

[No. 233]**(HB 4854)**

AN ACT to amend 1965 PA 314, entitled “An act to authorize the investment of assets of public employee retirement systems or plans created and established by the state or any political subdivision; to provide for the payment of certain costs and investment expenses; to authorize investment in variable rate interest loans; to define and limit the investments which may be made by an investment fiduciary with the assets of a public employee retirement system; and to prescribe the powers and duties of investment fiduciaries and certain state departments and officers,” (MCL 38.1132 to 38.1140m) by adding section 13c.

The People of the State of Michigan enact:

38.1133c Definitions; effort by fiduciary to identify scrutinized companies; assembly into scrutinized companies list; update and availability of list; procedures; report; effectiveness of section; exemption of fiduciary from conflicting statutory or common law obligations; liability; affirmative exclusion from federal sanctions; severability.

Sec. 13c. (1) As used in this section:

(a) “Active business operations” means all business operations that are not inactive business operations.

(b) “Business operations” means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(c) “Company” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

(d) “Complicit” means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur, including, but not limited to, preventing Darfur’s victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.

(e) “Direct holdings” in a company means all securities of that company held directly by the fiduciary or in an account or fund in which the fiduciary owns all shares or interests.

(f) “Fiduciary” means the Michigan legislative retirement system board of trustees for the Tier 1 plan for the Michigan legislative retirement system created by the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080, and the treasurer of this state for the retirement systems created under all of the following acts:

(i) The state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648.

(ii) The Tier 1 retirement plan available under the judge’s retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

(iii) The Tier 1 retirement plan available under the state employees retirement act, 1943 PA 240, MCL 38.1 to 38.69.

(iv) The public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1408.

(g) “Government of Sudan” means the government in Khartoum, Sudan, which is led by the national congress party or any successor government formed on or after October 13, 2006 and does not include the regional government of southern Sudan.

(h) “Inactive business operations” means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(i) “Indirect holdings” in a company means all securities of that company held in an account or fund, such as a mutual fund or other commingled fund, managed by 1 or more persons not employed by the fiduciary, in which the fiduciary owns shares or interests together with other investors not subject to the provisions of this act.

(j) “Marginalized populations of Sudan” includes, but is not limited to, all of the following:

(i) The portion of the population in the Darfur region that has been genocidally victimized.

(ii) The portion of the population of southern Sudan victimized by Sudan’s north-south civil war.

(iii) The Beja, Rashidiya, and other similarly underserved groups of eastern Sudan.

(iv) The Nubian and other similarly underserved groups in Sudan’s Abyei, Southern Blue Nile, and Nuba Mountain regions.

(v) The Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(k) “Military equipment” means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles; or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(l) “Mineral extraction activities” includes exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides, including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(m) “Oil-related activities” includes, but is not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

(n) “Power production activities” means any business operation that involves a project commissioned by the national electricity corporation of Sudan or other similar government of Sudan entity whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(o) “Scrutinized company” means any company, except a social development company and a company described in subsection (10) that is not complicit in the Darfur genocide, that meets the criteria in subparagraph (i), (ii), or (iii):

(i) The company has business operations that involve contracts with or provision of supplies or services to 1 or more of the following:

(A) The government of Sudan.

(B) Companies in which the government of Sudan has any direct or indirect equity share.

(C) Government of Sudan-commissioned consortia or projects.

(D) Companies involved in government of Sudan-commissioned consortia or projects and that have 1 or more of the following:

(I) More than 10% of the company's revenues or assets linked to Sudan involve oil-related activities or mineral extraction activities, less than 75% of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government, and the company has failed to take substantial action.

(II) More than 10% of the company's revenues or assets linked to Sudan involve power production activities, less than 75% of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan, and the company has failed to take substantial action.

(ii) The company is complicit in the Darfur genocide.

(iii) The company supplies military equipment within Sudan, unless the fiduciary finds that the military equipment will not be used to facilitate offensive military actions in Sudan or the fiduciary finds that the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict.

(p) "Social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.

(q) "Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any new business operations, undertaking significant humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan, or a nonprofit entity and evaluated and certified by an independent third party to be substantial in relationship to the company's Sudan business operations and of benefit to 1 or more marginalized populations of Sudan, or through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

(2) Within 90 days after the effective date of the amendatory act that added this section, the fiduciary shall make its best efforts to identify all scrutinized companies in which the fiduciary has direct or indirect holdings or could possibly have such holdings in the future. The efforts shall include 1 or more of the following:

(a) Reviewing and relying, as appropriate in the fiduciary's judgment, on publicly available information regarding companies with business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

(b) Contacting asset managers contracted by the fiduciary that invest in companies with business operations in Sudan.

(c) Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

(3) At the end of the 90-day period or by the first meeting of the fiduciary following the 90-day period described in subsection (2), the fiduciary shall assemble all scrutinized companies identified into a scrutinized companies list.

(4) The fiduciary shall update the scrutinized companies list on a quarterly basis based on evolving information from, among other sources, those sources listed in subsection (2). The fiduciary shall make the scrutinized companies list freely available to the fiduciaries of other public retirement systems located in this state if making the list available does not violate any agreements with third parties or reveal proprietary information of a third party.

(5) The fiduciary shall adhere to the following procedure for companies on the scrutinized companies list:

(a) The fiduciary shall immediately determine the companies on the scrutinized companies list in which the fiduciary oversees pursuant to its responsibilities as defined in subsection (1)(f).

(b) For each company identified in subdivision (a) with only inactive business operations, the fiduciary shall send a written notice informing the company of this section and encourage the company to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations and further encourage the company to engage in substantial humanitarian operations in the country. The fiduciary shall continue the correspondence on a semiannual basis.

(c) For each company newly identified in subdivision (a) with active business operations, the fiduciary shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the fiduciary. The notice shall offer the company the opportunity to clarify its Sudan-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the fiduciary.

(d) If, within 90 days following the fiduciary's first engagement with a company pursuant to subdivision (c), that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and this section shall cease to apply to it unless it resumes scrutinized business operations. If, within 90 days following the fiduciary's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall be subject to this section.

(e) If, after 90 days following the fiduciary's first engagement with a company pursuant to subdivision (c), the company continues to have scrutinized active business operations, and only while the company continues to have scrutinized active business operations, the fiduciary shall sell, redeem, divest, or withdraw all publicly traded securities of the company, according to the following schedule:

(i) At least 50% of the assets shall be removed from the fiduciary's assets under management within 9 months after the company's most recent appearance on the scrutinized companies list.

(ii) 100% of the assets shall be removed from the fiduciary's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

(f) Except as provided in subdivisions (g) and (h), at no time shall the fiduciary acquire securities of companies on the scrutinized companies list that have active business operations.

(g) No company which the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall be subject to divestment or investment prohibition pursuant to subdivisions (e) and (f).

(h) Subdivisions (e) and (f) shall not apply to indirect holdings in actively managed investment funds. For purposes of this section, actively managed investment funds include private

equity funds and publicly traded funds. Before the fiduciary invests in a new private equity fund that is not in the fiduciary's portfolio as of the effective date of the amendatory act that added this section, the fiduciary shall perform due diligence to prevent investment in any private equity fund where the offering memorandum or prospectus identifies the purpose of the private equity fund as investing in scrutinized companies with active business operations in Sudan. The fiduciary is not required to identify holdings in private equity funds or submit engagement letters to those funds. If the manager of a publicly traded, actively managed fund that is in the fiduciary's portfolio on the effective date of the amendatory act that added this section creates a similar publicly traded, actively managed fund with indirect holdings devoid of identified scrutinized companies with scrutinized active business operations as defined in this section, the fiduciary shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investment standards.

(6) The fiduciary shall file a publicly available report to the legislature that includes the scrutinized companies list within 30 days after the list is created. Annually thereafter, the fiduciary shall file a publicly available report to the legislature and send a copy of that report to the United States presidential special envoy to Sudan that includes all of the following:

(a) A summary of correspondence with companies engaged by the fiduciary under this section.

(b) All investments sold, redeemed, divested, or withdrawn in compliance with this section.

(c) All prohibited investments under this section.

(d) Any progress made under subsection (5)(h).

(7) This section is effective until the first occurrence of any of the following:

(a) The United States congress or the president of the United States declares that the Darfur genocide has been halted for at least 12 months.

(b) The United States revokes all sanctions imposed against the government of Sudan.

(c) The congress or president of the United States declares that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons.

(d) The congress or president of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

(8) With respect to actions taken in compliance with this section, including all good faith determinations regarding companies as required by this section, the fiduciary shall be exempt from any conflicting statutory or common law obligations, including any obligations in respect to choice of asset managers, investment funds, or investments for the fiduciary's securities portfolios.

(9) The fiduciary, members of an investment advisory committee, and any person with decision-making authority with regard to investments of the fiduciary shall not be held liable for any action undertaken for the purpose of complying with or executing the mandates required under this section.

(10) Scrutinized company does not include a company that the federal government has affirmatively excluded from federal sanctions for business the scrutinized company conducts relating to Sudan, or that has consistently obtained applicable licenses or approvals to conduct transactions with Sudan. If the fiduciary becomes aware at any time that a company that

has not been affirmatively excluded from federal sanctions for business it conducts relating to Sudan and has not received from the United States government applicable licenses or approvals to conduct transactions with Sudan, that company is immediately subject to subsection (5).

(11) If any provision, section, subsection, sentence, clause, phrase, or word of this legislation or its application to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 846 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 15, 2008.

Filed with Secretary of State July 17, 2008.

Compiler's note: Senate Bill No. 846, referred to in enacting section 1, was filed with the Secretary of State July 17, 2008, and became 2008 PA 234, Imd. Eff. July 17, 2008.

[No. 234]

(SB 846)

AN ACT to prohibit the investment of certain state money or other assets in companies with certain types of business operations in countries designated as state sponsors of terror; to require divestment of any current investments in those companies; and to provide for the powers and duties of certain state and local governmental officers and entities.

The People of the State of Michigan enact:

129.291 Short title.

Sec. 1. This act shall be known and may be cited as the “divestment from terror act”.

129.292 Definitions.

Sec. 2. As used in this act:

(a) “Active business operations” means all business operations that are not inactive business operations. Active business operations do not include the activities of any business, legal, or governmental entity or institution that provides humanitarian aid to the people of any state sponsors of terror.

(b) “Business operations” means engaging in commerce in any form with a state sponsor of terror, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(c) “Company” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, that exists for profit-making purposes.

(d) “Direct holdings” in a company means all securities of that company held directly by the fiduciary or in an account or fund in which the fiduciary owns all shares or interests.

(e) “Fiduciary” means any of the following:

(i) The Michigan legislative retirement system board of trustees for the Tier 1 retirement plan available under the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080.

(ii) The state treasurer for all of the following:

(A) The state police retirement system created under the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648.

(B) The Tier 1 retirement plan available under the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

(C) The Tier 1 retirement plan available under the state employees retirement act, 1943 PA 240, MCL 38.1 to 38.69.

(D) The public school employees retirement system created under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1408.

(iii) The state treasurer in connection with his or her duties under any of the following:

(A) 1946 (1st Ex Sess) PA 9, MCL 35.602 to 35.610.

(B) 1855 PA 105, MCL 21.141 to 21.147.

(C) Section 7 of the Michigan trust fund act, 2000 PA 489, MCL 12.257.

(D) Children’s trust fund under 1982 PA 249, MCL 21.171 to 21.172.

(E) The McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239, MCL 432.1 to 432.47.

(F) Section 503b of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503b.

(iv) The board of trustees of a community college subject to the community college act of 1966, 1966 PA 331, MCL 389.1 to 389.195.

(v) The board of directors of the Michigan education trust described in section 10 of the Michigan education trust act, 1986 PA 316, MCL 390.1430.

(vi) The board of the Michigan strategic fund under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

(f) “Inactive business operations” means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for that purpose.

(g) “Indirect holdings” in a company means all securities of that company held in an account or fund, including a mutual fund or other commingled fund, managed by 1 or more persons not employed by the fiduciary, in which the fiduciary owns shares or interests together with other investors not subject to the provisions of this act.

(h) “Scrutinized company” means, except for a company described in subdivision (i), and for a social development company or a company that only meets the criteria of this subdivision because an independently owned franchisee of that company is a scrutinized company, any company that has business operations that involve contracts with or provision of supplies or services to a state sponsor of terror; companies in which a state sponsor of terror has any direct or indirect equity share, consortiums, or projects commissioned by a state sponsor of terror; or companies involved in consortiums and projects commissioned by a state sponsor of terror and 1 or more of the following:

(i) More than 10% of the company’s total revenues or assets are directly invested in or earned from or significantly contributed to a state sponsor of terror and the company has failed to take substantial action.

(ii) The company has, with actual knowledge, made an investment of \$20,000,000.00 or more, or any combination of investments of at least \$10,000,000.00 each, which in the aggregate equals or exceeds \$20,000,000.00 in any 12-month period, and which directly or significantly contributes to a state sponsor of terror, and the company has failed to take substantial action.

(i) A scrutinized company does not mean a company which the United States government has excluded from any present federal sanctions regime relating to a state sponsor of terror, or which has obtained from the United States government an applicable license or approval to conduct a transaction with a state sponsor of terror.

(j) “Social development company” means a company licensed by the United States department of treasury pursuant to the federal trade sanction reform and export enhancement act of 2000, P.L. 106-387, or a company lawfully operating under the laws of another country, whose primary purpose in a state sponsor of terror is to provide humanitarian goods or services including, food, other agricultural products, supplies or infrastructure, clothing, shelter, medicines or medical equipment, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, general consumer goods, or services of a purely clerical or reporting nature, to aid the inhabitants of a state sponsor of terror.

(k) “State sponsor of terror” means, subject to section 10 as to applicability, any country determined by the United States secretary of state to have repeatedly provided support for acts of international terrorism.

(l) “Substantial action” means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any new business operations.

129.293 Scrutinized companies; identification by fiduciary.

Sec. 3. Within 90 days after the effective date of this act, the fiduciary shall make its best efforts to identify all scrutinized companies in which the fiduciary has direct or indirect holdings or has a current option to have such holdings in the future. The efforts may include 1 or more of the following:

(a) Reviewing and relying, as appropriate in the fiduciary’s judgment, on publicly available information regarding companies with business operations in a state sponsor of terror, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

(b) Contacting asset managers contracted by the fiduciary that invest in companies with business operations in a state sponsor of terror.

(c) Contacting other institutional investors that have divested from or engaged with companies that have business operations in a state sponsor of terror.

(d) Reviewing the laws of the United States regarding the levels of business activity that would cause application of sanctions against companies conducting business or investing in countries that are designated state sponsors of terror.

129.294 Scrutinized companies; assembly into list; modification; procedure to be adhered to by fiduciary.

Sec. 4. (1) At the end of the 90-day period or by the first meeting of the fiduciary following the 90-day period described in section 3, the fiduciary shall assemble all scrutinized companies identified into a scrutinized companies list.

(2) The fiduciary shall update the scrutinized companies list described in subsection (1) on a quarterly basis based on evolving information from, among other sources, those sources

listed in section 3. However, if a fiduciary receives credible information that shows that a scrutinized company was wrongfully identified as a scrutinized company, the fiduciary shall immediately modify the scrutinized company list to remove the name of the scrutinized company.

(3) The fiduciary shall adhere to the following procedure for companies on the scrutinized companies list described in subsection (1):

(a) The fiduciary shall immediately determine the companies on the scrutinized companies list in which the fiduciary oversees pursuant to its responsibilities as described in section 2(e).

(b) For each company identified in subdivision (a) with only inactive business operations, the fiduciary shall send a written notice informing the company of this section and encourage the company to continue to refrain from initiating active business operations in a state sponsor of terror until it is able to avoid scrutinized business operations and further encourage the company to engage in substantial humanitarian operations in the country. The fiduciary shall continue the correspondence on a semiannual basis.

(c) For each company newly identified in subdivision (a) with active business operations, the fiduciary shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the fiduciary. The notice shall offer the company the opportunity to clarify its state sponsor of terror-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the fiduciary.

(d) If, within 90 days following the fiduciary's first engagement with a company, that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and this act shall cease to apply to it unless it resumes scrutinized business operations. If, within 9 months following the fiduciary's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall not be subject to this act.

(e) If, after 90 days following the fiduciary's first engagement with a company, if the company has not developed and announced a plan to convert its active business operations to inactive business operations, and only while the company continues to have scrutinized active business operations, the fiduciary shall sell, redeem, divest, or withdraw all publicly traded securities of the company, according to the following schedule:

(i) At least 50% of the assets shall be removed from the fiduciary's assets under management within 9 months after the company's most recent appearance on the scrutinized companies list.

(ii) 100% of the assets shall be removed from the fiduciary's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

(f) Except as provided in subdivision (g), at no time shall the fiduciary acquire securities of companies on the scrutinized companies list that have active business operations.

(g) Subdivisions (e) and (f) shall not apply to indirect holdings in actively managed investment funds. For purposes of this section, actively managed investment funds include private equity funds and publicly traded funds. Before the fiduciary invests in a new private equity fund that is not in the fiduciary's portfolio as of the effective date of this act, the fiduciary shall perform due diligence to prevent investment in any private equity fund in violation of this act. The fiduciary is not required to identify holdings in private equity funds or submit engagement letters to those funds. If the manager of a publicly traded, actively managed fund that is in the fiduciary's portfolio on the effective date of this act creates a similar

publicly traded, actively managed fund with indirect holdings devoid of identified scrutinized companies with scrutinized active business operations as defined in this act, the fiduciary is not required to, but is strongly encouraged to, replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investment standards.

129.295 Internet website; collection and publication of information.

Sec. 5. The department of treasury shall collect and publish the following information on the department's internet website no later than 1 year after the effective date of this act and shall periodically update the information at reasonable intervals:

- (a) All investments sold, redeemed, divested, or withdrawn in compliance with this section.
- (b) All prohibited investments made under this section.
- (c) Any progress made under section 4(3)(g).

129.296 Exemption from conflicting statutory or common law obligations.

Sec. 6. (1) With respect to actions taken in compliance with this act, including all good faith determinations regarding companies as required by this act, the fiduciary shall be exempt from any conflicting statutory or common law obligations, including any obligations in respect to choice of asset managers, investment funds, or investments for the fiduciary's securities portfolios.

(2) The fiduciary, members of an investment advisory committee, and any person with decision-making authority with regard to investments of the fiduciary shall not be held liable for any action undertaken for the purpose of complying with or executing the mandates required under this act.

129.297 Severability.

Sec. 7. If any provision, section, subsection, sentence, clause, phrase, or word of this act or its application to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality.

129.298 Business with Sudan; fiduciary subject to provisions of public employee retirement system investment act.

Sec. 8. If a scrutinized company does business with the government of Sudan and the fiduciary is subject to the divestment provisions of section 13c of the public employee retirement system investment act, 1965 PA 314, MCL 38.1133c, for that period of time the fiduciary shall follow the divestment criteria contained in section 13c of the public employee retirement system investment act, 1965 PA 314, MCL 38.1133c, and not the divestment provisions of this act.

129.299 Business with Iran; fiduciary subject to provisions of public employee retirement system investment act.

Sec. 9. If a scrutinized company does business with the government of Iran and the fiduciary is subject to the divestment provisions of section 13d of the public employee retirement system investment act, 1965 PA 314, MCL 38.1133d, for that period of time the fiduciary shall follow the divestment criteria contained in section 13d of the public employee retirement system investment act, 1965 PA 314, MCL 38.1133d, and not the divestment provisions of this act.

129.300 Applicability of act; dates; extension.

Sec. 10. (1) If a state sponsor of terror is any of the following countries, then, except as provided in subsection (2), the provisions of this act begin to apply on the following dates:

(a) Syria, January 1, 2010.

(b) Cuba, January 1, 2011.

(c) Any other country, 12 months following the determination by the United States secretary of state.

(2) The state treasurer may extend, not more than 2 times, 1 or more of the dates in which the provisions of this act apply that are described in subsection (1) for 1 year if the state treasurer determines 1 or more of the following:

(a) The constitutionality of the divestment provisions of this act are in conflict with federal law.

(b) The department of treasury is not able to gather sufficient information to prepare an accurate scrutinized companies list.

129.301 Divestment of funds; recommendations of department of treasury.

Sec. 11. Not later than October 1, 2010 and October 1, 2011, and not later than 9 months immediately following the determination of another country as a state sponsor of terror, the department of treasury shall make recommendations to each house of the legislature and to the standing committees of the senate and house of representatives having jurisdiction over issues pertaining to divestment of state funds on what statutory changes are needed to improve the effectiveness of this act and whether the department of treasury has extended or will extend 1 or more of the dates provided in section 10(1) and the reason for that extension as described in section 10(2).

Conditional effective date.

Enacting section 1. This act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) House Bill No. 4854.

(b) House Bill No. 4903.

This act is ordered to take immediate effect.

Approved July 15, 2008.

Filed with Secretary of State July 17, 2008.

Compiler's note: House Bill No. 4854, referred to in enacting section 1, was filed with the Secretary of State July 17, 2008, and became 2008 PA 233, Imd. Eff. July 17, 2008.

House Bill No. 4903, also referred to in enacting section 1, was filed with the Secretary of State July 17, 2008, and became 2008 PA 232, Imd. Eff. July 17, 2008.

[No. 235]

(SB 848)

AN ACT to amend 1946 (1st Ex Sess) PA 9, entitled "An act to create the Michigan veterans' trust fund, and to define who shall be eligible to receive assistance therefrom; to provide for the disbursement of the income thereof and surplus therein; to create a board of trustees, and to prescribe its powers and duties; to provide for county and district committees, and their powers, duties, and expenses; to prescribe penalties; and to make appropriations to carry out the provisions of this act," by amending section 5 (MCL 35.605), as amended by 2002 PA 53.

The People of the State of Michigan enact:

35.605 Earnings of Michigan veterans' trust fund; allocation; investment; accounting.

Sec. 5. (1) The earnings of the Michigan veterans' trust fund shall be allocated from time to time by the board of trustees as follows:

(a) The operating expenses of the fund shall be approved annually and funded from the surplus earnings.

(b) Fifty percent of the remaining surplus in and the earnings of the fund shall be allocated for distribution to county and district committees on the basis of need as determined by the board.

(c) The balance of the surplus in and earnings of the trust fund after allocations under subdivisions (a) and (b) shall be allocated in part or in whole to the several county and district committees on the basis of veteran population. The funds made available to the board of trustees for distribution to county and district committees on the basis of need as determined by the board of trustees shall be disbursed only for the same purposes of providing for needs of Michigan veterans as defined by 1965 PA 190, MCL 35.61 to 35.62, or their dependents as are the funds allocated to county and district committees on the basis of veteran population.

(2) The state treasurer shall direct the investment of the Michigan veterans' trust fund. The state treasurer shall have the same authority to invest the assets of the trust fund as is granted to an investment fiduciary under the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140m. The state treasurer shall comply with the divestment from terror act in making investments under this act. The trust fund shall be considered state funds and shall be protected by the official bond of the state treasurer.

(3) The state treasurer shall annually prepare an accounting of revenues and expenditures from the trust fund. This accounting shall specifically identify the interest and earnings of the trust fund, shall describe how the amount of interest and earnings has been affected by the expanded investment options provided for in subsection (2), and shall identify how the increased interest and earnings, if any, have been expended. This accounting shall be provided to the senate and house of representatives appropriations committees.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 846 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 15, 2008.

Filed with Secretary of State July 17, 2008.

Compiler's note: Senate Bill No. 846, referred to in enacting section 1, was filed with the Secretary of State July 17, 2008, and became 2008 PA 234, Imd. Eff. July 17, 2008.

[No. 236]

(SB 849)

AN ACT to amend 1994 PA 451, entitled "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,” (MCL 324.101 to 324.90106) by adding section 503b.

The People of the State of Michigan enact:

324.503b Divestment from terror act; compliance by state treasurer.

Sec. 503b. The state treasurer shall comply with the divestment from terror act in making investments under this act.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 846 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 15, 2008.

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Compiler's note: Senate Bill No. 846, referred to in enacting section 1, was filed with the Secretary of State July 17, 2008, and became 2008 PA 234, Imd. Eff. July 17, 2008.

[No. 237]

(SB 850)

AN ACT to amend 1966 PA 331, entitled “An act to revise and consolidate the laws relating to community colleges; to provide for the creation of community college districts; to provide a charter for such districts; to provide for the government, control and administration of such districts; to provide for the election of a board of trustees; to define the powers and duties of the board of trustees; to provide for the assessment, levy, collection and return of taxes therefor; to prescribe penalties and provide remedies; and to repeal acts and parts of acts,” by amending sections 124 and 142 (MCL 389.124 and 389.142), section 124 as amended by 2007 PA 109 and section 142 as amended by 1997 PA 23.

The People of the State of Michigan enact:

389.124 Board of trustees; additional powers.

Sec. 124. The board of trustees may do all of the following:

(a) Contract with, appoint, and employ a suitable person as chief executive officer of the community college. The person employed as chief executive officer shall not be a member of the board of trustees and shall possess at least an earned bachelor's degree from an accredited college or university. The chief executive officer shall hold office for a term fixed by the board of trustees, not to exceed 5 years, shall perform duties as the board of trustees may determine, and shall make reports in writing to the board of trustees and to the department of education annually, or more often if required, in regard to all matters pertaining to the educational interests of the community college district.

(b) Delegate to the chief executive officer of the community college the board's authority to do any of the following:

(i) Select and employ personnel of the community college. If the chief executive officer provides medical, optical, or dental benefits to employees and their dependents under this

subparagraph, the chief executive officer shall provide those benefits in accordance with the public employees health benefit act and shall comply with that act.

(ii) Pay claims and demands against the community college.

(iii) Purchase, lease, or otherwise acquire personal property for the community college.

(iv) Invest community college funds, subject to section 142(4).

(v) Subject to terms and conditions established by the board of directors, accept contributions, capital grants, gifts, donations, services, or other financial assistance from any public or private entity.

(c) Appoint and employ a business manager responsible to the chief executive officer of the community college for the community college district and fix his or her term of office.

(d) Select and employ other administrative officers, teachers, and other employees and engage services as necessary to effectuate its purposes.

389.142 Investment of funds; restrictions; commingling prohibited; disposition of earnings; limitation on investment or deposit of funds; compliance with divestment from terror act; definitions.

Sec. 142. (1) Subject to subsections (3) and (4), the treasurer of a community college district, if authorized by resolution of the board of trustees, may invest debt retirement funds, building and site funds, building and site sinking funds, or general funds of the district, but investment is restricted to the following:

(a) Bonds, bills, or notes of the United States, or of an agency or instrumentality of the United States, or obligations of this state.

(b) Negotiable certificates of deposit, saving accounts, or other interest-earning deposit accounts of a financial institution.

(c) Bankers' acceptances that are issued by a bank that is a member of the federal deposit insurance corporation.

(d) Commercial paper that is supported by an irrevocable letter of credit issued by a bank that is a member of the federal deposit insurance corporation.

(e) Commercial paper of corporations rated prime by at least 1 of the standard rating services.

(f) Mutual funds, trusts, or investment pools composed entirely of instruments that are eligible collateral.

(g) Repurchase agreements against eligible collateral, the market value of which must be maintained during the life of the agreements at levels equal to or greater than the amounts advanced. An undivided interest in the instruments pledged for these agreements must be granted to the community college.

(h) Investment pools, as authorized by the surplus funds investment pool act, 1982 PA 367, MCL 129.111 to 129.118, composed entirely of instruments that are legal for direct investment by a community college.

(2) The board of trustees, chief executive officer, or treasurer of a community college district shall not commingle money in the funds of the community college district for the purpose of making an investment authorized by this section, and all earnings on an investment shall become a part of the fund for which the investment was made.

(3) The board of trustees, chief executive officer, or treasurer of a community college district shall not invest or deposit any funds of the community college district in any financial institution that is not eligible to be a depository of surplus funds belonging to this state under section 6 of 1855 PA 105, MCL 21.146.

(4) The board of trustees, chief executive officer, or treasurer of a community college district shall comply with the divestment from terror act in making investments or depositing funds under this act.

(5) As used in this section:

(a) “Eligible collateral” means any securities that otherwise would qualify for outright purchase under this act.

(b) “Financial institution” means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 846 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 15, 2008.

Filed with Secretary of State July 17, 2008.

Compiler's note: Senate Bill No. 846, referred to in enacting section 1, was filed with the Secretary of State July 17, 2008, and became 2008 PA 234, Imd. Eff. July 17, 2008.

[No. 238]

(SB 853)

AN ACT to amend 1982 PA 249, entitled “An act to establish the state children’s trust fund in the department of treasury; and to provide certain powers and duties of the department of treasury with respect to the trust fund,” by amending section 1 (MCL 21.171), as amended by 2005 PA 119.

The People of the State of Michigan enact:

21.171 Children’s trust fund; creation as charitable and educational endowment fund; expenditure; credits; investment; availability for disbursement; accounting of revenues and expenditures; “trust fund” defined.

Sec. 1. (1) The children’s trust fund is created as a charitable and educational endowment fund in the department of treasury. The fund shall be expended only as provided in this section.

(2) The state treasurer shall credit to the trust fund all amounts appropriated for this purpose under section 475 of the income tax act of 1967, 1967 PA 281, MCL 206.475, any amounts received under section 811j of the Michigan vehicle code, 1949 PA 300, MCL 257.811j, and section 8 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.608, and any amounts received from civil fines imposed under the playground equipment safety act, 1997 PA 16, MCL 408.681 to 408.687.

(3) The state treasurer shall direct the investment of the trust fund. The state treasurer shall have the same authority to invest the assets of the trust fund as is granted to an investment fiduciary under the public employee retirement system investment act, 1965 PA 314,

MCL 38.1132 to 38.1140m. The state treasurer shall comply with the divestment from terror act in making investments under this act.

(4) Not more than 1/2 of the money contributed to the trust fund each year, plus the interest and earnings, excluding unrealized gains and losses, credited to the trust fund during the previous fiscal year, shall be available for disbursement upon the authorization of the state board as provided in section 9 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.609.

(5) Money granted or received as gifts or donations to the trust fund shall be available for disbursement upon appropriation under section 8 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.608, and funds authorized for expenditure shall not be considered assets of the trust fund for the purposes of subsection (4).

(6) The state treasurer shall annually prepare an accounting of revenues and expenditures from the trust fund. This accounting shall specifically identify the interest and earnings of the trust fund, shall describe how the amount of interest and earnings has been affected by the expanded investment options provided for in subsection (3), and shall identify how the increased interest and earnings, if any, have been expended. This accounting shall be provided to the senate and house of representatives appropriations committees.

(7) As used in this section, “trust fund” means the children’s trust fund created in subsection (1).

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 846 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 15, 2008.

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Compiler’s note: Senate Bill No. 846, referred to in enacting section 1, was filed with the Secretary of State July 17, 2008, and became 2008 PA 234, Imd. Eff. July 17, 2008.

[No. 239]

(SB 856)

AN ACT to amend 1986 PA 316, entitled “An act to create the Michigan education trust; to prescribe the powers and duties of the trust and of its board of directors; to provide for advance tuition payment contracts; to establish an advance tuition payment fund and to provide for its administration; to provide for remedies; and to repeal certain acts and parts of acts on specific dates,” by amending sections 9 and 11 (MCL 390.1429 and 390.1431).

The People of the State of Michigan enact:

390.1429 Advance tuition payment fund; creation; placement of payments in fund; division of fund into separate accounts; assets of trust; priority of expenditures; investments; compliance with divestment from terror act.

Sec. 9. (1) There is created under the jurisdiction and control of the board an advance tuition payment fund. Payments received by the trust from purchasers on behalf of qualified beneficiaries or from any other source, public or private, shall be placed in the fund. The fund may be divided into separate accounts.

(2) Assets of the trust are not considered state money, common cash of the state, revenue for the purposes of sections 26 to 34 of article IX of the state constitution of 1963, or state money for the purposes of 1982 PA 259, MCL 12.61 to 12.64.

(3) Unless otherwise provided by resolution of the board, assets of the trust shall be expended in the following order of priority:

(a) To make payments to state institutions of higher education on behalf of qualified beneficiaries.

(b) To make refunds upon termination of an advance tuition payment contract.

(c) To pay the costs of administration and organization of the trust and the fund.

(4) Except as provided in subsection (5), the board may invest assets of the trust in any instrument, obligation, security, or property considered appropriate by the board and may be pooled for investment purposes with investments of the state, including, but not limited to, state pension funds, on such terms and conditions as are agreeable to the board.

(5) The board shall comply with the divestment from terror act in making investments under this act.

390.1431 Additional powers of board.

Sec. 11. In addition to the powers granted by other provisions of this act, the board shall have the powers necessary or convenient to carry out and effectuate the purposes, objectives, and provisions of this act, the purposes and objectives of the trust, and the powers delegated by other laws or executive orders, including, but not limited to, the power to:

(a) Except as provided in section 9(5), invest any money of the trust, at the board's discretion, in any instruments, obligations, securities, or property determined proper by the board, and name and use depositories for its money.

(b) Pay money to state institutions of higher education from the trust.

(c) Impose reasonable residency requirements for qualified beneficiaries.

(d) Impose reasonable limits on the number of participants in the trust.

(e) Segregate contributions and payments to the trust into various accounts and funds.

(f) Contract for goods and services and engage personnel as is necessary and engage the services of private consultants, actuaries, managers, legal counsel, and auditors for rendering professional, management, and technical assistance and advice, payable out of any money of the trust.

(g) Solicit and accept gifts, grants, loans, and other aids from any person or the federal, state, or a local government or any agency of the federal, state, or a local government, or to participate in any other way in any federal, state, or local government program.

(h) Charge, impose, and collect administrative fees and charges in connection with any transaction and provide for reasonable penalties, including default, for delinquent payment of fees or charges or for fraud.

(i) Procure insurance against any loss in connection with the trust's property, assets, or activities.

(j) Sue and be sued; to have a seal and alter the same at pleasure; to have perpetual succession; to make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient to the exercise of its powers; and to make and amend bylaws.

(k) Enter into contracts on behalf of the state.

(l) Administer the funds of the trust.

(m) Indemnify or procure insurance indemnifying any member of the board from personal loss or accountability from liability resulting from a member's action or inaction as

a member of the board, including, but not limited to, liability asserted by a person on any bonds or notes of the authority.

(n) Impose reasonable time limits on use of the tuition benefits provided by the trust, if the limits are made a part of the contract.

(o) Define the terms and conditions under which money may be withdrawn from the trust, including, but not limited to, reasonable charges and fees for any such withdrawal, if the terms and conditions are made a part of the contract.

(p) Provide for receiving contributions in lump sums or periodic sums.

(q) Establish policies, procedures, and eligibility criteria to implement this act.

(r) Enter into arrangements with Michigan institutions of higher education for the trust to offer on behalf of the institution advance tuition payment contracts under which the Michigan institution of higher education will be contractually obligated to provide a beneficiary under the contract with credit hours of higher education in addition to those required for a baccalaureate degree.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 846 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 15, 2008.

Filed with Secretary of State July 17, 2008.

Compiler's note: Senate Bill No. 846, referred to in enacting section 1, was filed with the Secretary of State July 17, 2008, and became 2008 PA 234, Imd. Eff. July 17, 2008.

[No. 240]

(HB 4323)

AN ACT to amend 1994 PA 451, entitled "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," by amending sections 81115, 81129, 81131, 81133, and 81147 (MCL 324.81115, 324.81129, 324.81131, 324.81133, and 324.81147), section 81115 as amended by 2003 PA 111, section 81129 as amended by 2008 PA 164, section 81131 as added by 1995 PA 58, section 81133 as amended by 1998 PA 86, and section 81147 as amended by 2004 PA 587.

The People of the State of Michigan enact:

324.81115 Licensing of ORV required; exceptions.

Sec. 81115. (1) A person shall not operate an ORV under any of the following conditions unless the ORV is licensed with the department or a dealer as provided under this part:

(a) Except as otherwise provided by law, on or over land, snow, ice, or other natural terrain.

(b) Except as otherwise provided in this part, on a forest trail or in a designated area.

(c) Except as otherwise provided in section 81102, on the maintained portion of a road or street.

(2) Licensure is not required for an ORV used exclusively in a safety and training program as required in section 81129.

324.81129 Operation of ORV or ATV by child; requirements; ORV information, safety education, and training program; course instruction; ORV safety certificates; rules; exceptions; report.

Sec. 81129. (1) Subject to subsections (2), (3), (17), and (18), a parent or legal guardian of a child less than 16 years of age shall not permit the child to operate an ORV unless the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate issued pursuant to this part or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.

(2) Subject to subsection (18), a parent or legal guardian of a child less than 12 years of age shall not permit the child to operate a 4-wheeled ATV, unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child. This subsection does not apply to the operation of an ATV used in agricultural operations.

(3) A parent or legal guardian of a child less than 16 years of age shall not permit the child to operate a 3-wheeled ATV.

(4) Subject to subsections (5), (6), (17), and (18), the owner or person in charge of an ORV shall not knowingly permit the vehicle to be operated by a child less than 16 years of age unless the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate issued pursuant to this part or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.

(5) Subject to subsection (18), the owner or person in charge of a 4-wheeled ATV shall not knowingly permit the vehicle to be operated by a child less than 12 years of age, unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child. This subsection does not apply to the operation of an ATV used in agricultural operations.

(6) The owner or person in charge of a 3-wheeled ATV shall not knowingly permit the vehicle to be operated by a child less than 16 years of age.

(7) The owner or person in charge of an ORV shall not knowingly permit the vehicle to be operated by a person who is incompetent to operate the vehicle because of mental or physical disability except as provided in section 81131.

(8) The department shall implement a comprehensive ORV information, safety education, and training program that shall include the training of operators and the preparation and dissemination of information and safety advice to the public. The program shall provide for the training of youthful operators and for the issuance of ORV safety certificates to those who successfully complete the training provided under the program and may include separate instruction for each type of ORV.

(9) In implementing a program under subsection (8), the department shall cooperate with private organizations and associations, private and public corporations, the department of education, the department of state, and local governmental units. The department shall consult with ORV and environmental organizations and associations in regard to the subject matter of a training program and performance testing that leads to certification of ORV operators.

(10) The department may designate a person it considers qualified to provide course instruction and to award ORV safety certificates.

(11) The department may promulgate rules to implement subsections (8) to (10) and (18).

(12) Subject to subsections (13), (14), (17), and (18), a child who is less than 16 years of age shall not operate an ORV unless the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate issued pursuant to this section or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.

(13) Subject to subsection (18), a child who is less than 12 years of age shall not operate a 4-wheeled ATV, unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child. This subsection does not apply to the operation of an ATV used in agricultural operations.

(14) A child who is less than 16 years of age shall not operate a 3-wheeled ATV.

(15) Subject to subsection (18), when operating an ORV, a child who is less than 16 years of age shall present the ORV safety certificate to a peace officer upon demand.

(16) Notwithstanding any other provision of this section, an operator who is less than 12 years of age shall not cross a highway or street. An operator who is not less than 12 years of age but less than 16 years of age may cross a highway or street or operate on the right-of-way or shoulder of roads and streets on which ORV use is authorized pursuant to section 81131(2), (3), or (5) if the operator has a valid ORV safety certificate in his or her immediate possession and meets any other requirements under this section for operation of the vehicle.

(17) The requirement of possession or presentation of an ORV safety certificate under this section does not apply until implementation of the program for the vehicle proposed to be operated required by subsection (8).

(18) The requirement that a child possess an ORV safety certificate to operate an ORV, and the requirement that a child who is less than 12 years of age not operate a 4-wheeled ATV unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child, do not apply if all of the following requirements are met:

(a) The child is participating in an organized ORV riding or racing event held on land not owned by this state.

(b) The child's parent or legal guardian has provided the event organizer with written permission for the child to participate in the event.

(c) The event organizer has not less than \$500,000.00 liability insurance coverage for the event.

(d) A physician or physician's assistant licensed or otherwise authorized under part 170 or 175 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084 and 333.17501 to 333.17556, or a paramedic or emergency medical technician licensed under part 209 of the public health code, 1978 PA 368, MCL 333.20901 to 333.20979, is present at the site of the event or available on call.

(e) The event is at all times under the direct visual supervision of adult staff of the event organizer and a staff member serves as a flagger to warn ORV riders if another ORV rider is injured or an ORV is inoperable in the ORV operating area.

(f) Fencing or another means of crowd control is used to keep spectators out of the ORV operating area.

(g) If the event is on a closed course, dust is controlled in the ORV operating area and the riding surface in the ORV operating area is otherwise properly prepared.

(h) Three-wheeled ATVs are not used by participants.

(i) Any ATVs used by participants are equipped with a side step bar or comparable safety equipment and with a tether kill switch, and the tether is used by all participants.

(j) Each participant in the event wears a crash helmet approved by the United States department of transportation, a protective long-sleeved shirt or jacket, long pants, boots, and protective gloves.

(k) Any other applicable requirements of this part or rules promulgated under this part are met.

(19) If a child less than 16 years of age participates and is injured in an organized ORV riding or racing event, the organizer of the event shall, within 30 days after the event, submit to the department a report on a form developed by the department. The report shall include all of the following, as applicable:

(a) Whether any participant less than 16 years of age was killed or suffered an injury resulting in transportation to a hospital as a result of an ORV accident at the event.

(b) The age of the child.

(c) Whether the child had been issued an ORV safety certificate under this part or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.

(d) The type of ORV operated.

(e) A description of the accident and injury.

(20) By December 31 of each year, the department shall submit to the legislature a report that summarizes reports received under subsection (19) during the preceding calendar year. In the report, the department may recommend amendments to this part to improve the safety of children less than 16 years of age participating in organized ORV riding or racing events.

(21) The requirements of this section are in addition to any applicable requirements of section 81131(9).

324.81131 Local ordinances; adoption; closure of road to operation of ORVs; operation of ORV with flow of traffic; applicability of subsections (2) to (6); maintaining road or street not required; immunity from liability; “gross negligence” defined; operator of ORV as prima facie negligent; violation as municipal civil infraction; deposit of fines; definitions.

Sec. 81131. (1) A municipality may pass an ordinance allowing a permanently disabled person to operate an ORV in that municipality.

(2) Subject to subsections (4) and (7), the county board of commissioners of an eligible county may adopt an ordinance authorizing the operation of ORVs on the maintained portion of 1 or more roads located within the county. Not less than 45 days before a public hearing on the ordinance, the county clerk shall send notice of the public hearing, by certified mail, to the county road commission and, if state forestland is located within the county, to the department.

(3) Subject to subsections (4) and (7), beginning 1 year after the effective date of the amendatory act that added this subsection, the township board of a township located in an eligible county may adopt an ordinance authorizing the operation of ORVs on the maintained portion of 1 or more roads located within the township. Not less than 28 days before a public hearing on the ordinance, the township clerk shall send notice of the public hearing, by certified mail, to the county road commission and, if state forestland is located within the township, to the department.

(4) The board of county road commissioners may close a road to the operation of ORVs under subsection (2) or (3) to protect the environment or if the operation of ORVs under subsection (2) or (3) poses a particular and demonstrable threat to public safety. A county road commission shall not under this subsection close more than 30% of the linear miles of roads located within the county to the operation of ORVs under subsection (2) or (3). The township board of a township located in an eligible county may adopt an ordinance to close a road to the operation of ORVs under subsection (2).

(5) Subject to subsection (7), the legislative body of a municipality located in an eligible county may adopt an ordinance authorizing the operation of ORVs on the maintained portion of 1 or more streets within the municipality.

(6) Subject to subsections (4) and (7), if a local unit of government adopts an ordinance pursuant to subsection (2), (3), or (5), a person may operate an ORV with the flow of traffic on the far right of the maintained portion of the road or street covered by the ordinance. A person shall not operate an ORV pursuant to subsection (2), (3), or (5) at a speed greater than 25 miles per hour or a lower posted ORV speed limit or in a manner that interferes with traffic on the road or street. Unless the person possesses a license as defined in section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a person shall not operate an ORV pursuant to subsection (2), (3), or (5) if the ORV is registered as a motor vehicle under chapter II of the Michigan vehicle code, 1949 PA 300, MCL 257.201 to 257.259, and either is more than 60 inches wide or has 3 wheels. ORVs operated pursuant to subsection (2), (3), or (5) shall travel single file, except that an ORV may travel abreast of another ORV when it is overtaking and passing, or being overtaken and passed by, another ORV.

(7) Subsections (2) to (6) and an ordinance adopted under subsection (2), (3), or (5) do not apply beginning 5 years after the effective date of the amendatory act that added this subsection.

(8) In addition to any applicable requirement of section 81133(c), a person shall not operate an ORV pursuant to this section when visibility is substantially reduced due to weather conditions without displaying a lighted headlight and lighted taillight. Beginning January 1, 2010, a person shall not operate an ORV pursuant to this section without displaying a lighted headlight and lighted taillight.

(9) A person under 18 years of age shall not operate an ORV pursuant to this section unless the person is in possession of a valid driver license or under the direct supervision of a parent or guardian and the person has in his or her immediate possession an ORV safety certificate issued pursuant to this part or a comparable ORV safety certificate issued under the authority of another state or a province of Canada. A person under 12 years of age shall not operate an ORV pursuant to this section. The requirements of this subsection are in addition to any applicable requirements of section 81129.

(10) A township that has authorized the operation of ORVs on a road under subsection (3) does not have a duty to maintain the road in a condition reasonably safe and convenient for the operation of ORVs. A board of county road commissioners, a county board of commissioners, or a municipality does not have a duty to maintain a road or street under its jurisdiction in a condition reasonably safe and convenient for the operation of ORVs, except the following ORVs:

- (a) ORVs registered as motor vehicles as provided in the code.
- (b) ORVs permitted by an ordinance as provided in subsection (1).

(11) Beginning October 19, 1993, a board of county road commissioners, a county board of commissioners, and a county are, and, beginning on April 25, 1995, a municipality is, immune from tort liability for injuries or damages sustained by any person arising in any way out of the operation or use of an ORV on maintained or unmaintained roads, streets, shoulders, and

rights-of-way over which the board of county road commissioners, the county board of commissioners, or the municipality has jurisdiction. The immunity provided by this subsection does not apply to actions that constitute gross negligence. As used in this subsection, “gross negligence” means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(12) In a court action in this state, if competent evidence demonstrates that a vehicle that is permitted to operate on a road or street pursuant to the code was in a collision with an ORV required to be operated on the far right of the maintained portion of a road or street pursuant to an ordinance adopted under subsection (2), (3), or (5), the operator of the ORV shall be considered prima facie negligent.

(13) A violation of an ordinance described in this section is a municipal civil infraction. The ordinance may provide for a maximum fine of not more than \$500.00 for a violation of the ordinance. In addition, the court shall order the defendant to pay the cost of repairing any damage to the environment, a road or street, or public property damaged as a result of the violation.

(14) The treasurer of the local unit of government shall deposit fines collected by that local unit of government under section 8379 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8379, and subsection (13) and damages collected under subsection (13) into a fund to be designated as the “ORV fund”. The legislative body of the local unit of government shall appropriate revenue in the ORV fund as follows:

(a) Fifty percent to the county sheriff or police department responsible for law enforcement in the local unit of government for ORV enforcement and training.

(b) Fifty percent to the board of county road commissioners or, in the case of a city or village, to the department responsible for street maintenance in the city or village, for repairing damage to roads or streets and the environment that may have been caused by ORVs and for posting signs indicating ORV speed limits or indicating whether roads or streets are open or closed to the operation of ORVs under this section.

(15) As used in this section:

(a) “Eligible county” means Mason, Lake, Osceola, Clare, Gladwin, Arenac, or Bay county or a county lying north thereof, including all of the counties of the Upper Peninsula.

(b) “Local unit of government” means a county, township, or municipality.

(c) “Municipality” means a city or village.

(d) “Road” means a county primary road or county local road as described in section 5 of 1951 PA 51, MCL 247.655.

(e) “Street” means a city or village major street or city or village local street as described in section 9 of 1951 PA 51, MCL 247.659.

324.81133 Operation of ORV; prohibited acts.

Sec. 81133. A person shall not operate an ORV:

(a) At a rate of speed greater than is reasonable and proper, or in a careless manner having due regard for conditions then existing.

(b) Unless the person and any passenger in or on the vehicle is wearing on his or her head a crash helmet and protective eyewear approved by the United States department of transportation. This subdivision does not apply if the vehicle is equipped with a roof that meets or exceeds standards for a crash helmet and the operator and each passenger is wearing a properly adjusted and fastened safety belt.

(c) During the hours of 1/2 hour after sunset to 1/2 hour before sunrise without displaying a lighted headlight and lighted taillight. The requirements of this subdivision are in addition to any applicable requirements of section 81131(8).

(d) Unless equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; a brake light, brighter than the taillight, visible when the brake is activated to the rear of the vehicle when the vehicle is operated during the hours of 1/2 hour after sunset and 1/2 hour before sunrise; and a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle.

(e) In a state game area or state park or recreation area, except on roads, trails, or areas designated for this purpose; on state owned lands under the control of the department other than game areas, state parks, or recreational areas where the operation would be in violation of rules promulgated by the department; in a forest nursery or planting area; on public lands posted or reasonably identifiable as an area of forest reproduction, and when growing stock may be damaged; in a dedicated natural area of the department; or in any area in such a manner as to create an erosive condition, or to injure, damage, or destroy trees or growing crops. However, the department may permit an owner and guests of the owner to use an ORV within the boundaries of a state forest in order to access the owner's property.

(f) On the frozen surface of public waters within 100 feet of a person not in or upon a vehicle, or within 100 feet of a fishing shanty or shelter or an area that is cleared of snow for skating purposes, except at the minimum speed required to maintain controlled forward movement of the vehicle, or as may be authorized by permit in special events.

(g) Unless the vehicle is equipped with a spark arrester type United States forest service approved muffler, in good working order and in constant operation. Exhaust noise emission shall not exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January 1, 1986, when the vehicle is under full throttle, traveling in second gear, and measured 50 feet at right angles from the vehicle path with a sound level meter that meets the requirement of ANSI S1.4 1983, using procedure and ancillary equipment therein described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after January 1, 1986, or that level comparable to the current sound level as provided for by the United States environmental protection agency when tested according to the provisions of the current SAE J1287, June 86 test procedure for exhaust levels of stationary motorcycles, using sound level meters and ancillary equipment therein described. A vehicle subject to this part, manufactured or assembled after December 31, 1972 and used, sold, or offered for sale in this state, shall conform to the noise emission levels established by the United States environmental protection agency under the noise control act of 1972, 42 USC 4901 to 4918.

(h) Within 100 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle, except on property owned or under the operator's control or on which the operator is an invited guest, or on a roadway, forest road, or forest trail maintained by or under the jurisdiction of the department, or on a road or street on which ORV use is authorized pursuant to section 81131(2), (3), or (5).

(i) In or upon the lands of another without the written consent of the owner, the owner's agent, or a lessee, when required by part 731. The operator of the vehicle is liable for damage to private property, including, but not limited to, damage to trees, shrubs, or growing crops, injury to other living creatures, or damage caused through vehicle operation in a manner so as to create erosive or other ecological damage. The owner of the private property may recover from the person responsible nominal damages of not less than the amount of damage or injury. Failure to post private property or fence or otherwise enclose in a manner to exclude intruders or of the private property owner or other authorized person to personally communicate against trespass does not imply consent to ORV use.

(j) In an area on which public hunting is permitted during the regular November firearm deer season from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except during an emergency or for law enforcement purposes, to go to and from a permanent residence or a hunting

camp otherwise inaccessible by a conventional wheeled vehicle, to remove from public land a deer, elk, or bear that has been taken under a valid license; except for the conduct of necessary work functions involving land and timber survey, communication and transmission line patrol, and timber harvest operations; or except on property owned or under control of the operator or on which the operator is an invited guest. A hunter removing game pursuant to this subdivision may leave the designated trail or forest road only to retrieve the game and shall not exceed 5 miles per hour. A vehicle registered under the code is exempt from this subdivision while operating on a public highway or public or private road capable of sustaining automobile traffic. A person holding a valid permit to hunt from a standing vehicle issued pursuant to part 401, or a person with disabilities using an ORV to access public lands for purposes of hunting or fishing through use of a designated trail or forest road, is exempt from this subdivision.

(k) While transporting on the vehicle a bow unless unstrung or encased, or a firearm unless unloaded and securely encased, or equipped with and made inoperative by a manufactured keylocked trigger housing mechanism.

(l) On or across a cemetery or burial ground, or land used as an airport.

(m) Within 100 feet of a slide, ski, or skating area, unless the vehicle is being used for the purpose of servicing the area or is being operated pursuant to section 81131(2), (3), or (5).

(n) On an operating or nonabandoned railroad or railroad right-of-way, or public utility right-of-way, other than for the purpose of crossing at a clearly established site intended for vehicular traffic, except railroad, public utility, or law enforcement personnel while in performance of their duties, and except if the right-of-way is designated as provided for in section 81127.

(o) In or upon the waters of any stream, river, bog, wetland, swamp, marsh, or quagmire except over a bridge, culvert, or similar structure.

(p) To hunt, pursue, worry, kill, or attempt to hunt, pursue, worry, or kill an animal, whether wild or domesticated.

(q) In a manner so as to leave behind litter or other debris.

(r) In a manner contrary to operating regulations on public lands.

(s) While transporting or possessing, in or on the vehicle, alcoholic liquor in a container that is open or uncapped or upon which the seal is broken, except under either of the following circumstances:

(i) The container is in a trunk or compartment separate from the passenger compartment of the vehicle.

(ii) If the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is encased or enclosed.

(t) While transporting any passenger in or upon an ORV unless the manufacturing standards for the vehicle make provisions for transporting passengers.

(u) On adjacent private land, in an area zoned residential, within 300 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle except on a roadway, forest road, or forest trail maintained by or under the jurisdiction of the department, or on a road or street on which ORV use is authorized pursuant to section 81131(2), (3), or (5).

324.81147 Violation of part as misdemeanor or civil violation; penalties.

Sec. 81147. (1) Except as otherwise provided in this part, 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 less than \$50.00 or more than \$1,000.00, or both, for each violation.

(2) A person who violates section 81133(e) by operating an ORV in such a manner as to create an erosive condition or who violates section 81133(i) or (o) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$250.00 or more than \$1,000.00, or both, for each violation.

(3) A person who violates section 81105, 81107, 81115, 81116, 81121, 81130, or 81133(b), (c), (d), (f), (g), (h), (j), (l), or (m) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00.

(4) A person shall not remove, deface, or destroy a sign or marker placed by the department indicating the boundaries of an ORV trail or area or that marks a route.

(5) In addition to the penalties otherwise provided under this part, a court of competent jurisdiction may order a person to restore, as nearly as possible, any land, water, stream bank, streambed, or other natural or geographic formation damaged by the violation of this part to the condition it was in before the violation occurred.

(6) The department or any other peace officer may impound the ORV of a person who commits a violation of this part that is punishable as a misdemeanor or who causes damage to the particular area in which the ORV was used in the commission of the violation.

(7) Upon conviction of a person for violation described in subsection (5), a court of competent jurisdiction may order the ORV and any personal property on the ORV seized as a result of the violation returned to the owner or, upon recommendation of the local prosecuting attorney, turned over to the department. An ORV or any other property turned over to the department under this subsection shall be disposed of in the manner provided for condemnation of property in part 16. The proceeds realized by the department under this subsection shall first be used to restore areas damaged by ORV use, with the balance to be deposited in the off-road vehicle account.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5559 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 17, 2008.

Filed with Secretary of State July 17, 2008.

Compiler's note: House Bill No. 5559, referred to in enacting section 1, was filed with the Secretary of State July 17, 2008, and became 2008 PA 241, Imd. Eff. July 17, 2008.

[No. 241]

(HB 5559)

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax

on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 2418, 2618, and 3101 (MCL 500.2418, 500.2618, and 500.3101), section 2418 as amended by 1993 PA 200 and section 3101 as amended by 1988 PA 126.

The People of the State of Michigan enact:

500.2418 Disapproval of filing after approval; hearing; notice; procedure.

Sec. 2418. If at any time after approval of any filing either by act or order of the commissioner or by operation of law, or before approval of a filing made by a worker's compensation insurer controlled by a nonprofit health care corporation operating pursuant to the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704, the commissioner finds that a filing does not meet the requirements of this chapter, the commissioner shall, after a hearing held upon not less than 10 days' written notice, specifying the matters to be considered at the hearing, to every insurer and rating organization that made the filing, issue an order specifying in what respects the commissioner finds that the filing fails to meet the requirements of this chapter, and stating for a filing that has gone into effect when, within a reasonable period thereafter, that filing shall be considered no longer effective. A copy of the order shall be sent to every insurer and rating organization subject to the order. The order shall not affect any contract or policy made or issued before the date the filing becomes ineffective as indicated in the commissioner's order.

500.2618 Failure of filing to meet requirements; procedure.

Sec. 2618. If at any time after the applicable review period provided for in section 2616, the commissioner finds that a filing does not meet the requirements of this chapter, the commissioner shall, after a hearing held upon not less than 10 days' written notice, specifying the matters to be considered at the hearing, to every insurer and rating organization that made

the filing, issue an order specifying in what respects the commissioner finds that the filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, that filing shall be considered no longer effective. A copy of the order shall be sent to every insurer and rating organization subject to the order. The order shall not affect any contract or policy made or issued before the date the filing becomes ineffective as indicated in the commissioner's order.

500.3101 Security for payment of benefits required; period security required to be in effect; deletion of coverages; definitions; policy of insurance or other method of providing security; filing proof of security; "insurer" defined.

Sec. 3101. (1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security shall only be required to be in effect during the period the motor vehicle is driven or moved upon a highway. Notwithstanding any other provision in this act, an insurer that has issued an automobile insurance policy on a motor vehicle that is not driven or moved upon a highway may allow the insured owner or registrant of the motor vehicle to delete a portion of the coverages under the policy and maintain the comprehensive coverage portion of the policy in effect.

(2) As used in this chapter:

(a) "Automobile insurance" means that term as defined in section 2102.

(b) "Highway" means that term as defined in section 20 of the Michigan vehicle code, 1949 PA 300, MCL 257.20.

(c) "Motorcycle" means a vehicle having a saddle or seat for the use of the rider, designed to travel on not more than 3 wheels in contact with the ground, which is equipped with a motor that exceeds 50 cubic centimeters piston displacement. The wheels on any attachment to the vehicle shall not be considered as wheels in contact with the ground. Motorcycle does not include a moped, as defined in section 32b of the Michigan vehicle code, 1949 PA 300, MCL 257.32b. Motorcycle does not include an ORV.

(d) "Motorcycle accident" means a loss involving the ownership, operation, maintenance, or use of a motorcycle as a motorcycle, but not involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.

(e) "Motor vehicle" means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels. Motor vehicle does not include a motorcycle or a moped, as defined in section 32b of the Michigan vehicle code, 1949 PA 300, MCL 257.32b. Motor vehicle does not include a farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan vehicle code pursuant to section 216 of the Michigan vehicle code, 1949 PA 300, MCL 257.216. Motor vehicle does not include an ORV.

(f) "Motor vehicle accident" means a loss involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle.

(g) "ORV" means a motor-driven recreation vehicle designed for off-road use and capable of cross-country travel without benefit of road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV includes, but is not limited to, a multi-track or multiwheel drive vehicle, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, an ATV as defined in section 81101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81101, or other means of transportation deriving motive power from a source other

than muscle or wind. ORV does not include a vehicle described in this subdivision that is registered for use upon a public highway and has the security described in section 3101 or 3103 in effect.

(h) “Owner” means any of the following:

(i) A person renting a motor vehicle or having the use thereof, under a lease or otherwise, for a period that is greater than 30 days.

(ii) A person who holds the legal title to a vehicle, other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.

(iii) A person who has the immediate right of possession of a motor vehicle under an installment sale contract.

(i) “Registrant” does not include a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.

(3) Security may be provided under a policy issued by an insurer duly authorized to transact business in this state which affords insurance for the payment of benefits described in subsection (1). A policy of insurance represented or sold as providing security is considered to provide insurance for the payment of the benefits.

(4) Security required by subsection (1) may be provided by any other method approved by the secretary of state as affording security equivalent to that afforded by a policy of insurance, if proof of the security is filed and continuously maintained with the secretary of state throughout the period the motor vehicle is driven or moved upon a highway. The person filing the security has all the obligations and rights of an insurer under this chapter. When the context permits, “insurer” as used in this chapter, includes any person filing the security as provided in this section.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4323 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 17, 2008.

Filed with Secretary of State July 17, 2008.

Compiler's note: House Bill No. 4323, referred to in enacting section 1, was filed with the Secretary of State July 17, 2008, and became 2008 PA 240, Imd. Eff. July 17, 2008.

[No. 242]

(SB 1206)

AN ACT to amend 1996 PA 376, entitled “An act to create and expand certain renaissance zones; to foster economic opportunities in this state; to facilitate economic development; to stimulate industrial, commercial, and residential improvements; to prevent physical and infrastructure deterioration of geographic areas in this state; to authorize expenditures; to provide exemptions and credits from certain taxes; to create certain obligations of this state and local governmental units; to require disclosure of certain transactions and gifts; to provide for appropriations; and to prescribe the powers and duties of certain state and local

departments, agencies, and officials,” by amending sections 6 and 10 (MCL 125.2686 and 125.2690), section 6 as amended by 2006 PA 304 and section 10 as amended by 2008 PA 117.

The People of the State of Michigan enact:

125.2686 State administrative board; duties; prohibitions; modification of renaissance zone boundaries.

Sec. 6. (1) The board shall review all recommendations submitted by the review board and determine which applications meet the criteria contained in section 7.

(2) The board shall do all of the following:

(a) Designate renaissance zones.

(b) Subject to subsection (3), approve or reject the duration of renaissance zone status.

(c) Subject to subsection (3), approve or reject the geographic boundaries and the total area of the renaissance zone as submitted in the application.

(3) The board shall not alter the geographic boundaries of the renaissance zone or the duration of renaissance zone status described in the application unless the qualified local governmental unit or units and the local governmental unit or units in which the renaissance zone is to be located consent by resolution to the alteration.

(4) The board shall not designate a renaissance zone under section 8 before November 1, 1996 or after December 31, 1996.

(5) Except as otherwise provided in this subsection, the designation of a renaissance zone under this act shall take effect on January 1 in the year following designation. However, for purposes of the taxes exempted under section 9(2), the designation of a renaissance zone under this act shall take effect on December 31 in the year of designation. For designations made pursuant to section 8a(2), the board of the Michigan strategic fund may choose a beginning date, provided that the date must be January 1 of a year and must not be more than 5 years after the date of designation. The board of the Michigan strategic fund may provide that the January 1 beginning date be determined under a written agreement between the board of the Michigan strategic fund and the qualified local governmental unit in which the renaissance zone is to be located. However, for purposes of the taxes exempted under section 9(2), the designation of a renaissance zone under section 8a(2) shall take effect on December 31 in the year immediately preceding the year in which the designation under section 8a(2) takes effect.

(6) The board shall not designate a renaissance zone under section 8a after December 31, 2002.

(7) Through December 31, 2002, a qualified local governmental unit in which a renaissance zone was designated under section 8 or 8a may modify the boundaries of that renaissance zone to include contiguous parcels of property as determined by the qualified local governmental unit and approval by the review board. The additional contiguous parcels of property included in a renaissance zone under this subsection do not constitute an additional distinct geographic area under section 4(1)(d). If the boundaries of the renaissance zone are modified as provided in this subsection, the additional contiguous parcels of property shall become part of the original renaissance zone on the same terms and conditions as the original designation of that renaissance zone.

(8) Notwithstanding any other provisions of this act, before July 1, 2004, a qualified local governmental unit in which a renaissance zone was designated under section 8a(1) as a renaissance zone located in a rural area may modify the boundaries of that renaissance zone to

include a contiguous parcel of property as determined by the qualified local governmental unit. The contiguous parcel of property shall only include property that is less than .5 acres in size and that the qualified local governmental unit previously sought to have included in the zone by submitting an application in February 2002 that was not acted upon by the review board. The additional contiguous parcel of property included in a renaissance zone under this subsection does not constitute an additional distinct geographic area under section 4(1)(d). If the boundaries of the renaissance zone are modified as provided in this subsection, the additional contiguous parcel of property shall become part of the original renaissance zone on the same terms and conditions as the rest of the property in that renaissance zone.

(9) A business that is located and conducts business activity within a renaissance zone designated under this act, except as designated under section 8a(2), shall not make a payment in lieu of taxes to any taxing jurisdiction within the qualified local governmental unit in which the renaissance zone is located.

(10) Notwithstanding any other provisions of this act, before July 1, 2006, a qualified local governmental unit in which a renaissance zone of less than 50 contiguous acres but more than 20 contiguous acres was designated under section 8 or 8a as a renaissance zone in a city located in a county with a population of more than 160,000 and less than 170,000 may modify the boundaries of that renaissance zone to include a contiguous parcel of property as determined by the qualified local governmental unit. The contiguous parcel of property shall only include property that is less than 12 acres in size. The additional contiguous parcel of property included in a renaissance zone under this subsection does not constitute an additional distinct geographic area under section 4(1)(d). If the boundaries of the renaissance zone are modified as provided in this subsection, the additional contiguous parcel of property shall become part of the original renaissance zone on the same terms and conditions as the rest of the property in that renaissance zone.

(11) Notwithstanding any other provisions of this act, before July 1, 2006, a qualified local governmental unit in which a renaissance zone of more than 500 acres was designated under section 8 or 8a as a renaissance zone in a county with a population of more than 61,000 and less than 64,000 may modify the boundaries of that renaissance zone to include a contiguous parcel of property as determined by the qualified local governmental unit. The contiguous parcel of property shall only include property that is less than 12 acres in size. The additional contiguous parcel of property included in a renaissance zone under this subsection does not constitute an additional distinct geographic area under section 4(1)(d). If the boundaries of the renaissance zone are modified as provided in this subsection, the additional contiguous parcel of property shall become part of the original renaissance zone on the same terms and conditions as the rest of the property in that renaissance zone.

(12) Notwithstanding any other provisions of this act, before July 1, 2006, a qualified local governmental unit in which a renaissance zone of more than 137 acres was designated under section 8 or 8a as a renaissance zone in a county with a population of more than 61,000 and less than 63,000 may modify the boundaries of that renaissance zone to include a parcel of property that is separated from the existing renaissance zone by a roadway as determined by the qualified local governmental unit. The parcel of property shall only include property that is less than 67 acres in size. The additional contiguous parcel of property included in a renaissance zone under this subsection does not constitute an additional distinct geographic area under section 4(1)(d). If the boundaries of the renaissance zone are modified as provided in this subsection, the additional contiguous parcel of property shall become part of the original renaissance zone on the same terms and conditions as the rest of the property in that renaissance zone.

125.2690 Individuals or businesses ineligible for exemption, deduction, or credit; limitations; eligibility; effect of failure to file return.

Sec. 10. (1) An individual who is a resident of a renaissance zone or a business that is located and conducts business activity within a renaissance zone or a person that owns property located in a renaissance zone is not eligible for the exemption, deduction, or credit listed in section 9(1) or (2) for that taxable year if 1 or more of the following apply:

(a) The resident, business, or property owner is delinquent on December 31 of the prior tax year under 1 or more of the following:

(i) Former 1975 PA 228 or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601.

(ii) The income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532.

(iii) 1974 PA 198, MCL 207.551 to 207.572.

(iv) The commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668.

(v) The enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123.

(vi) 1953 PA 189, MCL 211.181 to 211.182.

(vii) The technology park development act, 1984 PA 385, MCL 207.701 to 207.718.

(viii) Part 511 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.51101 to 324.51120.

(ix) The neighborhood enterprise zone act, 1992 PA 147, MCL 207.771 to 207.786.

(x) The city utility users tax act, 1990 PA 100, MCL 141.1151 to 141.1177.

(b) The resident, business, or property owner is substantially delinquent as defined in a written policy by the qualified local governmental unit in which the renaissance zone is located on December 31 of the prior tax year under 1 or both of the following:

(i) The city income tax act, 1964 PA 284, MCL 141.501 to 141.787.

(ii) Taxes, fees, and special assessments collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(c) For residential rental property in a renaissance zone, the residential rental property is not in substantial compliance with all applicable state and local zoning, building, and housing laws, ordinances, or codes and, except as otherwise provided in this subdivision, the residential rental property owner has not filed an affidavit before December 31 in the immediately preceding tax year with the local tax collecting unit in which the residential rental property is located as required under section 7ff of the general property tax act, 1893 PA 206, MCL 211.7ff. Beginning December 31, 2004, a residential rental property owner is not required to file an affidavit if the qualified local governmental unit in which the residential rental property is located determines that the residential rental property is in substantial compliance with all applicable state and local zoning, building, and housing laws, ordinances, and codes on December 31 of the immediately preceding tax year.

(2) An individual who is a resident of a renaissance zone is eligible for an exemption, deduction, or credit under section 9(1) and (2) until the department of treasury determines that the aggregate state and local tax revenue forgone as a result of all exemptions, deductions, or credits granted under this act to that individual reaches \$10,000,000.00.

(3) A casino located and conducting business activity within a renaissance zone is not eligible for the exemption, deduction, or credit listed in section 9(1) or (2). Real property in a renaissance zone on which a casino is operated, personal property of a casino located in a renaissance zone, and all property associated or affiliated with the operation of a casino is not eligible for the exemption, deduction, or credit listed in section 9(1) or (2). As used in this subsection, "casino" means a casino or a parking lot, hotel, motel, or retail store owned or

operated by a casino, an affiliate, or an affiliated company, regulated by this state pursuant to the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(4) For tax years beginning on or after January 1, 1997, an individual who is a resident of a renaissance zone shall not be denied the exemption under subsection (1) if the individual failed to file a return on or before December 31 of the prior tax year under subsection (1)(a)(ii) and that individual was entitled to a refund under that act.

(5) A business that is located and conducts business activity within a renaissance zone shall not be denied the exemption under subsection (1) if the business failed to file a return on or before December 31 of the prior tax year under subsection (1)(a)(i) and that business had no tax liability under that act for the tax year for which the return was not filed.

This act is ordered to take immediate effect.

Approved July 17, 2008.

Filed with Secretary of State July 17, 2008.

[No. 243]

(SB 886)

AN ACT to amend 1893 PA 206, entitled “An act to provide for the assessment of rights and interests, including leasehold interests, in property and the levy and collection of taxes on property, and for the collection of taxes levied; making those taxes a lien on the property taxed, establishing and continuing the lien, providing for the sale or forfeiture and conveyance of property delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to provide for the establishment of a delinquent tax revolving fund and the borrowing of money by counties and the issuance of notes; to define and limit the jurisdiction of the courts in proceedings in connection with property delinquent for taxes; to limit the time within which actions may be brought; to prescribe certain limitations with respect to rates of taxation; to prescribe certain powers and duties of certain officers, departments, agencies, and political subdivisions of this state; to provide for certain reimbursements of certain expenses incurred by units of local government; to provide penalties for the violation of this act; and to repeal acts and parts of acts,” by amending section 7dd (MCL 211.7dd), as amended by 2006 PA 114.

The People of the State of Michigan enact:

211.7dd Definitions.

Sec. 7dd. As used in sections 7cc and 7ee:

(a) “Owner” means any of the following:

(i) A person who owns property or who is purchasing property under a land contract.

(ii) A person who is a partial owner of property.

(iii) A person who owns property as a result of being a beneficiary of a will or trust or as a result of intestate succession.

(iv) A person who owns or is purchasing a dwelling on leased land.

(v) A person holding a life lease in property previously sold or transferred to another.

(vi) A grantor who has placed the property in a revocable trust or a qualified personal residence trust.

(vii) The sole present beneficiary of a trust if the trust purchased or acquired the property as a principal residence for the sole present beneficiary of the trust, and the sole present beneficiary of the trust is totally and permanently disabled. As used in this subparagraph, “totally and permanently disabled” means disability as defined in section 216 of title II of the social security act, 42 USC 416, without regard as to whether the sole present beneficiary of the trust has reached the age of retirement.

(viii) A cooperative housing corporation.

(ix) A facility registered under the living care disclosure act, 1976 PA 440, MCL 554.801 to 554.844.

(b) “Person”, for purposes of defining owner as used in section 7cc, means an individual and for purposes of defining owner as used in section 7ee means an individual, partnership, corporation, limited liability company, association, or other legal entity.

(c) “Principal residence” means the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established. Except as otherwise provided in this subdivision, principal residence includes only that portion of a dwelling or unit in a multiple-unit dwelling that is subject to ad valorem taxes and that is owned and occupied by an owner of the dwelling or unit. Principal residence also includes all of an owner’s unoccupied property classified as residential that is adjoining or contiguous to the dwelling subject to ad valorem taxes and that is owned and occupied by the owner. Contiguity is not broken by a road, a right-of-way, or property purchased or taken under condemnation proceedings by a public utility for power transmission lines if the 2 parcels separated by the purchased or condemned property were a single parcel prior to the sale or condemnation. Except as otherwise provided in this subdivision, principal residence also includes any portion of a dwelling or unit of an owner that is rented or leased to another person as a residence as long as that portion of the dwelling or unit that is rented or leased is less than 50% of the total square footage of living space in that dwelling or unit. Principal residence also includes a life care facility registered under the living care disclosure act, 1976 PA 440, MCL 554.801 to 554.844. Principal residence also includes property owned by a cooperative housing corporation and occupied by tenant stockholders. Property that qualified as a principal residence shall continue to qualify as a principal residence for 3 years after all or any portion of the dwelling or unit included in or constituting the principal residence is rented or leased to another person as a residence if all of the following conditions are satisfied:

(i) The owner of the dwelling or unit is absent while on active duty in the armed forces of the United States.

(ii) The dwelling or unit would otherwise qualify as the owner’s principal residence.

(iii) Except as otherwise provided in this subparagraph, the owner files an affidavit with the assessor of the local tax collecting unit on or before May 1 attesting that it is his or her intent to occupy the dwelling or unit as a principal residence upon completion of active duty in the armed forces of the United States. In 2008 only, the owner may file an affidavit under this subparagraph on or before December 31. A copy of an affidavit filed under this subparagraph shall be forwarded to the department of treasury pursuant to a schedule prescribed by the department of treasury.

(d) “Qualified agricultural property” means unoccupied property and related buildings classified as agricultural, or other unoccupied property and related buildings located on that property devoted primarily to agricultural use as defined in section 36101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.36101. Related buildings include a residence occupied by a person employed in or actively involved in the agricultural use and who has not claimed a principal residence exemption on other property. Property

used for commercial storage, commercial processing, commercial distribution, commercial marketing, or commercial shipping operations or other commercial or industrial purposes is not qualified agricultural property. A parcel of property is devoted primarily to agricultural use only if more than 50% of the parcel's acreage is devoted to agricultural use. An owner shall not receive an exemption for that portion of the total state equalized valuation of the property that is used for a commercial or industrial purpose or that is a residence that is not a related building.

This act is ordered to take immediate effect.

Approved July 17, 2008.

Filed with Secretary of State July 17, 2008.

[No. 244]

(SB 1243)

AN ACT to amend 1966 PA 346, entitled "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," by amending section 58b (MCL 125.1458b), as added by 2004 PA 480, and by adding sections 58e and 58f; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

125.1458b Michigan housing and community development program; creation and implementation; purpose; availability of financing to eligible applicants; biennial allocation plan; public hearings; annual report; rules.

Sec. 58b. (1) The authority shall create and implement the Michigan housing and community development program for the purpose of developing and coordinating public and private resources to meet the housing needs of low income, very low income, and extremely low income households and to finance projects located in a downtown area or adjacent neighborhood in this state.

(2) The authority shall identify, select, and make financing available to eligible applicants from money in the fund or from money secured by the fund for housing for low income, very low income, and extremely low income households and for projects located in a downtown area or adjacent neighborhood. This subsection does not preclude the authority from using other resources in conjunction with the fund for a purpose authorized under this chapter.

(3) The authority shall develop a biennial allocation plan providing for the allocation of money from the fund, according to all of the following:

(a) The allocation plan shall contain a formula for distributing money throughout the state based on the number of persons experiencing poverty, economic, and housing distress in various regions of the state.

(b) The allocation plan shall include a preference for special population groups described in section 58c(2).

(c) Not less than 25% of the fund shall be earmarked for rental housing projects that do not qualify under preferences for special population groups or other preferences contained in the allocation plan.

(d) Not less than 30% of the fund shall be earmarked for projects that target extremely low income households and include at a minimum developing housing for the homeless, supportive housing, transitional housing, and permanent housing.

(e) A rental housing project assisted by the fund must set aside at least 20% of the rental units included in the project for households earning no more than 60% of the area median income.

(f) A home ownership project assisted by the fund must set aside at least 20% of the housing units in the project for households earning no more than 60% of the area median income.

(g) Money that has not been committed at the end of a fiscal year shall not be carried over in the category to which the money had been allocated during that fiscal year, but shall be reallocated for the next fiscal year according to the next fiscal year's allocation plan.

(5) Prior to developing the biennial allocation plan, the authority shall hold public hearings in at least 3 separate locations in this state regarding the content of the biennial allocation plan. The authority may make modifications to the allocation plan necessary to facilitate the administration of the Michigan housing and community development program or to address unforeseen circumstances.

(6) The authority shall issue an annual report to the governor and the legislature summarizing the expenditures of the fund for the prior fiscal year including at a minimum a description of the eligible applicants that received funding, the number of housing units that were produced, the income levels of the households that were served, the number of homeless persons served, and the number of downtown areas and adjacent neighborhoods that receive financing.

(7) The authority may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this chapter.

125.1458e Michigan housing and community development fund advisory committee; creation; membership; terms; vacancy; compensation; expenses; chairperson; vice-chairperson; scope of advice; space, supplies, and staff; public meetings; quorum; majority vote; information used for personal gain prohibited; adoption of code of ethics.

Sec. 58e. (1) The Michigan housing and community development fund advisory committee is created in the authority. The committee shall have 10 members. Members of the committee shall include the executive director of the authority, who shall serve as a nonvoting ex officio member, and the following 9 members appointed by the governor with the advice and consent of the senate:

(a) An individual representing housing lenders, developers, or builders appointed by the governor from a list of 3 or more individuals nominated by the speaker of the house of representatives.

(b) An individual representing housing lenders, developers, or builders appointed by the governor from a list of 3 or more individuals nominated by the majority leader of the senate.

(c) An individual representing cities, villages, or townships.

(d) An individual representing local housing organizations.

(e) An individual representing nonprofit organizations.

(f) An individual representing a local economic development corporation, a downtown development authority, a corridor improvement authority, a business improvement district, or a principal shopping district.

(g) An individual representing a local neighborhood association or neighborhood improvement authority.

(h) Two other residents of this state.

(2) Except as provided in subsection (3), the term of a member of the committee appointed by the governor under subsection (1) shall be 4 years.

(3) Of the members initially appointed by the governor under subsection (1), 2 members shall be appointed for a term expiring on November 30, 2008, 2 members shall be appointed for a term expiring on November 30, 2009, 3 members shall be appointed for a term expiring on November 30, 2010, and 2 members shall be appointed for a term expiring on November 30, 2011.

(4) A vacancy on the committee arising for a reason other than the expiration of a term shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

(5) Members of the committee shall serve without compensation but, subject to available funding, may receive reimbursement for their actual and necessary expenses while attending meetings or performing other authorized official business of the committee.

(6) The governor shall designate 1 member of the committee to serve as chairperson of the committee at the pleasure of the governor. The members of the committee may elect a member of the committee to serve as vice-chairperson of the committee and may elect other members of the committee as officers of the committee as the committee considers appropriate.

(7) The committee may advise the authority on all of the following:

(a) Recommendations for the biennial allocation plan required under section 58b.

(b) Expenditures from the fund under this chapter, including all of the following:

(i) Whether expenditures are distributed fairly and equitably.

(ii) Whether expenditures satisfy housing needs and priorities in this state.

(iii) Whether expenditures satisfy the economic needs and priorities of communities benefiting from the expenditures.

(8) The committee may meet with representatives of the authority, including authority employees and members of the board of directors of the authority, to discuss and provide advice on matters relating to the fund.

(9) The authority may provide the committee with meeting space, supplies, and staff to support the functions of the committee under this section.

(10) A meeting of the committee shall be conducted as a public meeting held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Notice of the date, time, and place of a public meeting of the committee shall be given as prescribed in the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A majority of the members of the committee serving constitute a quorum for the transaction of the committee's business. The committee shall act by a majority vote of its serving members.

(11) A member of the committee shall not use for personal gain information obtained by the member while performing business of the committee, nor shall a member of the committee disclose confidential information obtained by the member while conducting committee business, except as necessary to perform committee business. The committee shall adopt a

code of ethics for its members and establish policies and procedures requiring the disclosure of relationships that may give rise to a conflict of interest. The committee shall require that any member of the committee with a direct or indirect interest in any matter before the committee disclose the member's interest to the committee before the committee takes any action on the matter.

125.1458f Rights of holders of authority bonds or notes; construction of chapter as to status of money controlled by authority.

Sec. 58f. (1) When performing duties under this chapter, the authority and the committee created under section 58e shall remain cognizant of the rights of the holders of authority bonds or notes and the extent to which certain authority bond and note contracts may require the authority to either maintain sufficient personnel or contract for services to plan authority programs and to supervise enforcement and, where necessary, foreclosure of authority mortgage agreements.

(2) Nothing in this chapter shall be construed to affect the status of money of the authority controlled by the authority as state funds appropriated to the authority lose their identity as state funds upon payment to the authority and become public funds of the authority solely under the control of the authority and funds established by or within the authority and are public trust funds administered by the authority. Nothing in this chapter shall be construed to impair the obligation of any bond or note issued by the authority. Bonds and notes issued by the authority are obligations of the authority and not obligations of this state.

Repeal of MCL 125.2821 to 125.2829.

Enacting section 1. The Michigan housing and community development fund act, 2004 PA 479, MCL 125.2821 to 125.2829, is repealed.

This act is ordered to take immediate effect.

Approved July 17, 2008.

Filed with Secretary of State July 17, 2008.

[No. 245]

(SB 1095)

AN ACT to make appropriations for the department of corrections and certain state purposes related to corrections for the fiscal year ending September 30, 2009; to provide for the expenditure of the appropriations; to provide for reports; to provide for the creation of certain advisory committees and boards; to prescribe certain powers and duties of the department of corrections, certain other state officers and agencies, and certain advisory committees and boards; to provide for the collection of certain funds; and to provide for the disposition of fees and other income received by certain state agencies.

The People of the State of Michigan enact:

PART 1

LINE-ITEM APPROPRIATIONS

Appropriations; department of corrections.

Sec. 101. Subject to the conditions set forth in this act, the amounts listed in this part are appropriated for the department of corrections for the fiscal year ending September 30,

2009, from the funds indicated in this part. The following is a summary of the appropriations in this part:

DEPARTMENT OF CORRECTIONS

APPROPRIATION SUMMARY:

Average population.....	51,841	
Full-time equated unclassified positions	16.0	
Full-time equated classified positions.....	17,087.0	
GROSS APPROPRIATION		\$ 2,040,648,200
Interdepartmental grant revenues:		
Total interdepartmental grants and intradepartmental transfers.....		1,277,200
ADJUSTED GROSS APPROPRIATION		\$ 2,039,371,000
Federal revenues:		
Total federal revenues		10,350,200
Special revenue funds:		
Total local revenues.....		430,300
Total private revenues.....		0
Total other state restricted revenues		53,094,700
State general fund/general purpose		\$ 1,975,495,800

Executive.

Sec. 102. EXECUTIVE

Full-time equated unclassified positions	16.0	
Full-time equated classified positions	5.0	
Unclassified positions—16.0 FTE positions.....		\$ 1,360,000
Executive direction—5.0 FTE positions		1,311,600
GROSS APPROPRIATION		\$ 2,671,600
Appropriated from:		
State general fund/general purpose		\$ 2,671,600

Planning and community support.

Sec. 103. PLANNING AND COMMUNITY SUPPORT

Full-time equated classified positions.....	72.0	
Planning, community development and research—		
32.0 FTE positions.....		\$ 3,361,400
Mental health awareness training		100,000
Prisoner reintegration programs.....		33,173,700
Community corrections administration—17.0 FTE positions		1,876,800
Substance abuse testing and treatment services—		
23.0 FTE positions.....		20,262,100
Residential services.....		17,075,500
Community corrections comprehensive plans and services.....		12,758,000
Public education and training.....		50,000
Regional jail program		100
Felony drunk driver jail reduction and community treatment		
program		1,740,100
County jail reimbursement program		12,272,100
GROSS APPROPRIATION		\$ 102,669,800
Appropriated from:		
Federal revenues:		
DOJ-OJP, Byrne grants		729,600

	For Fiscal Year Ending Sept. 30, 2009
DOJ-OJP, RSAT	\$ 142,800
DOJ, prisoner reintegration.....	1,035,000
Special revenue funds:	
Civil infraction fees	7,514,400
State general fund/general purpose	\$ 93,248,000

Operations support administration.

Sec. 104. OPERATIONS SUPPORT ADMINISTRATION

Full-time equated classified positions.....	133.9
Operations support administration—43.0 FTE positions.....	\$ 5,052,200
New custody staff training	13,313,300
Compensatory buyout and union leave bank.....	100
Workers' compensation	15,629,000
Bureau of fiscal management—59.9 FTE positions	5,440,700
Office of legal services—22.0 FTE positions	2,409,400
Internal audit services.....	660,400
Internal affairs—9.0 FTE positions	915,000
Rent.....	2,095,200
Equipment and special maintenance.....	2,425,500
Administrative hearings officers	3,820,500
Judicial data warehouse user fees	50,000
Sheriffs' coordinating and training office	500,000
Prosecutorial and detainer expenses	4,051,000
GROSS APPROPRIATION	\$ 56,362,300
Appropriated from:	
Interdepartmental grant revenues:	
IDG-MDSP, Michigan justice training fund.....	698,400
Special revenue funds:	
Local corrections officer training fund	500,000
Correctional industries revolving fund.....	108,300
State general fund/general purpose	\$ 55,055,600

Field operations administration.

Sec. 105. FIELD OPERATIONS ADMINISTRATION

Full-time equated classified positions.....	1,952.9
Field operations—1,802.9 FTE positions	\$ 153,156,400
Parole board operations—58.0 FTE positions.....	5,020,700
Parole/probation services.....	2,867,300
Intensive probation pilot program	980,000
Community re-entry centers—52.0 FTE positions	15,298,100
Electronic monitoring center—40.0 FTE positions.....	8,637,700
GROSS APPROPRIATION	\$ 185,960,200
Appropriated from:	
Special revenue funds:	
Local - community tether program reimbursement.....	430,300

Compiler's note: The shaded text was vetoed by the Governor, whose veto message appears in this volume under the heading "Vetoed."

	For Fiscal Year Ending Sept. 30, 2009
Re-entry center offender reimbursements	\$ 135,000
Parole and probation oversight fees	10,795,100
Parole and probation oversight fees set-aside	3,267,300
Public works user fees	249,400
Tether program, participant contributions	6,033,800
State general fund/general purpose	\$ 165,049,300

Correctional facilities administration.

Sec. 106. CORRECTIONAL FACILITIES

ADMINISTRATION

Full-time equated classified positions	1,391.9
Correctional facilities administration—41.0 FTE positions	\$ 7,427,600
Prison food service—494.0 FTE positions	83,585,000
Transportation—236.9 FTE positions	24,875,100
Central records—58.5 FTE positions	4,907,500
Inmate legal services	704,900
Loans to parolees	179,400
Housing inmates in federal institutions	793,900
Prison industries operations—219.0 FTE positions	19,973,900
Education services and federal education grants— 10.0 FTE positions	5,719,500
Federal school lunch program	712,800
Leased beds and alternatives to leased beds	100
Inmate housing fund	100
MPRI education program—332.5 FTE positions	36,610,100
GROSS APPROPRIATION	\$ 185,489,900

Appropriated from:

Interdepartmental grant revenues:	
IDG-MDCH, forensic center food service	578,800
Federal revenues:	
DAG-FNS, national school lunch	712,800
DED-OESE, title I	521,900
DED-OSERS	101,300
DED-OVAE, adult education	1,893,000
DED, adult literacy grants	308,400
DED, vocational education equipment	277,400
DED, youthful offender/Specter grant	1,289,700
DOJ-BOP, federal prisoner reimbursement	211,000
DOJ-OJP, serious and violent offender reintegration initiative	1,010,300
DOJ, prison rape elimination act grant	1,004,300
SSA-SSI, incentive payment	124,100
Special revenue funds:	
Correctional industries revolving fund	19,973,900
State general fund/general purpose	\$ 157,483,000

Consent decrees.

Sec. 107. CONSENT DECREES

Full-time equated classified positions	236.5
DOJ, psychiatric plan - MDCH mental health services	\$ 39,344,800

For Fiscal Year
Ending Sept. 30,
2009

DOJ, psychiatric plan - MDOC staff and services— 236.5 FTE positions.....	\$	17,937,900
GROSS APPROPRIATION	\$	57,282,700
Appropriated from:		
State general fund/general purpose	\$	57,282,700

Health care.

Sec. 108. HEALTH CARE

Full-time equated classified positions		1,229.6
Health care administration—20.0 FTE positions	\$	2,762,100
Hospital and specialty care services		80,274,900
Vaccination program		691,200
Northern region clinical complexes—276.4 FTE positions		38,782,800
Southeastern region clinical complexes—622.4 FTE positions		99,852,900
Southwestern region clinical complexes—310.8 FTE positions		45,015,700
GROSS APPROPRIATION	\$	267,379,600
Appropriated from:		
Special revenue funds:		
Prisoner health care copayments.....		332,400
State general fund/general purpose	\$	267,047,200

Northern region correctional facilities.

Sec. 109. NORTHERN REGION CORRECTIONAL FACILITIES

Average population.....		15,855
Full-time equated classified positions		3,900.6
Alger maximum correctional facility - Munising— 323.0 FTE positions.....	\$	31,092,000
Average population.....		849
Baraga maximum correctional facility - Baraga— 387.1 FTE positions.....		36,255,700
Average population.....		1,172
Chippewa correctional facility - Kincheloe—519.3 FTE positions.....		49,188,700
Average population.....		2,282
Kinross correctional facility - Kincheloe—541.1 FTE positions.....		53,928,900
Average population.....		2,999
Marquette branch prison - Marquette—359.1 FTE positions		37,147,100
Average population.....		1,201
Newberry correctional facility - Newberry—280.9 FTE positions ...		26,002,000
Average population.....		978
Oaks correctional facility - Eastlake—316.5 FTE positions		33,477,400
Average population.....		1,156
Ojibway correctional facility - Marenisco—261.9 FTE positions.....		23,837,300
Average population.....		1,378
Pugsley correctional facility - Kingsley—222.0 FTE positions.....		20,125,400
Average population.....		1,158
Saginaw correctional facility - Freeland—323.8 FTE positions.....		30,993,700
Average population.....		1,480

	For Fiscal Year Ending Sept. 30, 2009
Standish maximum correctional facility - Standish—	
365.9 FTE positions.....	\$ 36,462,900
Average population.....1,202	
GROSS APPROPRIATION	\$ 378,511,100
Appropriated from:	
Special revenue funds:	
Public works user fees.....	1,356,700
State general fund/general purpose	\$ 377,154,400

Southeastern region correctional facilities.

Sec. 110. SOUTHEASTERN REGION CORRECTIONAL FACILITIES

Average population.....	16,637
Full-time equated classified positions.....	4,245.5
Cooper Street correctional facility - Jackson—277.9 FTE positions... \$	28,151,800
Average population.....	1,752
G. Robert Cotton correctional facility - Jackson—	
407.5 FTE positions.....	38,273,500
Average population.....	1,854
Charles E. Egeler correctional facility - Jackson—	
362.3 FTE positions.....	38,698,000
Average population.....	1,108
Gus Harrison correctional facility - Adrian—484.9 FTE positions ...	46,740,300
Average population.....	2,342
Huron Valley correctional complex - Ypsilanti—	
691.2 FTE positions.....	67,617,100
Average population.....	1,872
Macomb correctional facility - New Haven—291.6 FTE positions...	27,110,600
Average population.....	1,228
Mound correctional facility - Detroit—276.9 FTE positions.....	25,889,900
Average population.....	1,051
Parnall correctional facility - Jackson—261.8 FTE positions.....	26,006,500
Average population.....	1,712
Ryan correctional facility - Detroit—324.9 FTE positions	28,702,500
Average population.....	1,059
Robert Scott correctional facility - Plymouth—353.5 FTE positions...	18,485,000
Average population.....	1,040
Thumb correctional facility - Lapeer—296.0 FTE positions	28,966,400
Average population.....	1,219
Special alternative incarceration program - Cassidy Lake—	
120.0 FTE positions.....	10,764,000
Average population.....	400
Jackson area support and services - Jackson—97.0 FTE positions ..	17,464,300
GROSS APPROPRIATION	\$ 402,869,900
Appropriated from:	
Federal revenues:	
DOJ, state criminal alien assistance program	988,600

For Fiscal Year
Ending Sept. 30,
2009

Special revenue funds:		
Public works user fees.....	\$	1,508,400
State general fund/general purpose	\$	400,372,900

Southwestern region correctional facilities.

Sec. 111. SOUTHWESTERN REGION CORRECTIONAL FACILITIES

Average population.....		19,349
Full-time equated classified positions.....		3,919.1
Bellamy Creek correctional facility - Ionia—389.6 FTE positions ...	\$	36,258,700
Average population.....		1,850
Earnest C. Brooks correctional facility - Muskegon—		
474.2 FTE positions.....		45,409,100
Average population.....		2,440
Carson City correctional facility - Carson City—		
480.8 FTE positions.....		46,904,200
Average population.....		2,440
Richard A. Handlon correctional facility - Ionia—		
238.4 FTE positions.....		22,938,200
Average population.....		1,320
Ionia maximum correctional facility - Ionia—307.7 FTE positions...		29,168,900
Average population.....		707
Lakeland correctional facility - Coldwater—590.7 FTE positions.....		56,947,100
Average population.....		3,102
Michigan reformatory - Ionia—411.3 FTE positions		39,029,500
Average population.....		2,538
Muskegon correctional facility - Muskegon—215.7 FTE positions ...		23,068,200
Average population.....		1,326
Pine River correctional facility - St. Louis—209.7 FTE positions ...		20,161,800
Average population.....		1,200
St. Louis correctional facility - St. Louis—545.0 FTE positions		51,063,300
Average population.....		2,426
Ionia area support and services - Ionia—56.0 FTE positions		11,412,700
GROSS APPROPRIATION	\$	<u>382,361,700</u>
Appropriated from:		
Special revenue funds:		
Public works user fees.....		619,800
State general fund/general purpose	\$	381,741,900

Information technology.

Sec. 112. INFORMATION TECHNOLOGY

Information technology services and projects.....	\$	19,089,400
GROSS APPROPRIATION	\$	<u>19,089,400</u>
Appropriated from:		
Special revenue funds:		
Correctional industries revolving fund.....		142,100
Parole and probation oversight fees set-aside		558,100
State general fund/general purpose	\$	18,389,200

PART 2

PROVISIONS CONCERNING APPROPRIATIONS

GENERAL SECTIONS**Total state spending; payments to local units of government.**

Sec. 201. Pursuant to section 30 of article IX of the state constitution of 1963, total state spending from state resources under part 1 for fiscal year 2008-2009 is \$2,028,590,500.00 and state spending from state resources to be paid to local units of government for fiscal year 2008-2009 is \$89,162,800.00. The itemized statement below identifies appropriations from which spending to local units of government will occur:

DEPARTMENT OF CORRECTIONS

Field operations - assumption of county probation staff.....	\$	47,677,800
Public service work projects		7,841,700
Community corrections comprehensive plans and services.....		12,758,000
Community corrections residential services.....		17,075,500
Community corrections public education and training		50,000
Felony drunk driver jail reduction and community treatment program		1,740,100
Community reentry centers		2,019,600
Regional jail program		100
TOTAL.....	\$	89,162,800

Appropriations subject to MCL 18.1101 to 18.1594.

Sec. 202. The appropriations authorized under this act are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

Definitions.

Sec. 203. As used in this act:

- (a) "DAG" means the United States department of agriculture.
- (b) "DAG-FNS" means the DAG food and nutrition service.
- (c) "DED" means the United States department of education.
- (d) "DED-OESE" means the DED office of elementary and secondary education.
- (e) "DED-OSERS" means the DED office of special education and rehabilitative services.
- (f) "DED-OVAE" means the DED office of vocational and adult education.
- (g) "Department" or "MDOC" means the Michigan department of corrections.
- (h) "DOJ" means the United States department of justice.
- (i) "DOJ-BOP" means the DOJ bureau of prisons.
- (j) "DOJ-OJP" means the DOJ office of justice programs.
- (k) "FTE" means full-time equated.
- (l) "GED" means general educational development certificate.
- (m) "GPS" means global positioning system.
- (n) "HIV" means human immunodeficiency virus.
- (o) "IDG" means interdepartmental grant.
- (p) "IDT" means intradepartmental transfer.
- (q) "MDCH" means the Michigan department of community health.

(r) “Medicaid benefit” means a benefit paid or payable under a program for medical assistance under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(s) “MDSP” means the Michigan department of state police.

(t) “MPRI” means the Michigan prisoner reentry initiative.

(u) “OCC” means the office of community corrections.

(v) “RSAT” means residential substance abuse treatment.

(w) “SSA” means the United States social security administration.

(x) “SSA-SSI” means SSA supplemental security income.

Billing by civil service commission.

Sec. 204. The civil service commission shall bill departments and agencies at the end of the first fiscal quarter for the 1% charge authorized by section 5 of article XI of the state constitution of 1963. Payments shall be made for the total amount of the billing by the end of the second fiscal quarter.

Hiring freeze; exceptions.

Sec. 205. (1) A hiring freeze is imposed on the state classified civil service. State departments and agencies are prohibited from hiring any new full-time state classified civil service employees and prohibited from filling any vacant state classified civil service positions. This hiring freeze does not apply to internal transfers of classified employees from 1 position to another within a department.

(2) The state budget director may grant exceptions to the hiring freeze when the state budget director believes that this hiring freeze will result in rendering a state department or agency unable to deliver basic services, cause loss of revenue to the state, result in the inability of the state to receive federal funds, or necessitate additional expenditures that exceed any savings from maintaining a vacancy. The state budget director shall report quarterly to the chairpersons of the senate and house standing committees on appropriations the number of exceptions to the hiring freeze approved during the previous quarter and the reasons to justify the exception.

Communication of employee with legislative member or staff.

Sec. 206. The department shall not take disciplinary action against an employee for communicating with a member of the legislature or his or her staff.

Privatization; project plan.

Sec. 207. At least 90 days before beginning any effort to privatize, the department shall submit a complete project plan to the appropriate senate and house appropriations subcommittees and the senate and house fiscal agencies. The plan shall include the criteria under which the privatization initiative will be evaluated. The evaluation shall be completed and submitted to the appropriate senate and house appropriations subcommittees and the senate and house fiscal agencies within 30 months.

Preprivatization cost-benefit analysis; records; contracts to privatize services; bids by state employees.

Sec. 207a. (1) Before privatizing any services or activities currently provided by state employees in the department, the department shall submit to the senate and house appropriations committees a preprivatization cost-benefit analysis. This analysis shall utilize accurate, reliable, and objective data. Included in this analysis shall be a comparative estimate of the costs that will be incurred by this state over the life of the contract if 1 or both of the following occur:

(a) The service or activity continues to be provided by state employees.

(b) The service or activity is privatized. The costs of privatizing these services shall include the costs of all necessary monitoring and oversight of the private entity by this state. These private entities shall be adequately bonded, so as not to expose the state to any potential future liability or legal causes of action.

(2) The department shall not commence any efforts to privatize the services or activities currently provided by state employees under part 1 until the cost-benefit analysis prescribed by subsection (1) has been sent to both the senate and house appropriations committees 14 days prior to the efforts to privatize and proves a cost savings of at least 5% of the costs of continuing to use state employees in providing the services or activities.

(3) A private contractor with a contract with this state that expends state or federal tax dollars shall have all records pertinent to state contracts, including all records detailing compliance with section 209, be subject to disclosure to the department or the department of management and budget.

(4) State employees shall be given the opportunity to bid on contracts that privatize services that are or were provided by state employees. If the contract is awarded to any state employee, he or she ceases being an employee of the state.

Reporting requirements; use of Internet.

Sec. 208. The department shall use the Internet to fulfill the reporting requirements of this act. This requirement may include transmission of reports via electronic mail to the recipients identified for each reporting requirement or it may include placement of reports on an Internet or Intranet site. There shall be at least 1 separate and distinct electronic file for each section that includes a reporting requirement.

Purchase of foreign goods or services; preference.

Sec. 209. Funds appropriated in part 1 shall not be used for the purchase of foreign goods or services, or both, if competitively priced and comparable quality American goods or services, or both, are available. Preference shall be given to goods or services, or both, manufactured or provided by Michigan businesses if they are competitively priced and of comparable quality. In addition, preference shall be given to goods or services, or both, that are manufactured or provided by Michigan businesses owned and operated by veterans if they are competitively priced and of comparable quality.

Individuals seeking employment; submission to substance abuse test.

Sec. 210. (1) Pursuant to the provisions of civil service rules and regulations and applicable collective bargaining agreements, individuals seeking employment with the department shall submit to a controlled substance test. The test shall be administered by the department.

(2) Individuals seeking employment with the department who refuse to take a controlled substance test or who test positive for the illicit use of a controlled substance on such a test shall be denied employment.

Expenses related to certain services and activities; revenues and fees.

Sec. 211. The department may charge fees and collect revenues in excess of appropriations in part 1 not to exceed the cost of offender services and programming, employee meals, parolee loans, academic/vocational services, custody escorts, compassionate visits, union steward activities, public work programs, and services provided to units of government. The revenues and fees collected are appropriated for all expenses associated with these services and activities.

Produce from Michigan growers and processors; preference.

Sec. 212. Preference should be given to purchasing produce from Michigan growers and processors when their produce is competitively priced and of comparable quality.

Nongeneral fund/general purpose sources of revenue; report.

Sec. 213. By February 15, 2009, the department shall provide the members of the senate and house appropriations subcommittees on corrections, the senate and house fiscal agencies, and the state budget director with a report detailing nongeneral fund/general purpose sources of revenue, including, but not limited to, federal revenues, state restricted revenues, local and private revenues, offender reimbursements and other payments, revolving funds, and 1-time sources of revenue, whether or not such revenues were appropriated. The report shall include statements detailing for each account the total amount of revenue received during fiscal year 2007-2008, the amount by which the revenue exceeded any applicable appropriated fund source, the amount spent during fiscal year 2007-2008, the account balance at the close of fiscal year 2007-2008, and the projected revenues and expenditures for fiscal year 2008-2009.

Technology-related services and projects; payment of user fees.

Sec. 214. From the funds appropriated in part 1 for information technology, the department shall pay user fees to the department of information technology for technology-related services and projects. These user fees shall be subject to provisions of an interagency agreement between the departments and agencies and the department of information technology.

Information technology; amounts designated as work projects.

Sec. 215. Amounts appropriated in part 1 for information technology may be designated as work projects and carried forward to support department of corrections technology projects under the direction of the department of information technology. Funds designated in this manner are not available for expenditure until approved as work projects under section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a.

Out-of-state travel; exceptions; report.

Sec. 216. (1) Due to the current budgetary problems in this state, out-of-state travel for the fiscal year ending September 30, 2009 shall be limited to situations in which 1 or more of the following conditions apply:

- (a) The travel is required by legal mandate or court order or for law enforcement purposes.
- (b) The travel is necessary to protect the health or safety of Michigan citizens or visitors or to assist other states in similar circumstances.
- (c) The travel is necessary to produce budgetary savings or to increase state revenues, or both, including protecting existing federal funds or securing additional federal funds.
- (d) The travel is necessary to comply with federal requirements.
- (e) The travel is necessary to secure specialized training for staff that is not available within this state.
- (f) The travel is financed entirely by federal or nonstate funds.

(2) If out-of-state travel is necessary but does not meet 1 or more of the conditions listed in subsection (1), the state budget director may grant an exception to allow the travel. Any exceptions granted by the state budget director shall be reported on a monthly basis to the senate and house standing committees on appropriations.

(3) Not later than January 1 of each year, each department shall prepare a travel report listing all travel by classified and unclassified employees outside this state in the immediately preceding fiscal year that was funded in whole or in part with funds appropriated in

the department's budget. The report shall be submitted to the chairs and members of the senate and house standing committees on appropriations, the fiscal agencies, and the state budget director. The report shall include the following information:

- (a) The name of each person receiving reimbursement for travel outside this state or whose travel costs were paid by this state.
- (b) The destination of each travel occurrence.
- (c) The dates of each travel occurrence.
- (d) A brief statement of the reason for each travel occurrence.
- (e) The transportation and related costs of each travel occurrence, including the proportion funded with state general fund/general purpose revenues, the proportion funded with state restricted revenues, the proportion funded with federal revenues, and the proportion funded with other revenues.
- (f) A total of all out-of-state travel funded for the immediately preceding fiscal year.

Contracts to provide services or supplies; businesses in deprived and depressed communities.

Sec. 217. The director shall take all reasonable steps to ensure businesses in deprived and depressed communities compete for and perform contracts to provide services or supplies, or both. The director shall strongly encourage firms with which the department contracts to subcontract with certified businesses in deprived and depressed communities for services, supplies, or both.

Employee dry cleaning allowances.

Sec. 218. It is the intent of the legislature that no expenditures for employee dry cleaning allowances be made or obligations to pay employee dry cleaning allowances be incurred for dry cleaning allowances in excess of the amounts authorized under collective bargaining contracts in effect from January 1, 2002 to December 31, 2004.

Prisoner telephone services; contract.

Sec. 219. Any contract for prisoner telephone services entered into after the effective date of this act shall include a condition that fee schedules for prisoner telephone calls, including rates and any surcharges other than those necessary to meet special equipment costs, be the same as fee schedules for calls placed from outside of correctional facilities.

Policy changes; report; applicability of rule to small business; definitions.

Sec. 221. (1) The department shall report no later than April 1, 2009 on each specific policy change made to implement a public act affecting the department that took effect during the previous calendar year to the senate and house appropriations subcommittees on corrections, the joint committee on administrative rules, and the senate and house fiscal agencies.

(2) Funds appropriated in part 1 shall not be used to adopt a rule that will apply to a small business and that will have a disproportionate economic impact on small businesses because of the size of those businesses if the department fails to reduce the disproportionate economic impact of the rule on small businesses as provided under section 40 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.240.

(3) As used in this section:

(a) "Rule" means that term as defined under section 7 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.207.

(b) "Small business" means that term as defined under section 7a of the administrative procedures act of 1969, 1969 PA 306, MCL 24.207a.

Legal services.

Sec. 222. Funds appropriated in part 1 shall not be used by a principal executive department, state agency, or authority to hire a person to provide legal services that are the responsibility of the attorney general. This prohibition does not apply to legal services for bonding activities and for those activities that the attorney general authorizes.

Contingency funds.

Sec. 223. (1) In addition to the funds appropriated in part 1, there is appropriated an amount not to exceed \$10,000,000.00 for federal contingency funds. These funds are not available for expenditure until they have been transferred to another line item in this act under section 393(2) of the management and budget act, 1984 PA 431, MCL 18.1393.

(2) In addition to the funds appropriated in part 1, there is appropriated an amount not to exceed \$5,000,000.00 for state restricted contingency funds. These funds are not available for expenditure until they have been transferred to another line item in this act under section 393(2) of the management and budget act, 1984 PA 431, MCL 18.1393.

(3) In addition to the funds appropriated in part 1, there is appropriated an amount not to exceed \$2,000,000.00 for local contingency funds. These funds are not available for expenditure until they have been transferred to another line item in this act under section 393(2) of the management and budget act, 1984 PA 431, MCL 18.1393.

(4) In addition to the funds appropriated in part 1, there is appropriated an amount not to exceed \$2,000,000.00 for private contingency funds. These funds are not available for expenditure until they have been transferred to another line item in this act under section 393(2) of the management and budget act, 1984 PA 431, MCL 18.1393.

Litigation report.

Sec. 224. By April 1, 2009, the department shall provide a litigation report to the senate and house appropriations subcommittees on corrections, the senate and house fiscal agencies, and the state budget director. The report shall identify all lawsuits adjudicated through the trial court phase in which the department or an employee acting on behalf of the department was a defendant and in which trial court proceedings resulted in a decision of \$1,000,000.00 or more against the department.

Displaced employees; placement in other positions; job training or education.

Sec. 225. (1) The department shall make every effort to place employees displaced by any reductions in force within other positions in the department.

(2) It is the intent of the legislature that employees displaced by any reductions in force who are not placed within other positions in the department be given priority in state programs for job retraining or education, such as the no worker left behind program.

Reductions in storekeepers or bidding out of prison store operations; workgroup to be convened by department; report.

Sec. 228. (1) Due to the importance of departmental employees in maintaining safe, secure, and efficient operations of the facilities, implementation of any reductions to the number of storekeepers or bidding out of prison store operations shall be suspended until a workgroup is convened to identify operational changes other than personnel reductions that result in full-year savings of at least \$1,205,400.00 to state general fund/general purpose appropriations that would otherwise be needed for prison store operations.

(2) The workgroup shall be convened by the department no later than October 1, 2008, and at a minimum shall include representatives of the department, storekeepers, and the chairs of the senate and house appropriations subcommittees on corrections.