond similar to the bond required by this subsection is executed and in force is exempt from the bond provisions set forth in this subsection. The aggregate liability of the surety shall not

exceed the sum of the bond. The surety on the bond may cancel the bond upon giving 30 days' notice in writing to the secretary of state and thereafter is not liable for a breach of condition occurring after the effective date of the cancellation.

(3) An applicant for a new vehicle dealer or a used or secondhand vehicle dealer license shall apply for not less than 2 dealer plates as provided by section 245 and shall include with the application the proper fee as provided by section 803.

(4) As a condition precedent to the granting of a license, a dealer shall file with the secretary of state an irrevocable written stipulation, authenticated by the applicant, stipulating and agreeing that legal process affecting the dealer, served on the secretary of state or a deputy of the secretary of state, has the same effect as if personally served on the dealer. This appointment remains in force as long as the dealer has any outstanding liability within this state.

(5) A person shall not carry on or conduct the business of buying, selling, brokering, leasing, negotiating a lease, or dealing in 5 or more vehicles of a type required to be titled under this act in a 12-month period unless the person obtains a dealer license from the secretary of state authorizing the carrying on or conducting of that business. A person shall not carry on or conduct the business of buying, selling, brokering, leasing, negotiating a lease, or dealing in 5 or more distressed, late model vehicles or salvageable parts to 5 or more of those vehicles in a 12-month period unless the person obtains a used or secondhand vehicle parts dealer, an automotive recycler, or a salvage pool license from the secretary of state or is an insurance company admitted to conduct business in this state. A person shall not carry on or conduct the business of buying 5 or more vehicles in a 12-month period to process into scrap metal or store or display 5 or more vehicles in a 12-month period as an agent or escrow agent of an insurance company unless the person obtains a dealer license from the secretary of state. A vehicle scrap metal processor who does not purchase vehicles or salvageable parts from unlicensed persons is not required to obtain a dealer license. A person from another state shall not purchase, sell, or otherwise deal in

distressed, late model vehicles or salvageable parts unless the person obtains a foreign salvage vehicle dealer license from the secretary of state as prescribed under section 248b. A person, including a dealer, shall not purchase or acquire a distressed, late model vehicle or a salvageable part through a salvage pool, auction, or broker without a license as a salvage vehicle agent. The secretary of state shall investigate and seek prosecution, if necessary, of persons allegedly conducting a business without a license.

(6) The application for a dealer license shall be in the form prescribed by the secretary of state and shall be signed by the applicant. In addition to other information as may be required by the secretary of state, the application shall include all of the following:

(a) Name of applicant.

(b) Location of applicant's established place of business in this state, together with written verification from the appropriate governing or zoning authority that the established place of business meets all applicable municipal and zoning requirements.

(c) The name under which business is to be conducted.

(d) If the business is a corporation, the state of incorporation.

(e) Name, address, date of birth, and social security number of each owner or partner and, if a corporation, the name, address, date of birth, and social security number of each of the principal officers.

(f) The county in which the business is to be conducted and the address of each place of business in that county.

(g) If new vehicles are to be sold, the make to be handled. Each new vehicle dealer shall send with the application for license a certification that the dealer holds a bona fide contract to act as factory representative, factory distributor, or distributor representative to sell at retail ..... (the make of vehicle to be sold).

(h) A statement of the previous history, record, and associations of the applicant and of each owner, partner, officer, and director. The statement shall be sufficient to establish to the satisfaction of the secretary of state the business reputation and character of the applicant.

(i) A statement showing whether the applicant has previously applied for a license, the result of the application, and whether the applicant has ever been the holder of a dealer license that was revoked or suspended.

(j) If the applicant is a corporation or partnership, a statement showing whether a partner, employee, officer, or director has been refused a license or has been the holder of a license that was revoked or suspended.

(k) If the application is for a used or secondhand vehicle parts dealer or an automotive recycler, it shall include all of the following:

(i) Evidence that the applicant maintains or will maintain an established place of business.

(ii) Evidence that the applicant maintains or will maintain a police book and vehicle parts purchase and sales and lease records as required under this act.

(iii) Evidence of worker's compensation insurance coverage for employees classified under the North American industrial classification system number 42114, entitled "motor vehicle parts (used) wholesalers" or under the national council on compensation insurance classification code number 3821, entitled "automobile dismantling and drivers", if applicable.

(l) Certification that neither the applicant nor another person named on the application is acting as the alter ego of any other person or persons in seeking the license. For the purpose of this subdivision, "alter ego" means a person who acts for and on behalf of, or in the place of, another person for purposes of obtaining a vehicle dealer license.

(7) A person shall apply separately for a dealer license for each county in which business is to be conducted. Before moving 1 or more of his or her places of business or opening an additional place of business, a dealer shall apply to the secretary of state for and obtain a supplemental dealer license, for which a fee shall not be charged. A supplemental dealer license shall be issued only for a location, including a tent, temporary stand, or any temporary quarters, that does not meet the definition of an established place of business, within the county in which the dealer's established place of business is located. A dealer license entitles the dealer to conduct the business of buying, selling, leasing, and dealing in vehicles or salvageable parts in the county covered by the license. The dealer license shall also entitle the dealer to conduct at any other licensed dealer's established place of business in this state only the business of buying, selling, leasing, or dealing in vehicles at wholesale.

(8) The secretary of state shall classify and differentiate vehicle dealers according to the type of activity they perform. A dealer shall not engage in activities of a particular classification as provided in this act unless the dealer is licensed in that classification. An applicant may apply for a dealer license in 1 or more of the following classifications:

(a) New vehicle dealer.

(b) Used or secondhand vehicle dealer.

(c) Used or secondhand vehicle parts dealer.

(d) Vehicle scrap metal processor.

(e) Vehicle salvage pool operator.

(f) Distressed vehicle transporter.

(g) Broker.

(h) Foreign salvage vehicle dealer.

(i) Automotive recycler.

(j) Beginning April 1, 2005, wholesaler.

(9) A dealer license expires on December 31 of the last year for which the license is issued. The secretary of state may renew a dealer license for a period of not more than 4 years upon application and payment of the fee required by section 807.

(10) A dealer may conduct the business of buying, selling, or dealing in motor homes, trailer coaches, trailers, or pickup campers at a recreational vehicle show conducted at a location in this state without obtaining a separate or supplemental license under subsection (7) if all of the following apply:

(a) The dealer is licensed as a new vehicle dealer or used or secondhand vehicle dealer.

(b) The duration of the recreational vehicle show is not more than 14 days.

(c) Not less than 14 days before the beginning date of the recreational vehicle show, the show producer notifies the secretary of state, in a manner and form prescribed by the secretary of state, that the recreational vehicle show is scheduled, the location, dates, and times of the recreational vehicle show, and the name, address, and dealer license number of each dealer participating in the recreational vehicle show.

History: 1949, Act 300, Eff. Sept. 23, 1949 ;-- Am. 1951, Act 270, Eff. Sept. 28, 1951 ;-- Am. 1957, Act 281, Eff. Sept. 27, 1957 ;-- Am. 1962, Act 166, Eff. Mar. 28, 1963 ;-- Am. 1964, Act 166, Imd. Eff. Jan. 1, 1965 ;-- Am. 1966, Act 216, Eff. Mar. 10, 1967 ;-- Am. 1970, Act 123, Imd. Eff. July 23, 1970 ;-- Am. 1976, Act 439, Imd. Eff. Jan. 13, 1977 ;-- Am. 1978, Act 507, Eff. July 1, 1979 ;-- Am. 1980, Act 398, Eff. Mar. 31, 1981 ;-- Am. 1988, Act 255, Eff. Oct. 1, 1989 ;-- Am. 1992, Act 304, Imd. Eff. Dec. 21, 1992 ;-- Am. 1993, Act 300, Eff. July 1, 1994 ;-- Am. 1998, Act 384, Eff. Jan. 1, 1999 ;-- Am. 1999, Act 172, Imd. Eff. Nov. 16, 1999 ;-- Am. 2002, Act 642, Eff. Jan. 1, 2003 ;-- Am. 2004, Act 495, Eff. Jan. 31, 2005

257.249 Denial, suspension, or revocation of license as dealer; grounds.

Sec. 249. The secretary of state may deny the application of a person for a license as a dealer and refuse to issue the person a license as a dealer, or may suspend or revoke a license already issued, if the secretary of state finds that 1 or more of the following apply:

(a) The applicant or licensee has made a false statement of a material fact in his or her application.

(b) The applicant or licensee has not complied with the provisions of this chapter or a rule promulgated under this chapter.

(c) The applicant or licensee has sold or leased or offered for sale or lease a new vehicle of a type required to be registered under this act without having authority of a contract with a manufacturer or distributor of the new vehicle.

(d) The applicant or licensee has been guilty of a fraudulent act in connection with selling, leasing, or otherwise dealing in vehicles of a type required to be registered under this act.

(e) The applicant or licensee has entered into or is about to enter into a contract or agreement with a manufacturer or distributor of vehicles of a type required to be registered under this act that is contrary to any provision of this act.

(f) The applicant or licensee has no established place of business that is used or will be used for the purpose of selling, leasing, displaying, or offering for sale or lease or dealing in vehicles of a type required to be registered, and does not have proper servicing facilities.

(g) The applicant or licensee is a corporation or partnership, and a stockholder, officer, director, or partner of the applicant or licensee has been guilty of any act or omission that would be cause for refusing, revoking, or suspending a license issued to the stockholder, officer, director, or partner as an individual.

(h) The applicant or licensee has possessed a vehicle or a vehicle part that has been confiscated under section 415 of the Michigan penal code, 1931 PA 328, MCL 750.415. The secretary of state shall conduct a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, before the secretary of state takes any action under this subdivision.

(i) The applicant or licensee has been convicted under section 415 of the Michigan penal code, 1931 PA 328, MCL 750.415.

(j) The applicant or licensee has been convicted of violating 1986 PA 119, MCL 257.1351 to 257.1355.

(k) The established place of business of the applicant or licensee is not in compliance with all applicable zoning requirements and municipal requirements.

(l) The applicant or licensee has engaged in the business of buying, selling, trading, or exchanging new, used, or secondhand motor vehicles or has offered to buy, sell, trade, or exchange, or participate in the negotiation thereof, or attempted to buy, sell, trade, or exchange any motor vehicle or interest in any motor vehicle or any written instrument pertaining to a motor vehicle on a Sunday, as prohibited by 1953 PA 66, MCL 435.251 to 435.254.

History: 1949, Act 300, Eff. Sept. 23, 1949 ;-- Am. 1951, Act 270, Eff. Sept. 28, 1951 ;-- Am. 1981, Act 115, Imd. Eff. July 17, 1981 ;-- Am. 1988, Act 255, Eff. Oct. 1, 1989 ;-- Am. 1992, Act 304, Imd. Eff. Dec. 21, 1992 ;-- Am. 1993, Act 300, Eff. Jan. 1, 1994 ;-- Am. 2002, Act 642, Eff. Jan. 1, 2003 ;-- Am. 2004, Act 495, Eff. Jan. 31, 2005

THE PRECIOUS METAL AND GEM DEALER ACT (EXCERPT) Act 95 of 1981

445.483 Dealer; certificate of registration required; internet drop-off store exempt from registration; application; fee; disclosures; dealer, agent, or employee convicted of misdemeanor or felony; compliance with local ordinances; issuance and posting of certificate; notification of change in name or address.

Sec. 3. (1) A dealer shall not conduct business in a local governmental unit in this state unless the dealer has obtained a valid certificate of registration from that local governmental unit or local police agency.

(2) This section does not require an internet drop-off store complying with subsection (3), or a person engaged in the sale, purchase, consignment, or trade of precious items for himself or herself, to obtain a registration under this act.

(3) An internet drop-off store in compliance with the following conditions is exempt from registration as a dealer under this act:

(a) Has a fixed place of business within this state except that he or she exclusively transacts all purchases or sales by means of the internet and the purchases and sales are not physically transacted on the premises of that fixed place of business.

(b) Has the personal property or other valuable thing available on a website for viewing by photograph, if available, by the general public at no charge, which website shall be searchable by zip code or state, or both. The website viewing shall include, as applicable, serial number, make, model, and other unique identifying marks, numbers, names, or letters appearing on the personal property or other valuable thing.

(c) Maintains records of the sale, purchase, consignment, or trade of the personal property or other valuable thing for at least 2 years, which records shall contain a description, including a photograph, if available, and, if applicable, serial number, make, model, and other unique identifying marks, numbers, names, or letters appearing on the personal property or other valuable thing.

(d) Provide the local police agency with any name under which it conducts business on the website and access to the business premises at any time during normal business hours for purposes of inspection.

(e) Within 24 hours after a request from a local police agency, provide an electronic copy of the seller's or consignor's name, address, telephone

number, driver license number and issuing state, the buyer's name and address if applicable, and a description of the personal property or other valuable thing as described in subdivision (c). The provision of information shall be in a format acceptable to the local police agency but shall at least be in a legible format and in the English language.

(f) Provide that payment for the personal property or other valuable thing is executed by means of check or other electronic payment system, so long as the payment is not made in cash. No payment shall be provided to the seller until the item is sold.

(g) Immediately remove the personal property or other valuable thing from the website if the local police agency determines that the personal property or other valuable thing is stolen.

(4) A dealer shall apply to the local police agency for a certificate of registration, and pay a fee not to exceed $50.00 to cover the reasonable cost of processing and issuing the certificate of registration, by disclosing the following information:

(a) The name, address, and thumbprint of the applicant.

(b) The name and address under which the applicant does business.

(c) The name, address, and thumbprint of all agents or employees of the dealer. Within 24 hours after hiring a new employee, the dealer shall forward to the local police agency the name, address, and thumbprint of the new employee.

(5) A dealer or an agent or employee of a dealer who is convicted of a misdemeanor under this act or under section 535 of the Michigan penal code, 1931 PA 328, MCL 750.535, shall not be permitted to operate as a dealer within this state for a period of 1 year after conviction.

(6) A dealer or an agent or employee of a dealer who is convicted of a felony under this act or under section 535 of the Michigan penal code,

1931 PA 328, MCL 750.535, shall not be permitted to operate as a dealer within this state for a period of 5 years after the conviction.

(7) This act shall not be construed to excuse a dealer from complying with the local zoning ordinance or any local ordinance regulating commercial activities. However, a local government may not pass an ordinance, or enforce an existing ordinance, that provides additional standards which must be met before the issuance of a certificate of registration.

(8) Upon receipt of the application described in subsection (4), the local police agency shall issue a certificate of registration in accordance with this section.

(9) Upon receipt of the certificate of registration from the local police agency, the dealer shall post it in a conspicuous place in the dealer's place of business.

(10) Not less than 10 days before a dealer changes the name or address under which the dealer does business, the dealer shall notify the local police agency of the change.

History: 1981, Act 95, Eff. Sept. 11, 1981 ;-- Am. 2006, Act 295, Imd. Eff. July 20, 2006

REGULATION OF MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, WHOLESALERS, AND DEALERS (EXCERPT) Act 118 of 1981

445.1563 Definitions; D to F.

Sec. 3. (1) “Distributor” means any person, including an importer, resident or nonresident, who is engaged in the business pursuant to a dealer agreement, in whole or in part, of offering for sale, selling, or distributing new and unaltered motor vehicles to a new motor vehicle dealer, who maintains a factory representative for such purposes, resident or nonresident, or who controls any person, resident or nonresident, who in whole or in part offers for sale, sells, or distributes

new and unaltered motor vehicles to a new motor vehicle dealer. Distributor does not include a person who alters or converts motor vehicles for sale to a new motor vehicle dealer.

(2) “Established place of business” means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable buildings codes, zoning, and other land-use regulatory ordinances.

(3) “Factory branch” means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

(4) “Factory representative” means an agent or employee of a manufacturer, distributor, or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

History: 1981, Act 118, Imd. Eff. July 19, 1981 ;-- Am. 1998, Act 456, Imd. Eff. Dec. 30, 1998