(2) Notwithstanding subsection (1), the jurisdiction of law enforcement officers who are granted powers and authority under section 3 and are employed by a school district shall include all territory within the boundaries of the school district and all property outside the boundaries of the school district that is owned, leased, or rented by or is otherwise under the legal control of the school district that employs the public safety officers.

(3) A public law enforcement agency established under section 3 and each local law enforcement agency with which it has overlapping jurisdiction shall enter into a memorandum of understanding that establishes reasonable communication and coordination efforts between those law enforcement agencies. If the public law enforcement agency is a qualifying school district under section 2(b)(*ii*), the memorandum of understanding shall also establish jurisdiction of the public law enforcement agency.

(4) This act does not limit the jurisdiction of state, county, or municipal peace officers.

28.590 Submission of monthly uniform crime reports.

Sec. 10. A law enforcement agency created under this act shall submit monthly uniform crime reports pertaining to crimes occurring within the agency's jurisdiction to the department of state police in the manner prescribed in section 1 of 1968 PA 319, MCL 28.251.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 12, 2004.

[No. 379]

(HB 5907)

AN ACT to amend 1965 PA 203, entitled "An act to provide for the creation of the commission on law enforcement standards; to prescribe its membership, powers, and duties; to prescribe the reporting responsibilities of certain state and local agencies; to provide for additional costs in criminal cases; to provide for the establishment of the law enforcement officers training fund; and to provide for disbursement of allocations from the law enforcement officers training fund to local agencies of government participating in a police training program," by amending sections 2 and 9 (MCL 28.602 and 28.609), section 2 as amended by 2001 PA 186 and section 9 as amended by 1998 PA 237.

The People of the State of Michigan enact:

28.602 Definitions.

Sec. 2. As used in this act:

(a) "Certificate" means a numbered document issued by the commission to a person who has received certification under this act.

(b) "Certification" means either of the following:

(*i*) A determination by the commission that a person meets the law enforcement officer minimum standards to be employed as a commission certified law enforcement officer and that the person is authorized under this act to be employed as a law enforcement officer.

(*ii*) A determination by the commission that a person was employed as a law enforcement officer before January 1, 1977 and that the person is authorized under this act to be employed as a law enforcement officer.

(c) "Commission" means the commission on law enforcement standards created in section 3.

(d) "Contested case" means that term as defined in section 3 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.203.

(e) "Executive director" means the executive director of the commission appointed under section 12.

(f) "Felony" means a violation of a penal law of this state or another state that is either of the following:

(*i*) Punishable by a term of imprisonment greater than 1 year.

(*ii*) Expressly designated a felony by statute.

(g) "Fund" means the law enforcement officers training fund created in section 13.

(h) "Law enforcement officer minimum standards" means standards established by the commission under this act that a person must meet to be eligible for certification under section 9a(1).

(i) "Law enforcement officer of a Michigan Indian tribal police force" means a regularly employed member of a police force of a Michigan Indian tribe who is appointed pursuant to former 25 CFR 12.100 to 12.103.

(j) "Michigan Indian tribe" means a federally recognized Indian tribe that has trust lands located within this state.

(k) "Multicounty metropolitan district" means an entity authorized and established pursuant to state law by 2 or more counties with a combined population of not less than 3,000,000, for the purpose of cooperative planning, promoting, acquiring, constructing, owning, developing, maintaining, or operating parks.

(*l*) "Police officer" or "law enforcement officer" means, unless the context requires otherwise, any of the following:

(*i*) A regularly employed member of a law enforcement agency authorized and established pursuant to law, including common law, who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state. Police officer or law enforcement officer does not include a person serving solely because he or she occupies any other office or position.

(*ii*) A law enforcement officer of a Michigan Indian tribal police force, subject to the limitations set forth in section 9(3).

(*iii*) The sergeant at arms or any assistant sergeant at arms of either house of the legislature who is commissioned as a police officer by that respective house of the legislature as provided by the legislative sergeant at arms police powers act, 2001 PA 185, MCL 4.381 to 4.382.

(*iv*) A law enforcement officer of a multicounty metropolitan district, subject to the limitations of section 9(7).

(*v*) A county prosecuting attorney's investigator sworn and fully empowered by the sheriff of that county.

(*vi*) Until December 31, 2007, a law enforcement officer of a school district in this state that has a membership of at least 20,000 pupils and that includes in its territory a city with a population of at least 180,000 as of the most recent federal decennial census.

(*vii*) A fire arson investigator from a fire department within a city with a population of not less than 750,000 who is sworn and fully empowered by the city chief of police.

(m) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

28.609 Minimum standards; rules; factors and special requirements; waiver; certification; authority of law enforcement officer of Michigan Indian tribal police force; waiver from minimum standards regarding training programs.

Sec. 9. (1) The commission shall promulgate rules to establish law enforcement officer minimum standards. In promulgating the law enforcement officer minimum standards, the commission shall give consideration to the varying factors and special requirements of local police agencies. The law enforcement officer minimum standards shall include all of the following:

(a) Minimum standards of physical, educational, mental, and moral fitness that govern the recruitment, selection, appointment, and certification of law enforcement officers.

(b) Minimum courses of study, attendance requirements, and instructional hours required at approved police training schools.

(c) The rules promulgated under this section do not apply to a member of a sheriff's posse or a police auxiliary temporarily performing his or her duty under the direction of the sheriff or police department.

(d) Minimum basic training requirements that a person, excluding sheriffs, shall complete before being eligible for certification under section 9a(1).

(2) If a person's certification under section 9a(1) becomes void under section 9a(4)(b), the commission shall waive the requirements described in subsection (1)(b) for certification of the person under section 9a(1) if 1 or more of the following apply:

(a) The person has been employed 1 year or less as a commission certified law enforcement officer and is again employed as a law enforcement officer within 1 year after discontinuing employment as a commission certified law enforcement officer.

(b) The person has been employed more than 1 year but less than 5 years as a commission certified law enforcement officer and is again employed as a law enforcement officer within 18 months after discontinuing employment as a commission certified law enforcement officer.

(c) The person has been employed 5 years or more as a commission certified law enforcement officer and is again employed as a law enforcement officer within 2 years after discontinuing employment as a commission certified law enforcement officer.

(d) The person has successfully completed the mandatory training and has been continuously employed as a law enforcement officer, but through no fault of that person the employing agency failed to obtain certification for that person as required by this act.

(3) The commission shall promulgate rules with respect to all of the following:

(a) The categories or classifications of advanced in-service training programs for commission certified law enforcement officers and minimum courses of study and attendance requirements for the categories or classifications.

(b) The establishment of subordinate regional training centers in strategic geographic locations in order to serve the greatest number of police agencies that are unable to support their own training programs.

(c) The commission's acceptance of certified basic police training and law enforcement experience received by a person in another state in fulfillment in whole or in part of the law enforcement officer minimum standards.

(d) The commission's approval of police training schools administered by a city, county, township, village, corporation, college, community college or university.

(e) The minimum qualifications for instructors at approved police training schools.

(f) The minimum facilities and equipment required at approved police training schools.

(g) The establishment of preservice basic training programs at colleges and universities.

(h) Acceptance of basic police training and law enforcement experience received by a person in fulfillment in whole or in part of the law enforcement officer minimum standards prepared and published by the commission if both of the following apply:

(*i*) The person successfully completed the basic police training in another state or through a federally operated police training school that was sufficient to fulfill the minimum standards required by federal law to be appointed as a law enforcement officer of a Michigan Indian tribal police force.

(*ii*) The person is or was a law enforcement officer of a Michigan Indian tribal police force for a period of 1 year or more.

(4) Except as otherwise provided in this section, a regularly employed person employed on or after January 1, 1977 as a member of a police force having a full-time officer is not empowered to exercise all the authority of a peace officer in this state, or be employed in a position for which the authority of a peace officer is conferred by statute, unless the person has received certification under section 9a(1).

(5) A law enforcement officer employed before January 1, 1977 may continue his or her employment as a law enforcement officer and participate in training programs on a voluntary or assigned basis but failure to obtain certification under section 9a(1) or (2) is not grounds for dismissal of or termination of that employment as a law enforcement officer. A person who was employed as a law enforcement officer before January 1, 1977 who fails to obtain certification under section 9a(1) and who voluntarily or involuntarily discontinues his or her employment as a law enforcement officer may be employed as a law enforcement officer if he or she was employed 5 years or more as a law enforcement officer and is again employed as a law enforcement officer within 2 years after discontinuing employment as a law enforcement officer.

(6) A law enforcement officer of a Michigan Indian tribal police force is not empowered to exercise the authority of a peace officer under the laws of this state and shall not be employed in a position for which peace officer authority is granted under the laws of this state unless all of the following requirements are met:

(a) The tribal law enforcement officer is certified under this act.

(b) The tribal law enforcement officer is 1 of the following:

(*i*) Deputized by the sheriff of the county in which the trust lands of the Michigan Indian tribe employing the tribal law enforcement officer are located, or by the sheriff of any county that borders the trust lands of that Michigan Indian tribe, pursuant to section 70 of 1846 RS 14, MCL 51.70.

(*ii*) Appointed as a police officer of the state or a city, township, charter township, or village that is authorized by law to appoint individuals as police officers.

(c) The deputation or appointment of the tribal law enforcement officer described in subdivision (b) is made pursuant to a written contract that includes terms the appointing authority under subdivision (b) may require between the state or local law enforcement agency and the tribal government of the Michigan Indian tribe employing the tribal law enforcement officer.

(d) The written contract described in subdivision (c) is incorporated into a self-determination contract, grant agreement, or cooperative agreement between the United States secretary of the interior and the tribal government of the Michigan Indian tribe

employing the tribal law enforcement officer pursuant to the Indian self-determination and education assistance act, Public Law 93-638, 88 Stat. 2203.

(7) A law enforcement officer of a multicounty metropolitan district, other than a law enforcement officer employed by a law enforcement agency created under the public body law enforcement agency act, is not empowered to exercise the authority of a peace officer under the laws of this state and shall not be employed in a position for which peace officer authority is granted under the laws of this state unless all of the following requirements are met:

(a) The law enforcement officer has met or exceeded minimum standards for certification under this act.

(b) The law enforcement officer is deputized by the sheriff or sheriffs of the county or counties in which the land of the multicounty metropolitan district employing the law enforcement officer is located and in which the law enforcement officer will work, pursuant to section 70 of 1846 RS 14, MCL 51.70.

(c) The deputation or appointment of the law enforcement officer is made pursuant to a written agreement that includes terms the deputizing authority under subdivision (b) may require between the state or local law enforcement agency and the governing board of the multicounty metropolitan district employing the law enforcement officer.

(d) The written agreement described in subdivision (c) is filed with the commission.

(8) A public body that creates a law enforcement agency under the public body law enforcement agency act and that employs 1 or more law enforcement officers certified under this act shall be considered to be a law enforcement agency for purposes of section 9d.

(9) The commission may establish an evaluation or testing process, or both, for granting a waiver from the law enforcement officer minimum standards regarding training requirements to a person who has held a certificate under this act and who discontinues employment as a law enforcement officer for a period of time exceeding the time prescribed in subsection (2)(a) to (c) or subsection (5), as applicable.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5906 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 12, 2004.

Compiler's note: House Bill No. 5906, referred to in enacting section 1, was filed with the Secretary of State October 12, 2004, and became P.A. 2004, No. 378, Imd. Eff. Oct. 12, 2004.

[No. 380]

(HB 5121)

AN ACT to amend 1976 PA 451, entitled "An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies,

intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts," (MCL 380.1 to 380.1852) by adding section 1240; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

380.1240 Law enforcement agency; creation.

Sec. 1240. (1) The board of a school district that has a membership of at least 20,000 pupils and that includes in its territory a city with a population of at least 180,000 as of the most recent decennial census may create a law enforcement agency in accordance with and as provided under the public body law enforcement agency act. If the school district is a qualifying school district under part 5a, the chief executive officer of the school district, with the concurrence of the school reform board of the school district, may create a law enforcement agency in accordance with and as provided under the public body law enforcement agency act.

(2) If the board or chief executive officer of a school district creates a law enforcement agency under subsection (1), the board or chief executive officer may grant to law enforcement officers of that law enforcement agency the same powers, immunities, and authority as are granted by law to peace officers and police officers to detect crime and to enforce the criminal laws of this state and to enforce state laws, local ordinances, and the ordinances and regulations of the school district, as provided under the public body law enforcement agency act. Law enforcement officers to whom the authority of peace officers and police officers is granted under that act are considered peace officers of this state and have the authority of police officers provided under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, and as provided under the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5906 of the 92nd Legislature is enacted into law.

Repeal of MCL 380.451.

Enacting section 2. Section 451 of the revised school code, 1976 PA 451, MCL 380.451, is repealed.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 12, 2004.

Compiler's note: House Bill No. 5906, referred to in enacting section 1, was filed with the Secretary of State October 12, 2004, and became P.A. 2004, No. 378, Imd. Eff. Oct. 12, 2004.

[No. 381]

(HB 5771)

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, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 1301, 11701, 11702, 11703, 11704, 11705, 11706, 11707, 11708, 11709, 11710, 11711, 11712, 11713, 11714, 11715, 11716, 11717, 11718, and 11719 (MCL 324.1301, 324.11701, 324.11702, 324.11703, 324.11704, 324.11705, 324.11706, 324.11707, 324.11708, 324.11709, 324.11710, 324.11711, 324.11712, 324.11713, 324.11714, 324.11715, 324.11716, 324.11717, 324.11718, and 324.11719), section 1301 as added and sections 11703, 11704, and 11709 as amended by 2004 PA 325, and by adding sections 11715b, 11715d, 11717b, and 11720.

The People of the State of Michigan enact:

324.1301 Definitions.

Sec. 1301. As used in this part:

(a) "Application period" means the period beginning when an application for a permit is received by the state and ending when the application is considered to be administratively complete under section 1305 and any applicable fee has been paid.

(b) "Department" means the department, agency, or officer authorized by this act to approve or deny an application for a particular permit.

(c) "Director" means the director of the state department authorized under this act to approve or deny an application for a particular permit or the director's designee.

(d) "Permit" means a permit or operating license required by any of the following sections or by rules promulgated thereunder, or, in the case of section 9112, by an ordinance or resolution adopted thereunder:

(*i*) Section 3104, floodplain alteration permit.

(*ii*) Section 3503, permit for use of water in mining iron ore.

(*iii*) Section 4105, sewerage system construction permit.

(*iv*) Section 6516, vehicle testing license.

(*v*) Section 6521, motor vehicle fleet testing permit.

(*vi*) Section 8310, restricted use pesticide dealer business location license.

(*vii*) Section 8504, license to manufacture or distribute fertilizer.

(*viii*) Section 9112, local soil erosion and sedimentation control permit.

(*ix*) Section 11509, solid waste disposal area construction permit.

(*x*) Section 11512, solid waste disposal area operating license.

(*xi*) Section 11542, municipal solid waste incinerator ash landfill operating license amendment.

(*xii*) Section 11702, septage waste servicing license or septage waste vehicle license.

(*xiii*) Section 11709, septage waste site permit.

(*xiv*) Section 30104, inland lakes and streams project permit.

(*xv*) Section 30304, state permit for dredging, filling, or other activity in wetland.

(*xvi*) Section 31509, dam construction, repair, removal permit.

(*xvii*) Section 32312, flood risk, high risk, or environmental area permit.

(*xviii*) Section 32503, permit for dredging and filling bottomland.

(*xix*) Section 35304, department permit for critical dune area use.

(*xx*) Section 36505, endangered species permit.

(*xxi*) Section 41702, game bird hunting preserve license.

(*xxii*) Section 42101, dog training area permit.

(*xxiii*) Section 42501, fur dealer's license.

(*xxiv*) Section 42702, game dealer's license.

(*xxv*) Section 44513, charter boat operating permit under reciprocal agreement.

(*xxvi*) Section 44517, boat livery operating permit.

(*xxvii*) Section 45503, permit to take frogs for scientific use.

(*xxviii*) Section 45902, game fish propagation license.

(*xxix*) Section 45906, game fish import license.

(*xxx*) Section 61525, oil or gas well drilling permit.

(*xxxi*) Section 62509, brine, storage, or waste disposal well drilling or conversion permit or test well drilling permit.

(*xxxii*) Section 63103a, metallic mineral mining permit.

(*xxxiii*) Section 63514 or 63525, surface coal mining and reclamation permit or revision of the permit during the term of the permit, respectively.

(*xxxiv*) Section 63704, sand dune mining permit.

(*xxxv*) Section 72108, use permits for Michigan trailway.

(*xxxvi*) Section 76109, sunken aircraft or watercraft abandoned property recovery permit.

(*xxxvii*) Section 76504, Mackinac Island motor vehicle and land use permits.

(*xxxviii*) Section 80159, buoy or beacon permit.

(e) "Processing deadline" means the last day of the processing period.

(f) "Processing period" means the following time period after the close of the application period, for the following permit, as applicable:

(*i*) Twenty days for a permit under section 61525 or 62509.

(*ii*) Thirty days for a permit under section 9112.

(*iii*) Thirty days after the department consults with the underwater salvage and preserve committee created under section 76103, for a permit under section 76109.

(*iv*) Sixty days, for a permit under section 30104 for a minor project as established by rule under section 30105(6) or for a permit under section 32312.

(*v*) Sixty days or, if a hearing is held, 90 days for a permit under section 35304.

(*vi*) Sixty days or, if a hearing is held, 120 days for a permit under section 30104, other than a permit for a minor project as established by rule under section 30105(6), or for a permit under section 31509.

(*vii*) Ninety days for a permit under section 11512, a revision of a surface coal mining and reclamation permit during the term of the permit under section 63525, or a permit under section 72108.

(*viii*) Ninety days or, if a hearing is held, 150 days for a permit under section 3104, 30304, or 32503.

(*ix*) One hundred and twenty days for a permit under section 11509, 11542, 63103a, 63514, or 63704.

(*x*) One hundred fifty days for a permit under section 36505. However, if a site inspection or federal approval is required, the 150-day period is tolled pending completion of the inspection or receipt of the federal approval.

(*xi*) For any other permit, 150 days or, if a hearing is held, 90 days after the hearing, whichever is later.

324.11701 Definitions.

Sec. 11701. As used in this part:

(a) "Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown, including land used or suitable for use as a range or pasture; a sod farm; or a Christmas tree farm.

(b) "Certified health department" means a city, county, or district department of health certified under section 11716.

(c) "Cesspool" means a cavity in the ground that receives waste to be partially absorbed directly or indirectly by the surrounding soil.

(d) "Department" means the department of environmental quality or its authorized agent.

(e) "Director" means the director of the department of environmental quality or his or her designee.

(f) "Domestic septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, type III marine sanitation device, or similar storage or treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar facility that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease interceptor, grease trap, or other appurtenance used to retain grease or other fatty substances contained in restaurant waste.

(g) "Domestic sewage" means waste and wastewater from humans or household operations.

(h) "Domestic treatment plant septage" means biosolids generated during the treatment of domestic sewage in a treatment works and transported to a receiving facility or managed in accordance with a residuals management program approved by the department.

(i) "Food establishment septage" means material pumped from a grease interceptor, grease trap, or other appurtenance used to retain grease or other fatty substances contained in restaurant wastes and which is blended into a uniform mixture, consisting of not more than 1 part of that restaurant-derived material per 3 parts of domestic septage, prior to land application or disposed of at a receiving facility.

(j) "Fund" means the septage waste program fund created in section 11717.

(k) "Governmental unit" means a county, township, municipality, or regional authority.

(*l*) "Incorporation" means the mechanical mixing of surface-applied septage waste with the soil.

(m) "Injection" means the pressurized placement of septage waste below the surface of soil.

(n) "Operating plan" means a plan developed by a receiving facility for receiving septage waste that specifies at least all of the following:

(*i*) Categories of septage waste that the receiving facility will receive.

(*ii*) The receiving facility's service area.

(*iii*) The hours of operation for receiving septage waste.

(*iv*) Any other conditions for receiving septage waste established by the receiving facility.

(o) "Pathogen" means a disease-causing agent. Pathogen includes, but is not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

(p) "Peace officer" means a sheriff or sheriff's deputy, a village or township marshal, an officer of the police department of any city, village, or township, any officer of the Michigan state police, any peace officer who is trained and certified pursuant to the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, or any conservation officer appointed by the department or the department of natural resources pursuant to section 1606.

(q) "Portable toilet" means a receptacle for human waste temporarily in a location for human use.

(r) "Receiving facility" means a structure that is designed to receive septage waste for treatment at a wastewater treatment plant to which the structure is directly connected, and that is available for that purpose as provided for in an ordinance of the local unit of government that operates the wastewater treatment plant or in an operating plan. Receiving facility does not include either of the following:

(*i*) A septic tank.

(*ii*) A structure or a wastewater treatment plant at which the disposal of septage waste is prohibited by order of the department under section 11708 or 11715b.

(s) "Receiving facility service area" or "service area" means the territory for which a receiving facility has the capacity and is available to receive and treat septage waste, subject to the following:

(*i*) Beginning 1 year after the effective date of the 2004 amendatory act that added this subdivision and before the 2011 state fiscal year, the geographic service area of a receiving facility shall not extend more than 15 radial miles from the receiving facility.

(*ii*) After the 2010 state fiscal year, the geographic service area of a receiving facility shall not extend more than 25 radial miles from the receiving facility.

(t) "Sanitary sewer cleanout septage" means sanitary sewage or cleanout residue removed from a separate sanitary sewer collection system that is not land applied and that is transported by a vehicle licensed under this part elsewhere within the same system or to a receiving facility that is approved by the department.

(u) "Septage waste" means the fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin which is removed from a wastewater system. Septage waste consists only of food establishment septage, domestic septage, domestic treatment plant septage, or sanitary sewer cleanout septage, or any combination of these.

(v) "Septage waste servicing license" means a septage waste servicing license as provided for under sections 11703 and 11706.

(w) "Septage waste vehicle" means a vehicle that is self-propelled or towed and that includes a tank used to transport septage waste. Septage waste vehicle does not include an instrument of husbandry as defined in section 21 of the Michigan vehicle code, 1949 PA 300, MCL 257.21.

(x) "Septage waste vehicle license" means a septage waste vehicle license as provided for under sections 11704 and 11706.

(y) "Septic tank" means a septic toilet, chemical closet, or other enclosure used for the decomposition of domestic sewage.

(z) "Service" or "servicing" means cleaning, removing, transporting, or disposing, by application to land or otherwise, of septage waste.

(aa) "Site" means a location or locations on a parcel or tract, as those terms are defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, proposed or used for the disposal of septage waste on land.

(bb) "Site permit" means a permit issued under section 11709 authorizing the application of septage waste to a site.

(cc) "Storage facility" means a structure that receives septage waste for storage but not for treatment.

(dd) "Tank" means an enclosed container placed on a septage waste vehicle to carry or transport septage waste.

(ee) "Type I public water supply well", "type IIa public water supply well", "type IIb public water supply well", and "type III public water supply well" mean those terms, respectively, as described in R 325.10502 of the Michigan administrative code.

(ff) "Type III marine sanitation device" means that term as defined in 33 CFR 159.3.

324.11702 Septage waste servicing licensing; requirement.

Sec. 11702. (1) A person shall not engage in servicing or contract to engage in servicing except as authorized by a septage waste servicing license and a septage waste vehicle license issued by the department pursuant to part 13. A person shall not contract for another person to engage in servicing unless the person who is to perform the servicing has a septage waste servicing license and a septage waste vehicle license.

(2) The septage waste servicing license and septage waste vehicle license requirements provided in this part are not applicable to a publicly owned receiving facility subject to a permit issued under part 31.

324.11703 Septage waste servicing license; application; eligibility; records.

Sec. 11703. (1) An application for a septage waste servicing license shall include all of the following:

(a) The applicant's name and mailing address.

(b) The location or locations where the business is operated, if the applicant is engaged in the business of servicing.

(c) Written approval from all receiving facilities where the applicant plans to dispose of septage waste.

(d) The locations of the sites where the applicant plans to apply septage waste to land and, for each proposed site, either proof that the applicant owns the proposed site or written approval from the site owner.

(e) A written plan for disposal of septage waste obtained in the winter, if the disposal will be by a method other than delivery to a receiving facility or, subject to section 11711, application to land.

(f) Written proof of satisfaction of the continuing education requirements of subsection (2), if applicable.

(g) Any additional information pertinent to this part required by the department.

(h) Payment of the septage waste servicing license fee as provided in section 11717b.

(2) Beginning January 1, 2007, a person is not eligible for an initial servicing license unless the person has successfully completed not less than 10 hours of continuing education during the 2-year period before applying for the license. Beginning January 1, 2007 and until December 31, 2009, a person is not eligible to renew a servicing license unless the person has successfully completed not less than 10 hours of continuing education during the 2-year period preceding the issuance of the license. Beginning January 1, 2010, a person is not eligible to renew a servicing license unless the person has successfully completed not less than 30 hours of continuing education during the 5-year period preceding the issuance of the license.

(3) Before offering or conducting a course of study represented to meet the educational requirements of subsection (2), a person shall obtain approval from the department. The department may suspend or revoke the approval of a person to offer or conduct a course of study to meet the requirements of subsection (2) for a violation of this part or of the rules promulgated under this part.

(4) If an applicant or licensee is a corporation, partnership, or other legal entity, the applicant or licensee shall designate a responsible agent to fulfill the requirements of subsections (2) and (3). The responsible agent's name shall appear on any license or permit required under this part.

(5) A person engaged in servicing shall maintain at all times at his or her place of business a complete record of the amount of septage waste that the person has transported or disposed of, the location at which septage waste was disposed of, and any complaints received concerning disposal of the septage waste. The person shall also report this information to the department on an annual basis in a manner required by the department.

(6) A person engaged in servicing shall maintain records required under subsection (5) or 40 CFR part 503 for at least 5 years. A person engaged in servicing or an individual who actually applies septage waste to land, as applicable, shall display these records upon the request of the director, a peace officer, or an official of a certified health department.

324.11704 Septage waste vehicle license; application; display; transportation of hazardous waste.

Sec. 11704. (1) An application for a septage waste vehicle license shall include all of the following:

(a) The model and year of the septage waste vehicle.

(b) The capacity of any tank used to remove or transport septage waste.

(c) The name of the insurance carrier for the septage waste vehicle.

(d) Whether the septage waste vehicle or any other vehicle owned by the person applying for the septage waste vehicle license will be used at any time during the license period for land application of septage waste.

(e) Any additional information pertinent to this part required by the department.

(f) A septage waste vehicle license fee as provided by section 11717b for each septage waste vehicle.

(2) A person who is issued a septage waste vehicle license shall carry a copy of that license at all times in each vehicle that is described in the license and display the license upon the request of the department, a peace officer, or an official of a certified health department.

(3) A septage waste vehicle shall not be used to transport hazardous waste regulated under part 111 or liquid industrial waste regulated under part 121, without the express written permission of the department.

324.11705 Septage waste vehicle, tank, and accessory equipment; requirements.

Sec. 11705. A tank upon a septage waste vehicle shall be closed in transit to prevent the release of septage waste and odor. The septage waste vehicle and accessory equipment shall be kept clean and maintained in a manner that prevents environmental damage or harm to the public health.

324.11706 Review of applications; providing health department with copies of application materials; investigations; issuance of license; license nontransferable; duration of license.

Sec. 11706. (1) Upon receipt of an application for a septage waste servicing license or a septage waste vehicle license, the department shall review the application to ensure that it is complete. If the department determines that the application is incomplete, the department shall promptly notify the applicant of the deficiencies. If the department determines that the application is complete, the department shall promptly provide the appropriate certified health department with a copy of all application materials. Upon receipt of the application materials, a certified health department shall conduct investigations necessary to verify that the sites, the servicing methods, and the septage waste vehicles are in compliance with this part. If so, the department shall approve the application and issue the license applied for in that application. If a certified health department does not exist, the department may perform the functions of a certified health department as necessary.

(2) A septage waste servicing license is not transferable and is valid, unless suspended or revoked, for 5 years. A septage waste vehicle license is not transferable and is valid, unless suspended or revoked, for the same 5-year period as the licensee's septage waste servicing license.

324.11707 Display on both sides of septage waste vehicle.

Sec. 11707. Each septage waste vehicle for which a septage waste vehicle license has been issued shall display on both sides of the septage waste vehicle in letters not less than 2 inches high the words "licensed septage hauler", the vehicle license number issued by the department, and a seal furnished by the department that designates the year the septage waste vehicle license was issued.

324.11708 Deposit of septage waste in septage waste treatment facility; disposal fee; prohibiting operation of wastewater treatment plant.

Sec. 11708. (1) Before 1 year after the effective date of the 2004 amendatory act that added this subsection, if a person is engaged in servicing in a receiving facility service area not more than 15 road miles from that receiving facility, that person shall dispose of the septage waste at that receiving facility or another receiving facility in whose service area the person is engaged in servicing.

(2) Subsection (1) does not apply to a person engaged in servicing who owns a storage facility with a capacity of 50,000 gallons or more.

(3) Beginning 1 year after the effective date of the 2004 amendatory act that added this subsection, if a person is engaged in servicing in a receiving facility service area, that person shall dispose of the septage waste at that receiving facility or any other receiving facility within whose service area the person is engaged in servicing.

(4) If a person engaged in servicing owns a storage facility with a capacity of 50,000 gallons or more and the storage facility was constructed, or authorized by the department to be constructed, before the location where the person is engaged in servicing was included in a receiving facility service area under an operating plan approved under section 11715b, subsection (3) does not apply to that person before the 2025 state fiscal year.

(5) A receiving facility may charge a fee for receiving septage waste. Before 1 year after the effective date of the 2004 amendatory act that added this subsection, the fee shall not exceed the actual costs related to the treatment and storage of the waste. Beginning 1 year after the effective date of the 2004 amendatory act that added this subsection, the fee shall not exceed the actual costs of operating the receiving facility including the reasonable cost of doing business as defined by common accounting practices.

(6) The department may issue an order prohibiting the operation of a wastewater treatment plant or structure as a receiving facility due to excessive hydraulic or organic loading, odor problems, or other environmental or public health concerns.

(7) A person shall not dispose of septage waste at a wastewater treatment plant or structure if the operation of that wastewater treatment plant or structure as a receiving facility is prohibited by an order issued under subsection (6) or section 11715b.

324.11709 Disposal of septage waste on land; permit required; additional information; notice; renewal; revocation of permit.

Sec. 11709. (1) A person shall not dispose of septage waste on land except as authorized by a site permit for that site issued by the department pursuant to part 13. A person shall apply for a site permit using an application form provided by the department. The application shall include all of the following for each site:

(a) A map identifying the site from a county land atlas and plat book.

(b) The site location by latitude and longitude.

(c) The name and address of the land owner.

(d) The name and address of the manager of the land, if different than the owner.

(e) Results of a soil fertility test performed within 1 year before the date of the application for a site permit including analysis of a representative soil sample of each location constituting the site as determined by the bray P1 (bray and kurtz P1), or Mehlich 3 test, for which procedures are described in the publication entitled "Recommended chemical soil test procedures for the north central region". The department shall provide a copy of this publication to any person upon request at no cost. The applicant shall also provide test results from any additional test procedures that were performed on the soil.

(f) Other site specific information necessary to determine whether the septage waste disposal will comply with state and federal law.

(g) Payment of the site permit fee as provided under section 11717b.

(2) Upon receipt of an application under subsection (1), the department shall review the application to ensure that it is complete. If the department determines that the application is incomplete, it shall promptly notify the applicant of the deficiencies.

(3) An applicant for a site permit shall simultaneously send a notice of the application, including all the information required by subsection (1)(a) to (d), to all of the following:

(a) The certified health department having jurisdiction.

(b) The clerk of the city, village, or township where the site is located.

(c) Each person who owns a lot or parcel that is contiguous to the lot, parcel, or tract on which the proposed site is located or that would be contiguous except for the presence of a highway, road, or street.

(d) Each person who owns a lot or parcel that is within 150 feet of a location where septage waste is to be disposed of by injection or 800 feet of a location where septage waste is to be disposed of by surface application.

(4) If the department finds that the applicant is unable to provide notice as required in subsection (3), the department may waive the notice requirement or allow the applicant to use a substitute means of providing notice.

(5) The department shall issue a site permit if all the requirements of this part and federal law are met. Otherwise, the department shall deny the site permit.

(6) A site permit is not transferable and is valid, unless suspended or revoked, until the expiration of the permittee's septage waste servicing license. A site permit may be revoked by the department if the septage waste land application or site management is in violation of this part.

324.11710 Requirements to which permit subject.

Sec. 11710. A site permit is subject to all of the following requirements:

(a) The septage waste disposed of shall be applied uniformly at agronomic rates.

(b) Not more than 1 person licensed under this part may use a site for the disposal of septage waste during any year.

(c) Septage waste may be disposed of by land application only if the horizontal distance from the applied septage waste and the features listed in subparagraphs (*i*) to (*ix*) equals or exceeds the following isolation distances:

	TYPE OF APPLICATION	
	Surface	Injection
(*i*) Type I public water supply wells	2,000 feet	2,000 feet
(*ii*) Type IIa public water supply wells	2,000 feet	2,000 feet
(*iii*) Type IIb public water supply wells	800 feet	800 feet
(*iv*) Type III public water supply wells	800 feet	150 feet
(*v*) Private drinking water wells	800 feet	150 feet
(*vi*) Other water wells	800 feet	150 feet
(*vii*) Homes or commercial buildings	800 feet	150 feet
(*viii*) Surface water	500 feet	150 feet
(*ix*) Roads or property lines	200 feet	150 feet

(d) Septage waste disposed of by land application shall be disposed of either by surface application, subject to subdivision (g), or injection.

(e) If septage waste is applied to the surface of land, the slope of that land shall not exceed 6%. If septage waste is injected into land, the slope of that land shall not exceed 12%.

(f) Septage waste shall not be applied to land unless the water table is at least 30 inches below any applied septage waste.

(g) If septage waste is applied to the surface of the land, 1 of the following requirements is met:

(*i*) The septage waste shall be mechanically incorporated within 6 hours after application.

(*ii*) The septage waste shall have been treated to reduce pathogens prior to land disposal by aerobic or anaerobic digestion, lime stabilization, composting, air drying, or other process or method approved by the department and, if applied to fallow land, is mechanically incorporated within 48 hours after application, unless public access to the site is restricted for 12 months and no animals whose products are consumed by humans are allowed to graze on the site for at least 1 month following disposal.

(h) Septage waste shall be treated to reduce pathogens by composting, heat drying or treatment, thermophilic aerobic digestion, or other process or method approved by the department prior to disposal on lands where crops for direct human consumption are grown, if contact between the septage waste and the edible portion of the crop is possible.

(i) Vegetation shall be grown on a septage waste disposal site within 1 year after septage waste is disposed of on that site.

(j) Food establishment septage shall not be applied to land unless it has been combined with other septage waste in no greater than a 1 to 3 ratio and blended into a uniform mixture.

(k) The permittee shall not apply septage waste to a location on the site unless the permittee has conducted a soil fertility test of that location as described in section 11709 within 1 year before the date of the land application. The permittee shall not apply food establishment septage to a location on the site unless the permittee has conducted testing of soil in that location within 1 year before the date of application in accordance with requirements in 40 CFR 257.3 to 257.5 or a single test of mixed septage waste contained in a storage facility.

(*l*) Beginning 2 years after the effective date of the 2004 amendatory act that amended this section, before land application, domestic septage shall be screened through a screen of not greater than 1/2-inch mesh or through slats separated by a gap of not greater than 3/8 inch. Screenings shall be handled as solid waste under part 115. Instead of screening, the domestic septage may be processed through a sewage grinder designed to not pass solids larger than 1/2 inch in diameter.

324.11711 Surface application of septage waste to frozen ground; requirements.

Sec. 11711. Beginning 2 years after the effective date of the 2004 amendatory act that amended this section, a person shall not surface apply septage waste to frozen ground. Before that time, a person shall not surface apply septage waste to frozen ground unless all of the following requirements are met:

(a) Melting snow or precipitation does not result in the runoff of septage waste from the site.

(b) The slope of the land is less than 2%.

(c) The pH of septage waste is raised to 12.0 (at 25 degrees Celsius) or higher by alkali addition and, without the addition of more alkali, remains at 12.0 or higher for 30 minutes. Other combinations of pH and temperature may be approved by the department.

(d) The septage waste is mechanically incorporated within 20 days following the end of the frozen ground conditions.

(e) The department approves the surface application and subsequent mechanical incorporation.

(f) Less than 10,000 gallons per acre are applied to the surface during the period that the septage waste cannot be mechanically incorporated due to frozen ground.

(g) The septage waste is applied in a manner that prevents the accumulation and ponding of the septage waste.

(h) Any other applicable requirement under this part or federal law is met.

324.11712 Applicability of federal regulations.

Sec. 11712. Persons subject to this part shall comply with applicable provisions of subparts A, B, and D of part 503 of title 40 of the code of federal regulations.

324.11713 Inspection of disposal site.

Sec. 11713. (1) At any reasonable time, a representative of the department may enter in or upon any private or public property for the purpose of inspecting and investigating conditions relating to compliance with this part. However, an investigation or inspection under this subsection shall comply with the United States constitution, the state constitution of 1963, and this section.

(2) The department shall inspect septage waste vehicles at least annually.

(3) The department shall inspect a site at least annually.

(4) The department shall inspect a receiving facility within 1 year after that receiving facility begins operation and at least annually thereafter.

324.11714 Prohibited disposition of septage waste into certain bodies of water.

Sec. 11714. A person shall not dispose of septage waste directly or indirectly in a lake, pond, stream, river, or other body of water.

324.11715 Preemption; duty of governmental unit to make available septage waste treatment facility; posting of surety not required.

Sec. 11715. (1) This part does not preempt an ordinance of a governmental unit that prohibits the application of septage waste to land within that governmental unit or otherwise imposes stricter requirements than this part.

(2) If a governmental unit requires that all septage waste collected in that governmental unit be disposed of in a receiving facility or prohibits, or effectively prohibits, the application of septage waste to land within that governmental unit, the governmental unit shall make available a receiving facility that can lawfully accept all septage waste generated within that governmental unit that is not lawfully applied to land.

(3) The owner or operator of a receiving facility may require the posting of a surety, including cash in an escrow account or a performance bond, not exceeding $25,000.00 to dispose of septage waste in the receiving facility.

324.11715b Requirements for receiving facilities and control of nuisance conditions; notice of operation; penalties for noncompliance.

Sec. 11715b. (1) The department shall promulgate rules establishing design and operating requirements for receiving facilities and the control of nuisance conditions.

(2) A person shall not commence construction of a receiving facility on or after the date on which rules are promulgated under subsection (1) unless the owner has a permit from

the department authorizing the construction of the receiving facility. The application for a permit shall include a basis of design for the receiving facility, engineering plans for the receiving facility sealed by an engineer licensed to practice in Michigan, and any other information required by the department. If the proposed receiving facility will be part of a sewerage system whose construction is required to be permitted under part 41, the permit issued under part 41 satisfies the permitting requirement of this subsection.

(3) Subject to subsection (4), a person shall not operate a receiving facility contrary to an operating plan approved by the department.

(4) If the operation of a receiving facility commenced before the effective date of this section, subsection (3) applies to that receiving facility beginning 1 year after the effective date of this section.

(5) Before submitting a proposed operating plan to the department for approval, a person shall do all of the following:

(a) Publish notice of the proposed operating plan in a newspaper of general circulation in the area where the receiving facility is located.

(b) If the person maintains a website, post notice of the proposed operating plan on its website.

(c) Submit notice of the proposed operating plan by first-class mail to the county health department and the legislative body of each city, village, and township located in whole or in part within the service area of the wastewater treatment plant to which the receiving facility is connected.

(6) Notice of a proposed operating plan under subsection (5) shall contain all of the following:

(a) A statement that the receiving facility proposes to receive or, in the case of a receiving facility described in subsection (4), to continue to receive septage waste for treatment.

(b) A copy of the proposed operating plan or a statement where the operating plan is available for review during normal business hours.

(c) A request for written comments on the proposed operation of the receiving facility and the deadline for receipt of such comments, which shall be not less than 30 days after publication, posting, or mailing of the notice.

(7) After the deadline for receipt of comments under subsection (6), the person proposing to operate a receiving facility may modify the plan in response to any comments received and shall submit a summary of the comments and the current version of the proposed operating plan to the department for approval.

(8) The operator of a receiving facility may modify an approved operating plan if the modifications are approved by the department. Subsections (5) to (7) do not apply to the modification of the operating plan.

(9) If the owner or operator of a receiving facility violates this section or rules promulgated under this section, after providing an opportunity for a hearing, the department may order that a receiving facility cease operation as a receiving facility.

(10) The department shall post on its website both of the following:

(a) Approved operating plans, including any modifications under subsection (8).

(b) Notice of any orders under subsection (9).

(11) If construction of a receiving facility commenced before the date on which rules are promulgated under subsection (1), all of the following apply:

(a) Within 1 year after the date on which rules are promulgated under subsection (1), the owner of the receiving facility shall submit to the department and obtain department

approval of a report prepared by a professional engineer licensed to practice in Michigan describing the receiving facility's state of compliance with the rules and proposing any modifications to the receiving facility necessary to comply with the rules.

(b) If, according to the report approved under subdivision (a), modifications to the receiving facility are necessary to comply with the rules promulgated under subsection (1), within 18 months after the report is approved under subdivision (a), the owner of the receiving facility shall submit to the department engineering plans for modifying the receiving facility and shall obtain a construction permit from the department for modifying the receiving facility.

(c) Within 3 years after the report is approved under subdivision (a), the owner of the receiving facility shall complete construction modifying the receiving facility so that it complies with those rules.

(12) After a hearing, the department may order that a receiving facility whose owner fails to comply with this section cease operating as a receiving facility.

324.11715d Advisory committee to make recommendations on septage waste storage facility management practices.

Sec. 11715d. (1) Within 60 days after the effective date of the amendatory act that added this section, the department shall convene an advisory committee to make recommendations on septage waste storage facility management practices, including, but not limited to, storage facility inspections. The advisory committee shall include at least all of the following:

(a) A storage facility operator.

(b) A receiving facility operator.

(c) A generator of septage waste.

(d) A representative of township government.

(e) A representative of an environmental protection organization.

(f) A licensed Michigan septage waste hauler.

(2) Within 18 months after the effective date of this section, the department shall establish generally accepted septage storage facility management practices and post the management practices on the department's website.

(3) A person shall not construct a septage waste storage facility without written approval from the department.

324.11716 Certification of city, county, and district departments of health to carry out powers and duties.

Sec. 11716. (1) The department may certify a city, county, or district health department to carry out certain powers and duties of the department under this part.

(2) If a certified health department does not exist in a city, county, or district or does not fulfill its responsibilities under this part, the department may contract with qualified third parties to carry out certain responsibilities of the department under this part in that city, county, or district.

(3) The department and each certified health department or third party that will carry out powers or duties of the department under this part shall enter a memorandum of understanding or contract describing those powers and duties and providing for compensation to be paid by the department from the fund to the certified health department or third party.

324.11717 Septage waste site contingency fund; creation; authorization of expenditures.

Sec. 11717. (1) There is created in the state treasury a septage waste site contingency fund. Interest earned by the septage waste contingency fund shall remain in the septage waste contingency fund unless expended as provided in subsection (2).

(2) The department shall expend money from the septage waste contingency fund, upon appropriation, only to defray costs of the continuing education courses under section 11703 that would otherwise be paid by persons taking the courses.

(3) The septage waste program fund is created within the state treasury.

(4) Fees and interest on fees collected under this part shall be deposited in the fund. In addition, promptly after the effective date of the 2004 amendatory act that amended this section, the state treasurer shall transfer to the septage waste program fund all the money in the septage waste compliance fund. The state treasurer may receive money or other assets from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(5) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(6) The department shall expend money from the fund, upon appropriation, only for the enforcement and administration of this part, including, but not limited to, compensation to certified health departments or third parties carrying out certain powers and duties of the department under section 11716.

324.11717b Fees for persons engaged in septage waste servicing.

Sec. 11717b. (1) The cost of administering this part shall be recovered by collecting fees from persons engaged in servicing. Fee categories and, subject to subsection (2), rates are as follows:

(a) The fee for a septage waste servicing license is $200.00 per year.

(b) The fee for a septage waste vehicle license is as follows:

(*i*) If none of the vehicles owned by the person applying for the septage waste vehicle license will be used at any time during the license period for disposal of septage waste by land application, $350.00 per year for each septage waste vehicle.

(*ii*) If any of the vehicles owned by the person applying for the septage waste vehicle license will be used at any time during the license period for disposal of septage waste by land application, $480.00 per year for each septage waste vehicle.

(c) The fee for a site permit is $500.00. However, a person shall not be charged a fee to renew a site permit.

(2) If a fee under subsection (1) is paid for a license, permit, or approval but the application for the license or permit or the request for the approval is denied, the department shall promptly refund the fee.

(3) For each state fiscal year, a person possessing a septage waste servicing license and septage waste vehicle license as of January 1 of that fiscal year shall be assessed a septage waste servicing license fee and septage waste vehicle license fee as specified in this section. The department shall notify those persons of their fee assessments by February 1 of that fiscal year. Payment shall be postmarked by March 15 of that fiscal year. Fees assessed in the 2005 calendar year for a septage waste servicing license or a

septage waste vehicle license shall be reduced by the amount of the fee paid by the applicant for a septage waste vehicle license for the same vehicle or for a septage waste servicing license, respectively, in effect on January 1, 2005, prorated based on the portion of the 3-year term of that license remaining after December 31, 2004.

(4) The department shall assess interest on all fee payments received after the due date. The amount of interest shall equal 0.75% of the payment due, for each month or portion of a month the payment remains past due. The failure by a person to timely pay a fee imposed by this section is a violation of this part.

(5) If a person fails to pay a fee required under this section in full, plus any interest accrued, by October 1 of the year following the date of notification of the fee assessment, the department may issue an order that revokes the license or permit held by that person for which the fee was to be paid.

(6) Fees and interest collected under this section shall be deposited in the fund.

324.11718 Rules.

Sec. 11718. (1) The department shall promulgate rules that establish both of the following:

(a) Continuing education requirements under section 11706.

(b) Design and operating requirements for receiving facilities, as provided in section 11715b.

(2) The department may, in addition, promulgate rules that do 1 or more of the following:

(a) Add other materials and substances to the definition of septage waste.

(b) Add enclosures to the list of enclosures in the definition of septage waste under section 11701 the servicing of which requires a septage waste servicing license under this part.

(c) Specify information required on an application for a septage waste servicing license, septage waste vehicle license, or site permit.

(d) Establish standards or procedures for a department declaration under section 11708 that a wastewater treatment plant or structure is unavailable as a receiving facility because of excessive hydraulic or organic loading, odor problems, or other factors.

324.11719 Violation or false statement as misdemeanor; penalties.

Sec. 11719. (1) A person who violates section 11704, 11705, 11708, 11709, 11710, or 11711 is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00, or both. A peace officer may issue an appearance ticket to a person for a violation of any of these sections.

(2) A person who knowingly makes or causes to be made a false statement or entry in a license application or a record required in section 11703 is guilty of a felony punishable by imprisonment for not more than 2 years, or a fine of not less than $2,500.00 or more than $25,000.00, or both.

(3) A person who violates this part or a license or permit issued under this part, except as provided in subsections (1) and (2), is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not less than $1,000.00 and not more than $2,500.00, or both.

(4) Each day that a violation described in subsection (1), (2), or (3) continues constitutes a separate violation.

(5) Upon receipt of information that the servicing of septage waste regulated by this part presents an imminent or substantial threat to the public health, safety, welfare, or the environment, after consultation with the director or a designated representative of the department of community health, the department, or a peace officer if authorized by law, shall do 1 or more of the following:

(a) Pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, summarily suspend a license issued under this part and afford the holder of the license an opportunity for a hearing within 7 days.

(b) Request that the attorney general commence an action to enjoin the act or practice and obtain injunctive relief upon a showing that a person is or has removed, transported, or disposed of septage waste in a manner that is or may become injurious to the public health, safety, welfare, or the environment.

324.11720 Temporary variance from act.

Sec. 11720. (1) The director may grant a temporary variance from a requirement of this part added by the 2004 amendatory act that amended this part if all of the following requirements are met:

(a) The variance is requested in writing.

(b) The requirements of this part cannot otherwise be met.

(c) The variance will not create or increase the potential for a health hazard, nuisance condition, or pollution of surface water or groundwater.

(d) The activity or condition for which the variance is proposed will not violate any other part of this act.

(2) A variance granted under subsection (1) shall be in writing and shall be posted on the department's website.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 12, 2004.

[No. 382]

(HB 5772)

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe

its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 13c of chapter XVII (MCL 777.13c), as added by 2002 PA 30.

The People of the State of Michigan enact:

CHAPTER XVII

777.13c Applicability of chapter to certain felonies; MCL 324.3115(2) to 324.21548(1).

Sec. 13c. This chapter applies to the following felonies enumerated in chapter 324 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
324.3115(2)	Pub saf	H	Water pollution	2
324.3115(4)	Pub saf	G	Water pollution — substantial endangerment	5
324.5531(4)	Pub saf	H	Knowingly releasing air pollutants	2
324.5531(5)	Pub saf	G	Knowingly releasing air pollutants — causing death or serious bodily injury	6
324.5531(6)	Pub saf	C	Knowingly releasing air pollutants — intentionally causing death or serious bodily injury	15
324.8905(2)	Pub saf	H	Littering — infectious waste/ pathological waste/sharps	2
324.8905(3)	Pub saf	G	Littering — infectious waste/ pathological waste/sharps — subsequent offense	5
324.11151(2)	Pub saf	H	Hazardous waste — subsequent offense	2
324.11151(3)	Pub saf	H	Hazardous waste — disregard for human life	2
324.11151(3)	Pub saf	G	Hazardous waste — extreme indifference for human life	5
324.11719(2)	Pub saf	G	Septage — false statement or entry in a license application or other record	2
324.12116(2)	Pub saf	H	Liquid industrial waste — false statement in a license application	2

324.20139(3)	Pub saf	H	Hazardous substance — knowingly releasing or causing release	2
324.21324(1)	Pub saf	G	Underground storage tanks — false or misleading information	5
324.21548(1)	Pub trst	H	Underground storage tanks — false request for payment	5

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5771 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 12, 2004.

Compiler's note: House Bill No. 5771, referred to in enacting section 1, was filed with the Secretary of State October 12, 2004, and became P.A. 2004, No. 381, Imd. Eff. Oct. 12, 2004.

[No. 383]

(SB 1323)

AN ACT to amend 1972 PA 239, entitled "An act to establish and operate a state lottery and to allow state participation in certain lottery-related joint enterprises with other sovereignties; to create a bureau of state lottery and to prescribe its powers and duties; to prescribe certain powers and duties of other state departments and agencies; to license and regulate certain sales agents; to create the state lottery fund; to provide for the distribution of lottery revenues and earnings for certain purposes; to provide for an appropriation; and to provide for remedies and penalties," by amending sections 11 and 18 (MCL 432.11 and 432.18), section 11 as amended by 2004 PA 272.

The People of the State of Michigan enact:

432.11 Rules.

Sec. 11. (1) The commissioner shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to implement this act.

(2) The rules authorized under this section may include any of the following subject to requirements and limitations in this act:

(a) The type of lottery to be conducted.

(b) The price of tickets or shares in the lottery.

(c) The number and size of the prizes on the winning tickets or shares.

(d) The manner of selecting the winning tickets or shares.

(e) The manner of payment of prizes to the holders of winning tickets or shares.

(f) The frequency of the drawings or selections of winning tickets or shares.

(g) Without limit as to number, the type or types of locations at which tickets or shares may be sold.

(h) The method to be used in selling tickets or shares, except that a person's name, other than a name used in advertising or a promotion under section 18(2), shall not be printed on the tickets or shares.

(i) The licensing of agents to sell tickets or shares, but a person under the age of 18 shall not be licensed as an agent.

(j) The manner and amount of compensation to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public.

(k) The apportionment of the total annual revenues accruing from the sale of lottery tickets or shares and from all other sources for the payment of prizes to the holders of winning tickets or shares, for the payment of costs incurred in the operation and administration of the lottery, including the expenses of the bureau and the costs resulting from any contract or contracts entered into for promotional, advertising, consulting or operational services or for the purchase or lease of lottery equipment and materials, for the repayment of the money appropriated to the state lottery fund, and for transfer to the general fund.

(3) The commissioner may promulgate rules incorporating by reference existing rules or regulations of any joint enterprise as required as a condition for participation in that joint enterprise. Any subsequent changes or additions to the rules or regulations of the joint enterprise may be adopted by the commissioner through the promulgation of a rule.

432.18 Contracts for operation and promotion of lottery; assignment; limitations.

Sec. 18. (1) The commissioner, subject to the applicable laws relating to public contracts, may enter into contracts for the operation of the lottery, or any part of the lottery, and into contracts for the promotion of the lottery. A contract awarded or entered into by the commissioner shall not be assigned by the other contracting party except by specific approval of the commissioner.

(2) The commissioner may contract with 1 or more persons to allow the placement of advertising or promotional material, including, but not limited to, the placement of discount coupons for retail goods and NASCAR logos, images, and drivers' pictures and names, on lottery tickets, shares, and other available media under the control of the bureau. However, except for advertising that promotes responsible consumption of alcoholic beverages, the commissioner shall not allow the placement of advertising for the promotion of the consumption of alcoholic beverages or tobacco products on lottery tickets under the control of the bureau.

(3) As used in this section, "NASCAR" means the national association for stock car auto racing, inc.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 12, 2004.

[No. 384]

(HB 5319)

AN ACT to amend 1951 PA 51, entitled "An act to provide for the classification of all public roads, streets, and highways in this state, and for the revision of that classification and for additions to and deletions from each classification; to set up and establish the Michigan transportation fund; to provide for the deposits in the Michigan transportation fund of specific taxes on motor vehicles and motor vehicle fuels; to provide for the allocation of funds from the Michigan transportation fund and the use and administration of the fund for transportation purposes; to set up and establish the truck safety fund; to provide for the allocation of funds from the truck safety fund and administration of the fund for truck safety purposes; to set up and establish the Michigan truck safety commission; to establish certain standards for road contracts for certain businesses; to provide for the continuing review of transportation needs within the state; to authorize the state transportation commission, counties, cities, and villages to borrow money, issue bonds, and make pledges of funds for transportation purposes; to authorize counties to advance funds for the payment of deficiencies necessary for the payment of bonds issued under this act; to provide for the limitations, payment, retirement, and security of the bonds and pledges; to provide for appropriations and tax levies by counties and townships for county roads; to authorize contributions by townships for county roads; to provide for the establishment and administration of the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain other funds; to provide for the deposits in the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain other funds of money raised by specific taxes and fees; to provide for definitions of public transportation functions and criteria; to define the purposes for which Michigan transportation funds may be allocated; to provide for Michigan transportation fund grants; to provide for review and approval of transportation programs; to provide for submission of annual legislative requests and reports; to provide for the establishment and functions of certain advisory entities; to provide for conditions for grants; to provide for the issuance of bonds and notes for transportation purposes; to provide for the powers and duties of certain state and local agencies and officials; to provide for the making of loans for transportation purposes by the state transportation department and for the receipt and repayment by local units and agencies of those loans from certain specified sources; and to repeal acts and parts of acts," by amending the title and section 10 (MCL 247.660), the title as amended by 1997 PA 79 and section 10 as amended by 2003 PA 151; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

TITLE

An act to provide for the classification of all public roads, streets, and highways in this state, and for the revision of that classification and for additions to and deletions from each classification; to set up and establish the Michigan transportation fund; to provide for the deposits in the Michigan transportation fund of specific taxes on motor vehicles and motor vehicle fuels; to provide for the allocation of funds from the Michigan transportation fund and the use and administration of the fund for transportation purposes; to set up and establish the truck safety fund; to provide for the allocation of funds from the truck safety fund and administration of the fund for truck safety purposes; to set up and establish the Michigan truck safety commission; to establish certain standards for road contracts for

certain businesses; to provide for the continuing review of transportation needs within the state; to authorize the state transportation commission, counties, cities, and villages to borrow money, issue bonds, and make pledges of funds for transportation purposes; to authorize counties to advance funds for the payment of deficiencies necessary for the payment of bonds issued under this act; to provide for the limitations, payment, retirement, and security of the bonds and pledges; to provide for appropriations and tax levies by counties and townships for county roads; to authorize contributions by townships for county roads; to provide for the establishment and administration of the state trunk line fund, local bridge fund, comprehensive transportation fund, and certain other funds; to provide for the deposits in the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain other funds of money raised by specific taxes and fees; to provide for definitions of public transportation functions and criteria; to define the purposes for which Michigan transportation funds may be allocated; to provide for Michigan transportation fund grants; to provide for review and approval of transportation programs; to provide for submission of annual legislative requests and reports; to provide for the establishment and functions of certain advisory entities; to provide for conditions for grants; to provide for the issuance of bonds and notes for transportation purposes; to provide for the powers and duties of certain state and local agencies and officials; to provide for the making of loans for transportation purposes by the state transportation department and for the receipt and repayment by local units and agencies of those loans from certain specified sources; and to repeal acts and parts of acts.

247.660 Michigan transportation fund; establishment; use of money appropriated; programs; allocation to transportation economic development fund; transfer of funds to state trunk line fund; create local bridge fund and regional bridge councils.

Sec. 10. (1) A fund to be known as the Michigan transportation fund is established and shall be set up and maintained in the state treasury as a separate fund. Money received and collected under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170, except a license fee provided in that act, and a tax, fee, license, and other money received and collected under sections 801 to 810 of the Michigan vehicle code, 1949 PA 300, MCL 257.801 to 257.810, except a truck safety fund fee provided in section 801(1)(k) of the Michigan vehicle code, 1949 PA 300, MCL 257.801, and money received under the motor carrier act, 1933 PA 254, MCL 475.1 to 479.43, shall be deposited in the state treasury to the credit of the Michigan transportation fund. In addition, income or profit derived from the investment of money in the Michigan transportation fund shall be deposited in the Michigan transportation fund. Except as provided in this act, no other money, whether appropriated from the general fund of this state or any other source, shall be deposited in the Michigan transportation fund. Except as otherwise provided in this section, the legislature shall appropriate funds for the necessary expenses incurred in the administration and enforcement of the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170, the motor carrier act, 1933 PA 254, MCL 475.1 to 479.43, and sections 801 to 810 of the Michigan vehicle code, 1949 PA 300, MCL 257.801 to 257.810. Funds appropriated for necessary expenses shall be based upon established cost allocation methodology that reflects actual costs. Appropriations for the necessary expenses incurred by the department of state in administration and enforcement of sections 801 to 810 of the Michigan vehicle code, 1949 PA 300, MCL 257.801 to 257.810, shall be made from the Michigan transportation fund and from funds in the transportation administration collection fund created in section 810b of the Michigan vehicle code, 1949 PA 300, MCL 257.810b. Appropriations from the Michigan transportation fund for the necessary expenses incurred by department of state in administration and enforcement of sections 801 to 810 of the

Michigan vehicle code, 1949 PA 300, MCL 257.801 to 257.810, shall not exceed $20,000,000.00 per state fiscal year. All money in the Michigan transportation fund is apportioned and appropriated in the following manner:

(a) Not more than $3,000,000.00 as may be annually appropriated each fiscal year to the state trunk line fund for subsequent deposit in the rail grade crossing account.

(b) Not less than $3,000,000.00 each year to the local bridge fund established in subsection (5) for the purpose of payment of the principal, interest, and redemption premium on any notes or bonds issued by the state transportation commission under section 11b.

(c) Revenue from 3 cents of the tax levied under section 8(1)(a) of the motor fuel tax act, 2000 PA 403, MCL 207.1008, to the state trunk line fund, county road commissions, and cities and villages in the percentages provided in subdivision (i).

(d) Until September 30, 2004, all of the revenue from 1 cent of the tax levied under section 8(1)(a) of the motor fuel tax act, 2000 PA 403, MCL 207.1008, to the state trunk line fund for repair of state bridges under section 11. Beginning October 1, 2004 and continuing through September 30, 2005, 3/4 of the revenue from 1 cent of the tax levied under section 8(1)(a) of the motor fuel tax act, 2000 PA 403, MCL 207.1008, shall be appropriated to the state trunk line fund for the repair of state bridges under section 11, and 1/4 of the revenue from 1 cent of the tax levied under section 8(1)(a) of the motor fuel tax act, 2000 PA 403, MCL 207.1008, shall be appropriated to the local bridge fund created in subsection (5) for distribution only to cities, villages, and county road commissions. Beginning October 1, 2005, 1/2 of the revenue from 1 cent of the tax levied under section 8(1)(a) of the motor fuel tax act, 2000 PA 403, MCL 207.1008, shall be appropriated to the state trunk line fund for the repair of state bridges under section 11, and 1/2 of the revenue from 1 cent of the tax levied under section 8(1)(a) of the motor fuel tax act, 2000 PA 403, MCL 207.1008, shall be appropriated to the local bridge fund created in subsection (5) for distribution only to cities, villages, and county road commissions.

(e) $43,000,000.00 to the state trunk line fund for debt service costs on state of Michigan projects.

(f) Except as provided in subsection (4), 10% to the comprehensive transportation fund for the purposes described in section 10e.

(g) $5,000,000.00 to the local bridge fund established in subsection (5) for distribution only to the local bridge advisory board, the regional bridge councils, cities, villages, and county road commissions.

(h) $36,775,000.00 to the state trunk line fund for subsequent deposit in the transportation economic development fund, and, as of September 30, 1997, with first priority for allocation to debt service on bonds issued to fund transportation economic development fund projects. In addition, beginning October 1, 1997, $3,500,000.00 is appropriated from the Michigan transportation fund to the state trunk line fund for subsequent deposit in the transportation economic development fund to be used for economic development road projects in any of the targeted industries described in section 9(1)(a) of 1987 PA 231, MCL 247.909.

(i) Not less than $33,000,000.00 as may be annually appropriated each fiscal year to the local program fund created in section 11e.

(j) The balance of the Michigan transportation fund as follows, after deduction of the amounts appropriated in subdivisions (a) through (i) and section 11b:

(*i*) 39.1% to the state trunk line fund for the purposes described in section 11.

(*ii*) 39.1% to the county road commissions of the state.

(*iii*) 21.8% to the cities and villages of the state.

(2) The money appropriated pursuant to this section shall be used for the purposes as provided in this act and any other applicable act. Subject to the requirements of section 9b, the department shall develop programs in conjunction with the Michigan state chamber of commerce and the Michigan minority business development council to assist small businesses, including those located in enterprise zones and those located in empowerment zones as determined under federal law, as defined by law in becoming qualified to bid.

(3) Thirty-one and one-half percent of the funds appropriated to this state from the federal government pursuant to 23 USC 157, commonly known as minimum guarantee funds, shall be allocated to the transportation economic development fund, if such an allocation is consistent with federal law. These funds shall be distributed 16-1/2% for development projects for rural counties as defined by law and 15% for capacity improvement or advanced traffic management systems in urban counties as defined by law. Federal funds allocated for distribution under this section shall be eligible for obligation and use by all recipients as defined by the transportation equity act for the 21st century, Public Law 105-178.

(4) For the fiscal year beginning October 1, 2003 only, the apportionment of 10% of Michigan transportation fund money to the comprehensive transportation fund as provided in subsection (1)(f) shall be reduced by $10,000,000.00 and the $10,000,000.00 shall be transferred to the state trunk line fund for capacity improvements to state trunk line highways.

(5) A fund to be known as the local bridge fund is established and is set up and maintained in the state treasury as a separate fund. The money appropriated to the local bridge fund and the interest accruing to that fund shall be expended for the local bridge program. The purpose of the fund is to provide financial assistance to highway authorities for the preservation, improvement, or reconstruction of existing bridges or for the construction of bridges to replace existing bridges in whole or part. The money in the local bridge fund is not subject to section 12(15) or 13(5). The local bridge advisory board is created and shall consist of 6 voting members appointed by the state transportation commission and 2 nonvoting members appointed by the state transportation department. The board shall include 3 members from the county road association of Michigan, 1 member who represents counties with populations 65,000 or greater, 1 member who represents counties with populations greater than 30,000 and less than 65,000, and 1 member who represents counties with populations of 30,000 or less. Three members shall be appointed from the Michigan municipal league, 1 member who represents cities with a population 75,000 or greater, 1 member who represents cities with a population less than 75,000, and 1 member who represents villages. Each organization with voting rights shall submit a list of nominees in each population category to the state transportation commission. The state transportation commission shall make the appointments from the lists submitted under this subsection. Names shall be submitted within 45 days after October 1, 2004. The state transportation commission shall make the appointments by January 30, 2005. Voting members shall be appointed for 2 years. The chairperson of the board shall be selected from among the voting members of the board. In addition to the 2 nonvoting members, the department shall provide qualified administrative staff and qualified technical assistance to the board.

(6) Beginning October 1, 2005, no less than 5% and no more than 15% of the funds received in the local bridge fund may be used for critical repair of large bridges and emergencies as determined by the local bridge advisory board. Beginning October 1, 2005, funds remaining after the funds allocated for critical large bridge repair and emergencies are deducted shall be distributed by the board to the regional bridge councils created

under this section. One regional council shall be formed for each department of transportation region as those regions exist on October 1, 2004. The regional councils shall consist of 2 members of the county road association of Michigan from counties in the region, 2 members of the Michigan municipal league from cities and villages in the region, and 1 member of the state transportation department in each region. The members of the state transportation department shall be nonvoting members who shall provide qualified administrative staff and qualified technical assistance to the regional councils.

(7) Beginning October 1, 2005, funds in the local bridge fund after deduction of the amounts set aside for critical repair of large bridges and emergency repairs shall be distributed among the regional bridge councils according to all of the following ratios, which shall be assigned a weight expressed as a percentage as determined by the board, with each ratio receiving no greater than a 50% weight and no less than a 25% weight:

(a) A ratio with a numerator that is the total number of local bridges in the region and a denominator that is the total number of local bridges in this state.

(b) A ratio with a numerator that is the total local bridge deck area in the region and a denominator that is the total local bridge deck area in this state.

(c) A ratio with a numerator that is the total amount of structurally deficient local bridge deck area in the region and a denominator that is the total amount of structurally deficient local bridge deck area in this state.

(8) Beginning October 1, 2005, the regional bridge councils shall allocate the funds received from the board for the preservation, improvement, and reconstruction of existing bridges or for the construction of bridges to replace existing bridges in whole or in part in each region.

(9) Beginning January 1, 2007 and each January after 2007, the department shall submit a report to the chair and the minority vice-chair of the appropriations committees of the senate and the house of representatives, and to the standing committees on transportation of the senate and the house of representatives, on all of the following activities for the previous state fiscal year:

(a) A listing of how much money was dedicated for emergency and large bridge repair.

(b) A listing of what emergency and large bridge repair projects were funded.

(c) The actual weights used in the calculation required under subsection (7).

(d) A listing of the total money distributed to each region.

(e) A listing of what specific projects were funded pursuant to subsection (8).

(10) The state transportation commission shall borrow money and issue notes or bonds in an amount of not less than $30,000,000.00 to supplement the funding provided for the local bridge program under subsection (6). The bonds or notes issued pursuant to this subsection may be issued by the commission for any purpose for which other local bridge funds may be used under this section. The bonds or notes authorized by this subsection shall be issued by resolution of the state transportation commission consistent with the requirements of section 18b.

(11) The state transportation department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, governing the administration of the local bridge program. The rules shall set forth the eligibility criteria for financial assistance under the program and other matters related to the program that the department considers necessary and desirable. The department shall take into consideration the availability of federal aid and other financial resources of the highway

authority responsible for the bridge, the importance of the bridge to the highway, road, or street network, and the condition of the existing bridge.

(12) Beginning October 1, 2004, the revenue appropriated to the local bridge fund pursuant to subsection (1)(d) shall be distributed only to the local bridge advisory board, the regional bridge councils, cities, villages, and county road commissions.

Repeal of MCL 247.661b.

Enacting section 1. Section 11b of 1951 PA 51, MCL 247.661b, is repealed effective October 1, 2004.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 12, 2004.

[No. 385]

(SB 1340)

AN ACT to amend 1995 PA 29, entitled "An act concerning unclaimed property; to provide for the reporting and disposition of unclaimed property; to make uniform the law concerning unclaimed property; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 19 (MCL 567.239), as amended by 2004 PA 82, and by adding section 11a; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

567.231a Abandonment of ownership interest; exceptions.

Sec. 11a. (1) Any stock, share, or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if both of the following apply:

(a) The interest in the association is owned by a person who for more than 3 years has not claimed a dividend, distribution, or other sum payable as a result of the interest, or who has not communicated with the association regarding the interest or a dividend, distribution, or other sum payable as the result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(b) The association does not know the location of the owner at the end of the 3-year period.

(2) The return of official shareholder notifications or communications by the postal service as undeliverable is evidence that the association does not know the location of the owner.

(3) This section applies to both the underlying stock, share, or other intangible ownership interest of an owner, and any stock, share, or other intangible ownership interest of which

the business association is in possession of the certificate or other evidence or indicia of ownership, and to the stock, share, or other ownership interest of dividend and nondividend paying business associations whether or not the interest is represented by a certificate.

(4) At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(5) This section does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless 1 or more of the following apply:

(a) The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within 3 years communicated in any manner described in subsection (1).

(b) Three years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder notifications or communications by the postal service as undeliverable, and the owner has not within 3 years communicated in any manner described in subsection (1).

567.239 Notice; publication in newspaper; requirements.

Sec. 19. (1) The administrator shall cause a notice to be published once every 6 months in a newspaper that has statewide circulation.

(2) The published notice shall be entitled "notice to persons and entities who may be owners of abandoned property" and contain all of the following:

(a) A statement of the number of new properties that have been added to the department of treasury website and that the list of new properties will be available for not less than 1 year.

(b) The department's website address. The website shall enable persons and entities to search for their abandoned property.

(c) The department's telephone number for persons and entities wishing to contact the department via telephone in search of their abandoned property.

(d) A statement that anyone interested in searching the department of treasury website may search the internet at his or her local public library.

(3) The website shall contain all of the following:

(a) The name of any person for whom property has been added to the unclaimed property division database.

(b) A statement that information concerning the property may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator.

(c) A claim form.

(d) A statement informing an owner of property held by the administrator how to file a claim with the administrator to receive his or her property.

(4) The administrator is not required to publish on the website any items of less than $50.00 unless the administrator considers publication of 1 or more of those items to be in the public interest.

(5) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under section 5.

Repeal of MCL 567.231.

Enacting section 1. Section 11 of the uniform unclaimed property act, 1995 PA 29, MCL 567.231, is repealed.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 12, 2004.

[No. 386]

(HB 6165)

AN ACT to amend 1985 PA 106, entitled "An act to impose a state excise tax on persons engaged in the business of providing rooms for dwelling, lodging, or sleeping purposes to transient guests in certain counties; to provide for the levy, assessment, and collection of the tax; to provide for the disposition and appropriation of the collections from the tax; to create a convention facility development fund; to authorize the distributions from the fund; to authorize the use of distributions from the tax as security for any bonds, obligations, or other evidences of indebtedness issued to finance convention facilities as provided by law; to prescribe certain other matters relating to bonds, obligations, or other evidences of indebtedness issued for such purposes," by amending section 9 (MCL 207.629), as amended by 1993 PA 58.

The People of the State of Michigan enact:

207.629 Distribution of fund generally; "qualified local governmental unit" defined.

Sec. 9. (1) On or before the thirtieth day of each month, the state treasurer shall make a distribution from the convention facility development fund to a qualified local governmental unit. The distribution shall be an amount equal to the sum of the collections from the excise tax levied for accommodations under this act for the previous month from the convention hotels in the county in which the convention facility is or is to be located and in any county in which convention hotels are located that is contiguous to the county in which the convention facility is located, or is to be located, and the additional tax imposed under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, for the previous month received in the fund. However, distributions for any state fiscal year to any qualified local governmental unit shall not exceed an amount equal to the amount pledged, assigned, or dedicated by the qualified local governmental unit pursuant to section 11 for the payment during that state fiscal year of bonds, obligations, or other evidences of indebtedness incurred for the purposes specified in this act, plus any amount necessary to maintain a fully funded debt reserve or other reserves intended to secure the principal and interest on the bonds, obligations, or other evidences of indebtedness as contained in the resolution or ordinance authorizing their issuance.

(2) Notwithstanding the distributions provided by subsection (1), if a local governmental unit becomes a qualified local governmental unit entitled to receive distributions from the

tax imposed under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, or from the tax imposed by this act in counties in which the convention facility is located or in a county in which a convention hotel is located that is contiguous to the county in which the convention facility is located, no other qualified local governmental unit is entitled to distributions pursuant to this section for which that qualified local governmental unit has previously become entitled.

(3) As used in this act, "qualified local governmental unit" means a city, village, township, county, or authority that is located in a county in which convention hotels are located and that either is the owner or lessee of a convention facility with 350,000 square feet or more of total exhibit space on July 30, 1985 or, if such a convention facility does not exist, will be the owner or lessee of a convention facility with 350,000 square feet or more of total exhibit space through the application of distributions under this section to the purchase or lease of a convention facility.

(4) Notwithstanding any other provision of this act, after the distributions under subsection (1), and before any distributions under section 10, for fiscal year 2004-2005 only, $1,075,000.00 shall be distributed to the state sports tourism fund. The money distributed to the state sports tourism fund described in this subsection shall be deducted from the money described in section 10(2)(a) before any distribution is made under section 10(2)(a).

(5) The state sports tourism fund is created within the state treasury.

(6) The state treasurer may receive money or other assets from any source for deposit into the state sports tourism fund. The state treasurer shall direct the investment of the state sports tourism fund. The state treasurer shall credit to the state sports tourism fund interest and earnings from the state sports tourism fund investments.

(7) Money in the state sports tourism fund at the close of the fiscal year shall remain in the state sports tourism fund and shall not lapse to the general fund. However, money remaining in the fund on September 30, 2006, shall lapse to the convention facility development fund.

(8) The department of treasury shall expend money from the state sports tourism fund, upon appropriation, only for grants to Super Bowl XL host committee functions related to hosting, staging, or execution of Super Bowl XL activities or to reimburse a county not more than $500,000.00 for contributions or grants already made to the Super Bowl XL host committee for functions related to hosting, staging, or execution of Super Bowl XL activities. Money shall not be distributed to the state sports tourism fund that impairs obligations, bonds, or other evidences of indebtedness issued under this act.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 12, 2004.

[No. 387]

(HB 5782)

AN ACT to amend 2000 PA 161, entitled "An act to create the Michigan education savings program; to provide for education savings accounts; to prescribe the powers and duties of certain state agencies, boards, and departments; to allow certain tax credits or deductions; and to provide for penalties and remedies," by amending sections 2, 7, 8, and 9 (MCL 390.1472, 390.1477, 390.1478, and 390.1479), as amended by 2001 PA 215.

The People of the State of Michigan enact:

390.1472 Definitions.

Sec. 2. As used in this act:

(a) "Account" or "education savings account" means an account established under this act.

(b) "Account owner" means any of the following:

(*i*) The individual who enters into a Michigan education savings program agreement and establishes an education savings account. The account owner may also be the designated beneficiary of the account.

(*ii*) An entity exempt from taxation under section 501(c)(3) of the internal revenue code or an estate or trust that enters into a Michigan education savings program agreement and establishes an education savings account.

(c) "Board" means 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.

(d) "Department" means the department of treasury.

(e) "Designated beneficiary" means the individual designated as the individual whose higher education expenses are expected to be paid from the account.

(f) "Eligible educational institution" means that term as defined in section 529 of the internal revenue code or a college, university, community college, or junior college described in section 4, 5, or 6 of article VIII of the state constitution of 1963 or established under section 7 of article VIII of the state constitution of 1963.

(g) "Internal revenue code" means the United States internal revenue code of 1986 in effect on January 1, 2002 or at the option of the taxpayer, in effect for the current year.

(h) "Management contract" means the contract executed between the treasurer and the program manager.

(i) "Member of the family" means a family member as defined in section 529 of the internal revenue code.

(j) "Michigan education savings program agreement" means the agreement between the program and an account owner that establishes an education savings account.

(k) "Program" means the Michigan education savings program established pursuant to this act.

(*l*) "Program manager" means the entity selected by the treasurer to act as the manager of the program.

(m) "Qualified higher education expenses" means qualified higher education expenses as defined in section 529 of the internal revenue code.

(n) "Qualified withdrawal" means a distribution that is not subject to a penalty or an excise tax under section 529 of the internal revenue code, a penalty under this act, or taxation under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and that meets any of the following:

(*i*) A withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary incurred after the account is established.

(*ii*) A withdrawal made as the result of the death or disability of the designated beneficiary of an account.

(*iii*) A withdrawal made because a beneficiary received a scholarship that paid for all or part of the qualified higher education expenses of the beneficiary to the extent the amount of the withdrawal does not exceed the amount of the scholarship.

(*iv*) A transfer of funds due to the termination of the management contract as provided in section 5.

(*v*) A transfer of funds as provided in section 8.

(o) "Treasurer" means the state treasurer.

390.1477 Education savings accounts; establishment; purpose; agreement; form of contribution; withdrawal; distributions; penalty; separate accounting for each beneficiary.

Sec. 7. (1) Beginning October 1, 2000, education savings accounts may be established under this act.

(2) Any individual or entity described in section 2(b)(*ii*) may open 1 or more education savings accounts to save money to pay the qualified higher education expenses of 1 or more designated beneficiaries. An account owner shall open only 1 account for any 1 designated beneficiary. Each account opened under this act shall have only 1 designated beneficiary.

(3) To open an education savings account, the individual or entity described in section 2(b)(*ii*) shall enter into a Michigan education savings program agreement with the program. The Michigan education savings program agreement shall be in the form prescribed by the program manager and approved by the treasurer and contain all of the following:

(a) The name, address, and social security number or employer identification number of the account owner.

(b) A designated beneficiary.

(c) The name, address, and social security number of the designated beneficiary.

(d) Any other information that the treasurer or program manager considers necessary.

(4) Any individual or entity described in section 2(b)(*ii*) may make contributions to an account.

(5) Contributions to accounts shall only be made in cash, by check, by money order, by credit card, or by any similar method as approved by the state treasurer but shall not be property.

(6) An account owner may withdraw all or part of the balance from an account on 60 days' notice, or a shorter period as authorized in the Michigan education savings program agreement.

(7) Distributions from an account shall be requested on a form approved by the state treasurer. The program manager may retain from the distribution the amount necessary to comply with federal and state tax laws. Distributions may be made in the following manner:

(a) Directly to an eligible education institution.

(b) In the form of a check payable to both the designated beneficiary and the eligible educational institution.

(c) In the form of a check payable to the designated beneficiary or account holder.

(8) Except as otherwise provided in this subsection for tax years that begin before January 1, 2002, if the distribution is not a qualified withdrawal, the program manager shall withhold an amount equal to 10% of the distribution amount as a penalty and pay that amount to the department for deposit into the general fund. For a distribution made after December 31, 2001 that is not a qualified withdrawal, if an excise tax or penalty is imposed under section 529 of the internal revenue code pursuant to section 530(d)(4) of the internal revenue code, a penalty shall not be imposed under this subsection for that

distribution. If a distribution that is not a qualified withdrawal is made after December 31, 2001 and an excise tax or penalty is not imposed under section 529 of the internal revenue code pursuant to section 530(d)(4) of the internal revenue code on that distribution, the program manager shall withhold an amount equal to 10% of the accumulated earnings attributable to that distribution amount as a penalty and pay that amount to the department for deposit into the general fund. The penalty under this subsection may be increased or decreased if the treasurer and the program manager determine that it is necessary to increase or decrease the penalty to comply with section 529 of the internal revenue code.

(9) The program shall provide separate accounting for each designated beneficiary.

390.1478 Account owner or beneficiary; changes; transfer.

Sec. 8. (1) An account owner may designate another individual as a successor owner of the account in the event of the death of the account owner.

(2) An account owner may change the designated beneficiary of an account to a member of the family of the previously designated beneficiary as provided in the management contract or as otherwise provided in this act.

(3) An account owner may transfer ownership of all or a portion of an account to an individual or entity that is eligible to be an account owner under this act.

(4) An account owner may transfer all or a portion of an account to another education savings account. The designated beneficiary of the account to which the transfer is made must be a member of the family.

(5) An account owner may transfer all or a portion of an account to an account in a qualified tuition program under section 529 of the internal revenue code, other than the program under this act, once every 12 months, without a change in designated beneficiary.

(6) Changes in designated beneficiaries and transfers under this section are not permitted to the extent that the change or transfer would constitute excess contributions or unauthorized investment choices.

390.1479 Account owner or beneficiary; direction of contributions or earnings; selection of investment strategy; use of interest; prohibitions and restrictions.

Sec. 9. (1) Except as otherwise provided in this section, an account owner or a designated beneficiary of any account shall not direct the investment of any contributions to an account or the earnings on an account.

(2) An account owner may select among different investment strategies designed exclusively by the program manager in all of the following circumstances to the extent allowed under section 529 of the internal revenue code:

(a) At the time any contribution is made to an account with respect to the amount of that contribution.

(b) Once each calendar year with respect to the accumulated account balance.

(c) When an account owner makes a change in designated beneficiary of an account.

(3) The program may allow board members or employees of the program, or the board members or employees of a contractor hired by the program to perform administrative services, to make contributions to an account.

(4) An interest in an account shall not be used by an account owner or a designated beneficiary as security for a loan. Any pledge of an interest in an account has no force or effect.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 12, 2004.

[No. 388]

(HB 5783)

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 6, 7, and 8 (MCL 390.1426, 390.1427, and 390.1428); and to repeal acts and parts of acts.

The People of the State of Michigan enact:

390.1426 Advance tuition payment contract generally.

Sec. 6. (1) The trust, on behalf of itself and the state, may contract with a purchaser for the advance payment of tuition by the purchaser for a qualified beneficiary to attend any of the state institutions of higher education to which the qualified beneficiary is admitted, without further tuition cost to the qualified beneficiary. In addition, an advance tuition payment contract shall set forth in a clear, understandable manner all of the following:

(a) The amount of the payment or payments required from the purchaser on behalf of the qualified beneficiary.

(b) The terms and conditions for making the payment, including, but not limited to, the date or dates upon which the payment, or portions of the payment, is due.

(c) Provisions for late payment charges and for default.

(d) The name and age of the qualified beneficiary under the contract, unless the contract is purchased by a state or local government agency or instrumentality or a person exempt from taxation as an organization described in section 501(c)(3) of the internal revenue code of 1986, 26 USC 501, as part of a scholarship program. The purchaser, with the approval of and on conditions determined by the trust, may subsequently substitute another person for the qualified beneficiary originally named.

(e) The number of credit hours covered by the contract.

(f) The name of the person entitled to terminate the contract. The contract may provide for termination by the purchaser, the qualified beneficiary, a person appointed to act on behalf of the purchaser or qualified beneficiary, or any combination of these persons.

(g) The terms and conditions under which the contract may be terminated and the amount of the refund, if any, to which the person terminating the contract, or specifically the purchaser or designated qualified beneficiary if the contract so provides, is entitled upon termination.

(h) The assumption of a contractual obligation by the trust to the qualified beneficiary on its own behalf and on behalf of the state to provide for credit hours of higher education, not to exceed the credit hours required for the granting of a baccalaureate degree, at any state institution of higher education to which the qualified beneficiary is admitted. The advance tuition payment contract shall provide for the credit hours of higher education that a qualified beneficiary may receive under the contract if the qualified beneficiary is not entitled to in-state tuition rates.

(i) The period of time from the beginning to the end of which the qualified beneficiary may receive the benefits under the contract.

(j) All other rights and obligations of the purchaser and the trust.

(k) Other terms, conditions, and provisions as the trust considers in its sole discretion to be necessary or appropriate.

(2) The trust shall not enter into any advance tuition payment contract unless the state administrative board has approved of the form of that contract.

(3) The trust shall make any arrangements that are necessary or appropriate with state institutions of higher education in order to fulfill its obligations under advance tuition payment contracts. The arrangements may include, but need not be limited to, the payment by the trust of the then actual in-state tuition cost on behalf of a qualified beneficiary to the state institution of higher education.

(4) An advance tuition payment contract shall provide that the trust provide for the qualified beneficiary to attend a community or junior college in this state before entering a state institution of higher education if the beneficiary so chooses and that the contract may be terminated pursuant to section 8 after completing the requirements for a degree at the community or junior college in this state or before entering the state institution of higher education.

(5) An advance tuition payment contract may provide that, if after a number of years specified in the contract the contract has not been terminated or the qualified beneficiary's rights under the contract have not been exercised, the trust, after making a reasonable effort to locate the purchaser and qualified beneficiary or the agent of either, shall retain the amounts otherwise payable and the rights of the qualified beneficiary, the purchaser, or the agent of either shall be considered terminated.

(6) A writing or information provided to the trust for purposes of this section by a purchaser, qualified beneficiary, or person appointed under subsection (1)(f) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. As used in this subsection, "writing" means that term as defined in section 2 of the freedom of information act, 1976 PA 442, MCL 15.232.

390.1427 Plan A and Plan B.

Sec. 7. (1) At a minimum, the trust shall offer 1 of the 2 types of advance tuition payment contracts set forth in subsections (2) and (3), to be known as Plan A and Plan B, respectively.

(2) Under Plan A:

(a) A payment or series of payments shall be required from the purchaser on behalf of a qualified beneficiary.

(b) If an advance tuition payment contract is terminated before a qualified beneficiary earns a high school diploma or reaches the age of majority, or pursuant to section 8(1)(d), the trust shall refund the face amount of the payment or payments in accordance with the terms of the contract, less any administrative fee specified in the contract, but shall not refund any investment income attributable to the payments.

(c) Except as provided in subdivision (d), the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for the number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary, except as provided in section 6(1) for a qualified beneficiary who is not entitled to in-state tuition rates.

(d) As an alternative to subdivision (c), the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for a fixed number of credit hours, as permitted by the trust, less than the total number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary for that fixed number of credit hours, except as provided in section 6(1) for a qualified beneficiary who is not entitled to in-state tuition rates.

(3) Under Plan B:

(a) A payment or series of payments shall be required on behalf of a qualified beneficiary.

(b) If an advance tuition payment contract is terminated before a qualified beneficiary earns a high school diploma or reaches the age of majority, or pursuant to section 8(1)(d), the trust shall refund the face amount of the payment or payments in accordance with the terms of the contract, less any administrative fee specified in the contract, together with all or a specified portion of accrued investment income attributable to the payment or payments as may be agreed to in the contract.

(c) Except as provided in subdivision (d), the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for the number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary, except as provided in section 6(1) for a qualified beneficiary who is not entitled to in-state tuition rates.

(d) As an alternative to subdivision (c), the trust shall provide for the qualified beneficiary to attend a state institution of higher education at which the qualified beneficiary attends for a fixed number of credit hours, as permitted by the trust, less than the total number of credit hours required by the institution for the awarding of a baccalaureate degree, without further tuition cost to the qualified beneficiary for that fixed number of credit hours, except as provided in section 6(1) for a qualified beneficiary who is not entitled to in-state tuition rates.

(4) Contracts required to be offered by this section may require that payment or payments from a purchaser, on behalf of a qualified beneficiary who may attend a state institution of higher education in less than 4 years after the date the contract is entered into by the purchaser, be based upon attendance at a certain state institution of higher education or at that state institution of higher education with the highest prevailing tuition cost for the number of credit hours covered by the contract.

(5) A contract offered by the trust under this section shall be offered with 2 alternatives. The first alternative shall offer an advance tuition payment contract that provides the credit hours of higher education necessary for the granting of a baccalaureate degree at any of the state institutions of higher education. The second alternative shall provide that the number of credit hours of higher education a qualified beneficiary may receive under the contract will be reduced to a percentage of the credit hours required for the granting of a baccalaureate degree at a state institution of higher education, as specified in the contract, if the qualified beneficiary enrolls in a state institution of higher education imposing at the time the qualified beneficiary enrolls an annual tuition rate that is greater than 105% of the weighted average annual tuition rate of all state institutions of higher

education. This subsection does not preclude a state institution of higher education at which a qualified beneficiary is entitled to receive less than the minimum number of credit hours required for the granting of a baccalaureate degree from providing that qualified beneficiary, without further tuition charges, the additional credit hours necessary to receive a baccalaureate degree.

(6) If a beneficiary of an advance tuition payment contract with either alternative designation described in subsection (5) attends a community or junior college for 2 years at the in-district tuition rate, that beneficiary then may attend any state institution of higher education at no additional tuition cost and receive the number of credit hours necessary for the awarding of a baccalaureate degree.

390.1428 Termination of advance tuition payment contract; refund.

Sec. 8. (1) An advance tuition payment contract shall authorize a termination of the contract when any 1 of the following occurs:

(a) The qualified beneficiary dies.

(b) The qualified beneficiary is not admitted to a state institution of higher education after making proper application.

(c) The qualified beneficiary certifies to the trust that he or she has decided to attend and has been accepted by a Michigan independent, degree-granting institution of postsecondary education recognized by the state board of education or, after he or she has a high school diploma or has reached the age of majority, he or she has decided not to attend a state institution of higher education and requests, in writing, before July 15 of the year in which the qualified beneficiary desires to terminate the contract, that the advance tuition payment contract be terminated.

(d) Other circumstances, determined by the trust and set forth in the advance tuition payment contract, occur.

(2) Except as provided in section 7(2)(b) and (3)(b) and subsection (5), an advance tuition payment contract shall provide for a refund upon termination of the contract to a person to whom the refund is payable under the contract. All of the following apply to the refund described in this subsection:

(a) If the qualified beneficiary has a high school diploma or has reached the age of majority, and attends an institution of higher education, the amount of a refund, except as provided in subsection (4), is the lesser of the average tuition cost of all state institutions of higher education on the date of termination of the contract, or the face amount of the payment or payments and any accrued investment income attributable to the payment or payments, if he or she is covered by the first alternative described in section 7(5), or the lowest tuition cost of all state institutions of higher education on the date of termination of the contract if he or she is covered by the second alternative described in section 7(5) or does not attend an institution of higher education.

(b) The amount of a refund shall be reduced by an appropriate percentage if the purchaser entered into an advance tuition payment contract that provided for a fixed number of credit hours less than the total number of credit hours required by a state institution of higher education for the awarding of a baccalaureate degree, by the amount transferred to a community or junior college on behalf of a qualified beneficiary when the contract is terminated as provided in section 6(4), and by the amount transferred to a state institution of higher education on behalf of a qualified beneficiary.

(c) The contract may provide that the trust may deny payment of a refund upon termination of the contract if the qualified beneficiary has completed more than 1/2 of the credit hours required by the state institution of higher education for the awarding of a

baccalaureate degree. However, this subdivision shall not affect the termination and refund rights of a graduate of a community or junior college.

(d) Except as provided by subsection (3), the trust shall make refund payments in equal installments over 4 years and not later than August 15 of the year due.

(3) An advance tuition payment contract shall authorize a person, who is entitled under the advance tuition payment contract to terminate the contract, to direct payment of the refund to an independent degree-granting college or university located in this state or to a community or junior college located in this state. If directed to make payments pursuant to this subsection, the trust shall transfer to the designated institution an amount equal to the tuition due for the qualified beneficiary, but the trust shall not transfer a cumulative amount greater than the refund to which the person is entitled. If the refund exceeds the total amount of transfers directed to the designated institution, the excess shall be returned to the person to whom the refund is otherwise payable.

(4) Notwithstanding any other section of this act, the amount of a refund paid upon termination of the advance tuition payment contract by a person who directs the trust pursuant to subsection (3) to transfer the refund to an independent degree-granting college or university located in this state shall not be less than the prevailing weighted average tuition cost of state institutions of higher education for the number of credit hours covered by the contract on the date of termination. In calculating the amount of a refund for an advance payment contract containing the restrictions provided by section 7(5), the prevailing weighted average tuition cost shall be based upon only those state institutions of higher education at which the qualified beneficiary could have received sufficient credit hours for a baccalaureate degree.

(5) The trust may offer an advance tuition payment contract that does not provide for a refund under subsection (2) to a purchaser who is an individual, state or local government agency or instrumentality, or a person exempt from taxation as an organization described in section 501(c)(3) of the internal revenue code of 1986, 26 USC 501, and who is purchasing the contract as part of a scholarship program. The price of a contract offered pursuant to this subsection shall be established to reflect that the terms of the contract do not provide for a refund.

Repeal of MCL 390.1443 and 390.1444.

Enacting section 1. Sections 23 and 24 of the Michigan education trust act, 1986 PA 316, MCL 390.1443 and 390.1444, are repealed.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 12, 2004.

[No. 389]

(HB 5340)

AN ACT to amend 2002 PA 440, entitled "An act to authorize the state administrative board to convey certain state owned property in Macomb county; to prescribe conditions for the conveyance; and to provide for disposition of the revenue from the conveyance," by amending sections 3, 4, 5, and 6.

The People of the State of Michigan enact:

Determination of fair market value; appraisal.

Sec. 3. The fair market value of the property described in section 1 shall be determined by an appraisal based on using the property for providing services to individuals who are mentally ill, aged, physically handicapped, substance abusers, or developmentally disabled, referred to collectively as community-based services.

Conveyance of property to Macomb-Oakland regional center.

Sec. 4. The property described in section 1 shall be conveyed to the Macomb-Oakland regional center, inc., commonly known as MORC, at fair market value as determined under section 3.

Quitclaim deed.

Sec. 5. (1) The conveyance authorized by this act shall be by quitclaim deed, and a right of first refusal agreement, drafted by and approved by the attorney general.

(2) The quitclaim deed shall provide that if property is subsequently offered for sale by the Macomb-Oakland regional center for any purpose other than the provision of community-based services, the state has the first right to repurchase the property from the grantee, for a period of 90 days, for an amount equal to the price that the Macomb-Oakland regional center paid to the state for the property.

Payments; reservation of mineral rights.

Sec. 6. (1) The conveyance authorized under this act shall provide that, if the property is subsequently sold by the Macomb-Oakland regional center for any purpose other than the provision of community-based services as defined in section 3, and if the state has declined to exercise its first right to repurchase the property under section 5, the Macomb-Oakland regional center shall pay to the state both of the following amounts:

(a) An amount equal to the fair market value of the property according to an appraisal based on its highest and best use at the time it was sold to the Macomb-Oakland regional center by the state, less the sum of the following:

(*i*) The price the Macomb-Oakland regional center paid to the state for the property.

(*ii*) Any amount expended by the Macomb-Oakland regional center for new construction on the property.

(b) An amount equal to 50% of the difference between the price paid by the subsequent purchaser to the Macomb-Oakland regional center for the property and the fair market value of the property according to an appraisal based on its highest and best use at the time it was sold to the Macomb-Oakland regional center by the state.

(2) The state shall not reserve the mineral rights to the property conveyed under this act. However, the conveyance authorized under this act shall provide that if the purchaser or any subsequent grantee develops any minerals found on, within, or under the conveyed property, the purchaser or any grantee shall pay 1/2 of that revenue to the state, for deposit in the state general fund.

This act is ordered to take immediate effect.
Approved October 12, 2004.
Filed with Secretary of State October 12, 2004.

[No. 390]

(HB 6074)

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, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 21502, 21504, 21505, 21506, 21508, 21546, 21548, and 21550 (MCL 324.21502, 324.21504, 324.21505, 324.21506, 324.21508, 324.21546, 324.21548, and 324.21550), sections 21506 and 21508 as amended by 1995 PA 269, sections 21546 and 21548 as amended by 1996 PA 181, and section 21550 as amended by 1995 PA 252, by amending the part heading of part 215, and by adding sections 21506a and 21552; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

PART 215

REFINED PETROLEUM FUND

324.21502 Definitions; A to O.

Sec. 21502. As used in this part:

(a) "Administrator" means the fund administrator provided for in section 21513.

(b) "Approved claim" means a claim that is approved pursuant to section 21515.

(c) "Authority" means the Michigan underground storage tank financial assurance authority created in section 21523.

(d) "Board" means the Michigan underground storage tank financial assurance policy board created in section 21541.

(e) "Board of directors" means the board of directors of the authority.

(f) "Bond proceeds account" means the account or fund to which proceeds of bonds or notes issued under this part have been credited.

(g) "Bonds or notes" means the bonds, notes, commercial paper, other obligations of indebtedness, or any combination of these, issued by the authority pursuant to this part.

(h) "Claim" means the submission by the owner or operator or his or her representative of documentation on an application requesting payment from the fund. A claim shall include, at a minimum, a completed and signed claim form and the name, address, telephone number, and federal tax identification number of the consultant retained by the owner or operator to carry out responsibilities pursuant to part 213.

(i) "Consultant" means a person on the list of qualified underground storage tank consultants prepared pursuant to section 21542.

(j) "Co-pay amount" means the co-pay amount provided for in section 21514.

(k) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment or the taking of such other actions as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources.

(*l*) "Department" means the department of environmental quality.

(m) "Financial responsibility requirements" means the financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from an underground storage tank system that the owner or operator of an underground storage tank system must demonstrate under part 211 and the rules promulgated under that part.

(n) "Fund" means the Michigan underground storage tank financial assurance fund created in section 21506.

(o) "Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils including navy special fuel oil and bunker C; and other fuels when used as substitutes for 1 of these fuel oils.

(p) "Indemnification" means indemnification of an owner or operator for a legally enforceable judgment entered against the owner or operator by a third party, or a legally enforceable settlement entered between the owner or operator and a third party, compensating that third party for bodily injury or property damage, or both, caused by an accidental release as those terms are defined in R 29.2163 of the Michigan administrative code.

(q) "Location" means a facility or parcel of property where petroleum underground storage tank systems are registered pursuant to part 211.

(r) "Operator" means a person who was, at the time of discovery of a release, in control of or responsible for the operation of a petroleum underground storage tank system or a person to whom an approved claim has been assigned or transferred.

(s) "Owner" means a person, other than a regulated financial institution, who, at the time of discovery of a release, held a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located, including, but not limited to, a trust, vendor, vendee, lessor, or lessee. Owner includes a person to whom an approved claim is assigned or transferred. Owner does not include a person or a regulated financial institution who, without participating in the management of an underground storage tank system and without being otherwise engaged in petroleum production, refining, or marketing relating to the underground storage tank system, is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located. This exclusion does not apply to a grantor, beneficiary, remainderman, or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust.

(t) "Oxygenate" means an organic compound containing oxygen and having properties as a fuel that are compatible with petroleum, including, but not limited to, ethanol, methanol, or methyl tertiary butyl ether (MTBE).

324.21504 Objectives of part.

Sec. 21504. The objectives of this part are to address certain problems associated with releases from petroleum underground storage tank systems, to promote compliance with

parts 211 and 213, and to fund environmental and consumer protection programs necessary to protect public health, safety, or welfare or the environment due to the sale, use, or release of refined petroleum products.

324.21505 Legislative findings.

Sec. 21505. The legislature finds that releases from underground storage tanks are a significant cause of contamination of the natural resources, water resources, and groundwater in this state. It is hereby declared to be the purpose of this part and of the authority created by this part to preserve and protect the water resources of the state and to prevent, abate, or control the pollution of water resources and groundwater, to protect and preserve the public health, safety, and welfare, to assist in the financing of repair and replacement of petroleum underground storage tanks and to improve property damaged by any petroleum releases from those tanks, to preserve jobs and employment opportunities or improve the economic welfare of the people of the state, and to fund environmental and consumer protection programs necessary to protect public health, safety, or welfare or the environment due to the sale, use, or release of refined petroleum products.

324.21506 Michigan underground storage tank financial assurance fund; creation; expenditures.

Sec. 21506. (1) The Michigan underground storage tank financial assurance fund is created in the state treasury.

(2) The state treasurer shall direct the investment of the fund. Interest and earnings from fund investments shall be credited to the fund.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) Except as provided in subsections (5) and (6), money in the fund shall be expended only as follows and in the following order of priority:

(a) To defease principal and interest due and owing on bonds issued by the authority pursuant to this part that are outstanding on the effective date of the 2004 amendatory act that amended this section.

(b) For the reasonable administrative cost of implementing this part by the department, the department of treasury, the department of attorney general, and the authority as annually appropriated by the legislature. Administrative costs include the actual and necessary expenses incurred by the board and its members in carrying out the duties imposed by this part. Total administrative costs expended under this subdivision shall not exceed 7% of the fund's projected revenues in any year. Costs incurred by the authority for the issuance of bonds or notes which may also be payable from the proceeds of the bonds or notes shall not be considered administrative costs.

(c) For payment of rewards under section 21549.

(d) For the interest subsidy program established in section 21522. The money expended under this subdivision shall not exceed 10% of the fund's projected revenues in any year. However, 10% of the revenue of the fund during the first year of the fund's operation shall be expended on the interest subsidy program. If this money is not expended during the first year, this money shall be carried over for expenditure in the succeeding years of the fund's operation. Additional fund revenue shall not be set aside for the interest subsidy program until all of the first year revenue is expended.

(e) For corrective action and indemnification including all of the following:

(*i*) Payments for work invoices submitted prior to 5 p.m. on June 29, 1995 and approved by the department pursuant to this part.

(*ii*) Payments for requests for indemnification submitted prior to 5 p.m. on June 29, 1995 and approved by the department pursuant to this part.

(*iii*) Payments for work invoices or requests for indemnification that were submitted prior to 5 p.m. on June 29, 1995 and denied by the department pursuant to this part but which denials were subsequently reversed on appeal.

(5) All revenue collected during the state fiscal years ending September 30, 2003 and September 30, 2004 from the environmental protection regulatory fee imposed under section 21508 shall be allocated and expended by the state treasurer for the purchase of United States treasury obligations in an amount sufficient, together with interest on the obligations, to implement subsection (4)(a).

(6) Upon determination by the state treasurer of the amount of money needed to satisfy all obligations listed in subsection (4), the state treasurer shall transfer all remaining money in the fund to the refined petroleum fund created in section 21506a.

(7) The board shall make recommendations to the appropriations committees in the senate and house of representatives on the distribution and amount of administrative costs under subsection (4)(b). The board shall provide a copy of these recommendations to each affected department.

324.21506a Refined petroleum fund; creation.

Sec. 21506a. (1) The refined petroleum fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the refined petroleum fund. The state treasurer shall direct the investment of the refined petroleum fund. The state treasurer shall credit to the refined petroleum fund interest and earnings from refined petroleum fund investments.

(3) Money in the refined petroleum fund at the close of the fiscal year shall remain in the refined petroleum fund and shall not lapse to the general fund.

(4) Money from the refined petroleum fund shall be expended, upon appropriation, only for 1 or more of the following purposes:

(a) For gasoline inspection programs under both of the following:

(*i*) The weights and measures act, 1964 PA 283, MCL 290.601 to 290.634.

(*ii*) The motor fuels quality act, 1984 PA 44, MCL 290.641 to 290.650d.

(b) For corrective actions necessary to address releases of refined petroleum products under a refined petroleum product cleanup program established by law following the issuance of recommendations from the refined petroleum cleanup advisory council created in section 21552.

(c) For the reasonable administrative costs of the department, the department of agriculture, the department of attorney general, and the department of treasury in administering the refined petroleum fund and in implementing the programs receiving revenue from the refined petroleum fund.

324.21508 Environmental protection regulatory fee; imposition; disposition of fees; powers and authority of department of treasury.

Sec. 21508. (1) An environmental protection regulatory fee is imposed on all refined petroleum products sold for resale in this state or consumption in this state. The regulatory fee shall be charged for capacity utilization of underground storage tanks measured on a per gallon basis. The regulatory fee shall be charged against all refined petroleum products sold for resale in this state or consumption in this state so as to not exclude any products that may be stored in an underground tank at any point after the petroleum is refined. The regulatory fee shall be 7/8 cent per gallon for each gallon of refined petroleum sold for resale in this state or consumption in this state, with the per gallon charge being a direct measure of capacity utilization of an underground storage tank system.

(2) The department of treasury shall precollect regulatory fees from persons who refine petroleum in this state for resale in this state or consumption in this state and persons who import refined petroleum into this state for resale in this state or consumption in this state. The department of treasury shall collect regulatory fees that can be collected at the same time as the sales tax under section 6a of the general sales tax act, 1933 PA 167, MCL 205.56a, at that time. The remainder of the regulatory fees shall be collected in the manner determined by the state treasurer.

(3) A public utility with more than 500,000 customers in this state is exempt from any fee or assessment imposed under this part if that fee or assessment is imposed on petroleum used by that public utility for the generation of steam or electricity.

(4) Beginning on the effective date of the 2004 amendatory act that amended this section, all regulatory fees collected pursuant to this part shall be deposited into the refined petroleum fund created in section 21506a.

(5) Consistent with the March 31, 1995 determination by the state treasurer that revenue will not be sufficient to pay expected expenditures, and consistent with the April 3, 1995 notice of the fund administrator pursuant to subsection (6), funding is no longer available under this part for new claims, work invoices, and requests for indemnification received after 5 p.m. on June 29, 1995. Claims, work invoices, and requests for indemnification received after 5 p.m. on June 29, 1995 are not eligible for funding under this part. Work invoices and requests for indemnification received prior to 5 p.m. on June 29, 1995 may be paid to the extent money is available in the fund as provided in this part.

(6) If the state treasurer determines that fund revenues will not be sufficient to pay expected expenditures from the fund, the state treasurer shall notify the administrator, and 90 days after this notification has been given the administrator shall not accept any new work invoices or requests for indemnification. Upon receiving this notification from the state treasurer, the administrator shall notify by certified mail the owners and operators of petroleum underground storage tank systems registered under part 211 that funding under this part will no longer be available for new claims after the 90-day period has expired. However, work invoices and requests for indemnification that were submitted to the administrator prior to or during this 90-day period may be paid to the extent money is available in the fund as provided in this part.

(7) The department of treasury may audit, enforce, collect, and assess the fee imposed by this part in the same manner and subject to the same requirements as revenues collected pursuant to 1941 PA 122, MCL 205.1 to 205.31.

324.21546 Liability; constitutionality of part.

Sec. 21546. (1) This part does not create any liability on behalf of the state. This part shall not be construed as making the state the guarantor of the fund.

(2) This part does not relieve any person who may be eligible to receive money from the fund or the former emergency response fund from any liability that he or she may incur as the owner or operator of an underground storage tank system. The state is not assuming the liability of an owner or operator eligible for funding under this part; it is only providing assistance to such owners or operators in meeting the financial responsibility requirements.

(3) If all bonds or notes of the authority payable from the fund have been fully paid or provided for and if any provision of this part is found to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, this whole part shall be considered unconstitutional and invalid.

324.21548 Knowledge of false, misleading, or fraudulent request for payment as felony or subject to civil fine; "fraudulent" or "fraudulent practice" defined; action brought by attorney general or county prosecutor; prosecutions under other laws not precluded; apportionment of fines.

Sec. 21548. (1) A person who makes or submits or causes to be made or submitted either directly or indirectly any statement, report, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification under this part knowing that the statement, report, application, claim, bid, work invoice, or other request for payment or indemnification is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $50,000.00, or both. In addition to any penalty imposed under this subsection, a person convicted under this subsection shall pay restitution to the fund for the amount received in violation of this subsection.

(2) A person who makes or submits or causes to be made or submitted either directly or indirectly any statement, report, application, claim, bid, work invoice, or other request for payment or indemnification under this part knowing that the statement, report, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification is false, misleading, or fraudulent, or who commits a fraudulent practice, is subject to a civil fine of not more than $50,000.00 or twice the amount submitted, whichever is greater. In addition to any civil fine imposed under this subsection, a person found responsible under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. The legislature intends that this subsection be given retroactive application.

(3) As used in subsection (2), "fraudulent" or "fraudulent practice" includes, but is not limited to, the following:

(a) Submitting a work invoice for the excavation, hauling, disposal, or provision of soil, sand, or backfill for an amount greater than the legal capacity of the carrying vehicle or greater than was actually carried, excavated, disposed, or provided.

(b) Submitting paperwork for services done or work provided that was not in fact provided or that was not directly provided by the individual indicated on the paperwork.

(c) Contaminating an otherwise clean resource or site with contaminated soil or product from a contaminated resource or site.

(d) Returning any load of contaminated soil to its original site for reasons other than remediation of the soil.

(e) Causing damage intentionally or as the result of gross negligence to an underground storage tank system, which damage results in a release at a site.

(f) Placing an underground storage tank system at a contaminated site where no underground storage tank system previously existed for purposes of disguising the source of contamination or to obtain funding under this part.

(g) Submitting a work invoice for the excavation of soil from a site that was removed for reasons other than removal of the underground storage tank system or remediation.

(h) Any intentional act or act of gross negligence that causes or allows contamination to spread at a site.

(i) Registration of a nonexistent underground storage tank system with the department.

(j) Loaning to an owner or operator the co-pay amount required under section 21514 and then submitting or causing to be submitted inflated claims or invoices designed to recoup the co-pay amount.

(k) Confirming a release without simultaneously providing notice to the owner or operator.

(*l*) Inflating bills or work invoices, or both, by adding charges for work that was not performed.

(m) Submitting a false or misleading laboratory report.

(n) Submitting bills or work invoices, or both, for sampling, testing, monitoring, or excavation that are not justified by the site condition.

(o) Falsely characterizing the contents of an underground storage tank system for purposes of obtaining funding under this part.

(p) Submitting or causing to be submitted bills or work invoices by or from a person who did not directly provide the service.

(q) Characterizing legal services as consulting services for purposes of obtaining funding under this part.

(r) Misrepresenting or concealing the identity, credentials, affiliation, or qualifications of principals or persons seeking, either directly or indirectly, funding or approval for participation under this part.

(s) Falsifying a signature on a claim application or a work invoice.

(t) Failing to accurately disclose the actual amount and carrier of unencumbered insurance coverage available for new environmental impairment or professional liability claims.

(u) Any other act or omission of a false, fraudulent, or misleading nature undertaken in order to obtain funding under this part.

(4) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section.

(5) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or records, however stored or embodied, or tangible object which is relevant to an investigation of a violation or attempted violation of this part or a crime or attempted crime against the fund, the attorney general or county prosecutor may, before bringing any action, make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the document, records, or object for